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## News Story

### Has Detroit mayor exposed city to liability beyond Whistleblower case?

#### Kilpatrick's relationship with ex-chief of staff may have laid foundation for sexual harassment claim

By *Melissa P. Stewart, Esq.*

#### ADVERTISEMENT

When news broke of the text messages that confirmed reports of an extramarital affair between Detroit Mayor Kwame Kilpatrick and then-Chief of Staff Christine Beatty, questions began to swirl.

Among them: Had the mayor exposed the city to a potentially enormous liability by engaging in a sexual relationship with a subordinate?

According to Michigan's Elliott-Larsen Civil Rights Act, a claim for sexual

harassment arises when unwelcome sexual advances become a condition of — or substantially interferes with — an individual's employment.

Given the nature of Kilpatrick's relationship with Beatty, as set out by the now infamous text messages, it seems a far stretch to claim the relationship was "unwelcome."

But, according to employment law specialist Andrey T. Tomkiw of Royal Oak, "Four percent of all consensual workplace romances result in some sort of sexual harassment complaint or litigation."

Though all of the facts surrounding the relationship have yet to shake out, "assuming their relationship was purely consensual, and that can be established, there is really very limited exposure to the city," he said.

"If Beatty says the relationship was not consensual, that's where the problems for the city begin," Tomkiw said.

In his estimation, however, such a claim is not out of the realm of possibility.

"It is [common] that once a relationship sours, one of the parties will claim they were just 'pretending' to consent to the relationship," he said.

And, should Beatty make such a claim, the city might have a difficult time disproving it, given

that, typically, "you take a claimant at her word, because you don't know what her motivating factors really are," Tomkiw said.

To help insulate itself from liability, the Royal Oak attorney recommended the city take affirmative steps to remedy any potential flaws in its personnel policies.

"The city needs to conduct a full and thorough investigation from an employment law perspective to determine whether it has been exposed to any adverse actions," he said.

Beyond that, Tomkiw said, the city needs to determine "whether the mayor had engaged in any conduct [for] which corrective actions needs to be taken, while also ... taking affirmative steps to ensure that its harassment policies are not violated in the future."

Doing so, Tomkiw said, will allow the city to "assert an affirmative defense that it took certain steps to help the aggrieved individual."

But Bloomfield Hills attorney Deborah L. Gordon, who also specializes in employment law, said that such precautions are not necessary, in light of Beatty's recent resignation from her post as chief of staff.

"In order to have a sexual harassment case, Beatty would have to show she was involved in something unwelcome to her — unwelcome is key — and she was terminated because she either complained about it or refused to go along with it," Gordon said. "Neither [scenario] was the case here."

Rather, she said, "With her resignation, most of the possibilities [for a lawsuit] are removed, because she was not actually terminated."

*If you would like to comment on this story, please contact Melissa P. Stewart at (248) 865-3105 or [melissa.stewart@mi.lawyersweekly.com](mailto:melissa.stewart@mi.lawyersweekly.com).*

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