

The Day of the Woman – Maybe Not at Kleiner Perkins

Barbara E. Hoey

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On Monday, March 9, one day after we all celebrated International Women's Day, Ellen Pao, a Harvard-trained lawyer, took the stand in her sexual harassment trial against venture capital firm Kleiner Perkins in California. There are always two sides to every case, and Kleiner has just begun to cross examine Ms. Pao and offer its defense to her claims, so I do not profess to offer my views on which side is telling the truth. However, even before she testified, the evidence thus far has depicted an environment that – at least from what has been presented – was far from the model of the professional workplace.

First, there were alleged “slights” in the treatment of women at Kleiner. For example, women partners were not invited to an important client dinner with Vice President Al Gore and then were excluded from a company ski trip. One male partner asked two female junior partners to take notes at a meeting. The firm has explanations for all of these incidents, but women felt that they were being treated as second-class citizens.

Then there are the more significant “events” and incidents. It is undisputed that Ms. Pao had a consensual affair with a married partner. When that ended, the same partner appeared at the door of yet another female partner's hotel room in a bathrobe carrying a wine bottle. When that woman complained, a partner suggested she “did not want to go public” and that she should be “flattered” by his attention. When Ms. Pao tried to complain about the partner, senior partner John Doerr laughed it off, claiming the partner was a “sex addict.”

Beyond these lurid incidents, the testimony also reveals a deeper possible double standard that the women like Ms. Pao had to endure. Ms. Pao's evaluations revealed sometimes contradictory advice and criticism. In some situations they were told to “speak up,” while at other times they were told to be quiet.

When outside counsel (a male law firm partner) was finally brought in to investigate Ms. Pao's complaint, it is alleged that no one could locate a copy of the firm's harassment policy. When asked about Ms. Pao, Mr. Doerr told the investigator she had a “female chip on her shoulder.” Once he made his report, Mr. Doerr did not have time to read it, so it was merely “summarized” for him. There are also now allegations from Ms. Pao that the outside counsel was biased, as he was trying to get hired by Kleiner for an in-house position.

Ultimately, Ms. Pao claims that she was terminated in retaliation for reporting this alleged harassment.

Again, the trial continues and the defense is now cross-examining Ms. Pao and putting some holes in her story, but many of the facts which have come out at the trial are disturbing.

So you may ask yourself what does this case have to do with my company?

While the incidents which are alleged in the Pao case may not happen in every workplace, they do bear a strange similarity to some of the allegations in the recent [Faruqi harassment lawsuit](#) in New York, so patterns emerge which all employers should take note of:

- **It's Not Just About a Policy** - Remember that your harassment policy should be a living, breathing thing – which everyone not only knows about, but follows. It should be more than a piece of paper; it should be part of your culture. It never hurts to have an annual reminder or training for management on respectful behavior in the workplace. Make sure all of your employees also know the policy and know how to complain if needed. Also, respectful behavior starts at the top, so if senior executives treat women and all employees with respect, then that attitude will trickle down to the rest of the staff.
- **Love (At Work) Is not a “Many Splendored Thing”** – Affairs, even totally consensual affairs, between and among employees, and especially where a more senior executive is having an affair with someone at a more junior level, rarely are a good thing for the employer. As we see in these cases, these relationships may end badly and then the “he said/ she said” battle begins. The company will rarely be able to sort this out. Also, they can stir resentment and bad feelings among other staff. Senior executives should be reminded that affairs with those junior to them are frowned upon.
- **The workplace does not end at your office door** - The Pao and Faruqi lawsuits both included allegations of “bad” behavior on business trips and at firm social functions, most of which included some over-use of alcohol. Again, remind your executives especially that they are always representing the company, and that their behavior – whether on a business trip or holiday party – **MUST be professional at all times**. The reality is that the company can be liable for the behavior of a senior executive at these events, and executives need to be aware of that.

Finally, no matter who “wins” the Pao lawsuit, the defendant in such a case is often losing a great deal. There is the tremendous cost, in terms of dollars in legal fees and executive time. There is also the cost in damage to the reputation of the company, and possible damage to its ability to recruit female talent. It is also possible that potential clients will turn away from a firm which they perceive to be unwelcome to women.