

# Keillor's case tests blurry legal lines

Sexual banter between workers, supervisors is minefield, lawyers say.

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For two years, Garrison Keillor exchanged flirtatious e-mails and texts with a female staffer, sharing personal thoughts and fantasies in discussions that sometimes turned erotic.

Keillor maintains that the e-mails themselves are proof that he didn't do anything wrong, that the relationship was entirely mutual. Minnesota Public Radio ended its four-decade connection to the Prairie Home Companion star over Keillor's behavior, including incidents of what the company called "unwanted sexual touching."

Employment lawyers say the scandal raises important questions about sexual harassment and workplace romance that defy simple rules. When does flirting become a problem? How should workers respond if they get suggestive e-mails from a boss? How much is an organization required to do to police the actions of its leaders?

"Not engaging in any kind of sexually related banter is the  
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## Keillor case tests boundaries around work relationships

• **HARASSMENT** from AI safest rule, but we know the world often doesn't work that way," said Minneapolis attorney Clayton Halunen, who represents victims of sexual harassment.

While the #MeToo movement has spurred more women to come forward with accusations of executive misconduct, attorneys said the courts have been making it harder for victims to pursue legal claims against co-workers.

Nonetheless, lawyers said it is important for companies to act assertively when evidence surfaces of possible misconduct. An abusive boss or supervisor hurts morale and reduces productivity, and companies can get tied up in expensive, time-consuming litigation.

"Many organizations feel they can only discipline or react if a certain behavior would create legal liability for the employer," Minneapolis attorney Beth Bertelson said. "However, these same employers are comfortable with firing employees that show up late, sneak food or are perceived to be poor performers."

A key question the Keillor case highlights is whether a relationship between a person in a position of power and a junior staffer can ever be truly consensual.

Attorneys said they typically advise executives and business owners to avoid office romance because it could create legal problems. The rules are different, they said, between workers who occupy the same rung on the corporate ladder.

"The law is fairly forgiving of peer-to-peer conduct," said attorney Sheila Engelmeier, who specializes in sexual harassment cases. "It's a different situation if the conduct involves a supervisor or a boss who is essentially the alter ego of the company, because they are the people who have obli-

gations" to provide a safe work environment.

To avoid reprisals, attorneys said, many victims of sexual harassment either remain silent or try to appease the harasser.

"I had a case where a very senior individual at the company sent 1,400 texts to my client of a flirty, sexualized nature — including photos of himself in his underwear," said Minneapolis attorney John Klassen. "And she'd reply nicely just to buy herself some time and get the guy off her back. ... If you surveyed female victims, you'd find that they engage in banter because they really want to keep their jobs."

Keillor, who sent more than 20 flirtatious e-mails and texts to a female staffer, says the records exonerate him, pointing to messages in which the former worker flirts back. For instance, when he proposed kissing her on the beach in June 2014, she said "I would kiss you back." When he imagined them lying naked in bed together in his hotel room, she responded, "The image of us lying together is sweet. I wish I were there, too."

"I think if a line was crossed, we crossed it mutually," Keillor said in a recent interview. "This was two people — a woman in her 50s and a man in his 70s — being crazy together. ... I can't explain it. I can't justify it. But at the same time, I don't think there is anything that unusual about it."

The woman declined an interview request. Her attorney, Frances Bailion, disputed Keillor's characterization of the relationship.

"The conduct was unwelcome and offensive to our client," Bailion said. "This is why she reported it on more than one occasion to management" at Prairie Home Productions.

The Star Tribune showed the e-mails to six local employment lawyers who specialize in sexual harassment cases.



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Garrison Keillor, on his flirtatious e-mails and texts with a female staff member

Some attorneys said they believe Keillor's increasingly amorous messages broke the rules, while others said the situation is murkier.

The key issue, attorneys said, is whether the conduct is severe and pervasive, standards the U.S. Supreme Court established in defining whether behavior creates a hostile work environment. However, there are no specific limits on the number of improper contacts, leaving such determinations up to judges and juries.

"The standard for defining sexual harassment is outrageously high right now," said Engelmeier, who recently testified on the issue at the Minnesota Legislature. "It's not enough to look at someone through a peephole dozens of times when they go to the bathroom. Asking someone to have sex many times is not enough."

In Keillor's case, the

woman who now accuses him of harassment expressed concerns about his behavior as early as 2011 to Kate Gustafson, the managing director of Prairie Home Productions and Keillor's longtime second-in-command.

In one 2014 e-mail, Gustafson advised the woman to confront Keillor and tell him to "stop telling me your fantasies." In another e-mail from 2014, Gustafson offered to "intervene" on behalf of the female worker, but she also noted in the message that "he is not doing anything really wrong, is he?"

Gustafson declined an interview request, referring questions to attorney Eric Nilsson, who represents Keillor and his production company. Nilsson said Gustafson acted appropriately.

"Given what Kate learned from the woman about the woman's relationship with

Garrison and how much she, the woman, appreciated the relationship, given the woman's assurance that she could handle any boundary issues herself, and given that in an abundance of caution Kate consulted with counsel, Kate reasonably believed that she did not have a basis for intervening," Nilsson said in a written statement.

MPR officials said they did not learn of Keillor's alleged misconduct until last fall, when a former employee told officials that Keillor had behaved inappropriately with at least one female colleague.

"We wish that others who knew about the interactions had told us," MPR spokeswoman Angie Andresen said. "We expect and encourage anyone involved with our programs to inform us of inappropriate behavior."

Attorneys said companies should encourage all employ-

ees to promptly report suspected harassment, noting that the law requires companies to provide more than one way to raise concerns to make sure a worker can approach someone in an unbiased position.

They said all complaints must be investigated thoroughly, and that prompt action must be taken to prevent the harassment from recurring. Staff members also must be told they will be protected from retaliation.

"To say that a person should go and confront their own harasser is not appropriate action," said Minneapolis attorney Jean Boler. "If a person is worried enough to confide in you, you need to take action. You need to say, 'I can't not do anything just because you've asked me not to do anything.'"

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