

## **Men are entitled to harassment free workplaces too!**

**By: Kimberly Ross**

Yes, it's true that women can sexually harass men. It's more common than one may expect, which leads to the problem of both preventing and correcting that kind of harassment.

Take the case of Michael Binkley, a probation officer in Gloucester County, New Jersey, who recently filed suit against his employer and several female employees, whom he claimed either subjected him to merciless harassment or did nothing about it when he complained. Among his allegations, Mr. Binkley claimed that female co-workers exposed their breasts to him; made overt sexual advances towards him; talked about sexual acts they wanted to perform with him; hid underwear in his desk drawer; and questioned him about his personal life. For example, he alleged that his female co-workers discussed sex scenes from the book "Fifty Shades of Grey," and then they asked him about his sexual preferences, and whether he liked bondage and sexual toys. He alleged several other incidents that would make most readers of this blog blush. All of this was happening during his 90 day probationary period.

According to Mr. Binkley, he asked them to stop, and they laughed at him. After enduring these acts during his 90 day probationary period, and despite his embarrassment, he then decided to report the unrelenting harassment. Subsequently, the bullying worsened, and the women allegedly started to pick apart his work and blame him for things he did not do in an apparent attempt to get him fired. The women, described by one of them as a "clique," ganged up on him to make him feel embarrassed and powerless. He alleges that he then began suffering medical and mental health consequences. He was eventually transferred to another location and also filed an EEOC charge of discrimination. The employer did eventually investigate, but Mr. Binkley alleged that none of the harassers were disciplined, though interestingly, he was suspended for five days (more than a year after he complained and long after he filed his lawsuit) for supposedly engaging in harassing conduct, himself.

The above scenario is all too common in the workplace with male harassers and female victims. So, why is it that we don't hear more about these situations like the one Mr. Binkley allegedly experienced? Though it may sound sexist, some men don't mind this kind of attention from women. Some don't care enough to complain. And likely the most common reason is that many men would fear repercussions, not even necessarily from their harassers, but from other men, who may view them as a "wuss" or a "wimp."

Employers are required to take reasonable measures to prevent harassment (and correct if it occurs), and no employer should tolerate any harassment of any employee, male or female. Likewise, no employee should be encouraged to withstand harassment, no matter their gender. One scenario I have seen in my practice over and over is the following: Female employee tries to be "one of the guys" and participates in and even instigates sexual banter. Male employees don't mind or don't complain and

some even enjoy the banter and joke right back with the female. Later, something happens with the female's employment (such as discipline or termination), and she makes a complaint about sexual harassment (frequently as an attempt to rescind the discipline or termination), and claims that the male employees made certain sexual comments to her, which out of context, happens to be true. In the end, it is an uphill battle to convince a jury that it was the woman who instigated the banter, rather than the men who committed the harassment.

Because of the number of times I have defended cases with this same general set of facts (i.e. female instigates sexual banter and later claims harassment), I make it a point to teach this to clients when conducting anti-harassment training. I remind the males that they can be sexually harassed no differently than females, that they are required to report it no differently than females, and that there are potential consequences if they don't. After one such training session at an auto dealership, the owner of the company contacted me to report that a young male porter (in his 20s), who had been with the company for several years had "sheepishly" come to him, heeding my instruction, to complain about a female receptionist (in her 50s) who sat at the front desk. The keys for the demo cars were kept behind the front desk, and whenever the porter went to retrieve a key, the receptionist would frequently touch him, sniff his buttocks and proposition him for sex, among other things. When the owner went to fire the receptionist, he went armed with her signed acknowledgement of receipt of the company's anti-harassment policy and acknowledgment of attendance at the same training session the porter attended. Not unexpectedly, the female employee tried to claim that it was the porter who harassed her, but when she was reminded of the policy and training, and was asked where her own complaint was (as required by the policy and training), she fell silent and went on her way.

The take-away from these types of scenarios is that no form of sexual harassment can be tolerated, no matter who is the harasser and who the victim is, male, female, gay, straight, co-worker, supervisor. It doesn't matter if the recipient of the conduct enjoys or simply doesn't mind the attention, or is afraid of being teased later. Employees must be taught that they are required to complain. If not, sooner or later someone is going to get in trouble, and it may not always be the harasser if the harasser is able to turn the tables and blame the victim.