

Taking the Sting Out of Workplace Romance

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While internet dating is becoming more prevalent, recent surveys indicate more and more employees are looking for love in the next cubical over, the front desk at the workplace, or even the supervisor's office. In fact, in its annual survey, Careerbuilder.com reported that 38 percent of workers across the US have dated someone who worked for the same company, and 16 percent said they have done so more than once. Of those employees, a surprising 24% indicated that their love interest was higher up in the company, including their direct supervisor. While your office may not be the set of Mad Men, it does not mean that you are insulated from potential harassment claims from budding and waning office romances.

Unfortunately, workplace romance can go awry, statements can be misinterpreted, and "flirting" can result in claims of unwanted touching. Ultimately, these situations can give rise to complaints and lawsuits, particularly where one participant in the relationship later claims that it was less love and more stalking or harassment. This is an even more pressing problem when the relationship involves a supervisor and subordinate and other employees can feel [and/or allege] that the subordinate was given preferential treatment because of the romantic relationship causing a hostile work environment. This especially is problematic when employees can claim that management knew of the relationship and did nothing about it.

Notably, these claims can result in plaintiffs seeking monies for lost wages, emotional distress, and punitive damages, just to name a few. Moreover, blanket policies prohibiting any fraternization between employees after working hours and/or romantic relationships can open the company up to claims of violations of privacy. So, with a potential minefield of love and lawsuits, what can employers do? As discussed herein, steps as simple as revising your employee handbook and policies and even having employees enter into "love contracts" [once again proving that attorneys can turn anything into a legal document], when properly implemented, can aid employers in establishing strong defenses against claims of harassment by star-crossed lovers.

Review and Revise Harassment Policy and Handbooks

Although controversial and potentially unpopular, policies prohibiting or discouraging romantic relationships between supervisors and subordinates can be useful tools in

preventing claims of harassment. Furthermore, instituting a policy requiring that employees disclose romantic relationships can be useful if, in the future, a relationship is spurn between employees. Finally, having an air-tight harassment policy and complaint procedure will provide employers from protection for employees who were in a consensual relationship, and only complain it was harassing after the relationship sours.

Employers in most states are prohibited from explicitly preventing employees from engaging in romantic relationships. However, in situations where there is a romantic relationship between a supervisor and a subordinate, an employer can strongly argue that such a relationship will create a conflict of interest for the supervisor. After all, who among us could state that they could successfully and effectively supervise, critique and evaluate the “love of their life,” or even their “love of that moment.” To implement such a policy, companies should stress that these types of relationships create a conflict for the supervisor and the operation of the business, and are thus prohibited. If such a relationship does occur, the company can then take action with respect to the employees. In fact, most companies have policies stating that such actions can result in discipline ranging from transfer to termination.

Notably, in most instances, employers will transfer one or both of the employees. However, when deciding to transfer only one of the employees, companies have to be careful to ensure that it does not appear that only one member of the couple is being negatively affected [opening the employer into claims of gender discrimination in some instances]. Moreover, companies should be aware that a simple transfer doesn’t always solve the problem. For example, by transferring a manager to supervise a different department, the company could potentially magnify the problem by creating interdepartmental conflict and/or alerting more employees to the interoffice romance, who might not have known about it otherwise. If a transfer doesn’t fix the problem, or if there is no other appropriate position available, termination may be the only option.

If the conflict can be resolved short of termination, both parties will remain in the workplace. Therefore, the employer should remain particularly aware of both employees’ disposition in the workplace by keeping in touch with their supervisors. Follow-up interviews with both employees at a reasonable interval, such as one to three months after the transfer, also should help to keep emotions in check.

Love Contracts

Another available tool to employers are Love Contracts, used to formalize the consensual nature of a workplace romantic relationship. Such agreements have been used by companies, big and small, for over 10 years. While the contract does not necessarily completely insulate the employer and supervisor from claims of harassment, they require the parties to formally acknowledge their relationship is consensual and does not amount to threats or harassment by one party, potentially mitigating claims by the employee down the road. Additionally, such

contracts clarify that both parties understand that the relationship will not result in any unique benefits for either party.

However, employers should consult legal counsel prior to implementing such policies in order to ensure their legality. Specifically, when implementing said contracts, companies must take into account the type of employees involved and tailor its provisions accordingly. Companies may have simple contracts for those rank-and-file employees who work at the same level within the company. More sophisticated contracts may be required when management-level employees are involved because those employees may be more litigation savvy. Additionally, when the relationship involves a manager and supervisor, specific language can be implemented that helps mitigate future claims of hostile work environment. Finally, all of these contracts can serve as a document requiring the employees to re-acknowledge any anti-harassment policy and to remind the employee that if at anytime they feel harassed they should immediately alert human resources. Once again, an employee will be hard pressed to claim that the relationship evolved into harassment when they sign the aforementioned agreement, but never raise any complaints until after the relationship is over.

Companies that have consulted with our firm to develop Love Contracts note that a critical part of the document is reminding employees that the company's acknowledgment of the relationship should not be confused with condoning public displays of affection or other unprofessional behavior. It should be made clear to the parties that signing the document does not give them free reign to act inappropriately in the workplace. Furthermore, when the company institutes said policies, it is often discussed in the workforce. The result is often a decrease in workplace romance and showcases that the company is taking efforts to negate any potential hostile work environments. As a result, the company is further insulated by implementing said contracts.

Any company must be mindful that, despite its best efforts, any complaint of harassment can result in a lawsuit related to the actions alleged and the employer's response to the complaint. However, companies can reduce the likelihood of harassment lawsuits stemming from romantic workplace relationships by preventing relationships between subordinates and managers and by having employees in romantic relationships sign Love Contracts.



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