

# LOVE IS IN THE AIR: THE DANGERS OF WORKPLACE ROMANCES AND HOW TO PROTECT YOUR COMPANY FROM LIABILITY

FOR CORPORATE COUNSEL, BUSINESS OWNERS, AND HUMAN RESOURCE PROFESSIONALS

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# Workplace Romances are Inevitable

- 59% of employees have had an office romance
- 25% have dated a subordinate
- 35% reported having an office tryst
  - 5% were caught during a tryst!



# Dangers of Office Romances

- *A consensual* office relationship poses several risks for the employer:
  - Sexual harassment
  - Sexual favoritism by participants
  - Third-party retaliation
  - Workplace violence



# Sexual Harassment

- Prohibited sex discrimination under Title VII of the Civil Rights Act (and state/local equivalents)
- Generally involves unwelcome sexual conduct
- Risk is exacerbated by:
  - Technology: text messages, emails, social networking
  - Public displays of affection: kissing, hugging, inappropriate touching



# Two types of Sexual Harassment

- **Quid Pro Quo Harassment**
  - When supervisor seeks sexual favors in return for job benefit or to avoid job detriment
- **Hostile Work Environment Harassment**
  - When employer's environment is so offensive or intimidating on basis of sex that it alters conditions of employment and makes environment abusive



# Sexual/Paramour Favoritism

- Claims by participants
  - Individual believes adverse employment action is result of office romance or post-romance behavior
- Claims by third-parties
  - Individual believes professionally disadvantaged because he/she not dating supervisor like other employee
  - Can be isolated, coerced, or widespread



# Workplace Violence

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- If unrequited affection or soured romance leads to workplace violence, employer can have exposure to claims for:
  - Negligent hiring
  - Negligent supervision
  - Negligent retention
  - Health and safety violations under OSHA

# Practical Considerations

- Damage to employee morale and productivity
- Higher turnover rates
- Negative publicity
- Conflicts of interest or other ethical problems





# Best Practices

- Draft realistic policies and apply uniformly
- Conduct regular training
- Ensure that relationships are consensual
- Consider using a “love contract”
- Limit employer involvement
- Document everything
- Inform employees about possible communications monitoring
- Harassment hotline or other resource



# Realistic Policy

- Complete ban on office romances is unworkable
- Well-written policy will put you in better position to defend against claims
- Make sure formal policy is:
  - Applied uniformly without exception;
  - Available to all employees; and
  - Written acknowledgement from employee that read/received



# What to include in formal policy?

- Prohibit, limit or give guidance about romances:
  - Can limit or prohibit supervisor/subordinate relationships or internal department relationships
- Ensure guidance about supervisor/subordinate relationships is clear
  - Consider prohibiting relationships between employees who (i) are in direct reporting relationship, or (ii) could advance career through promotion, raise, etc.
- Explain conduct expected from supervisors, managers, and employees
- Require disclosure of relationship to HR or other appropriate party as soon as it begins
- Require employees to behave professionally and keep relationship out of work environment
- Clearly state consequences for violating policy (e.g., transfer, schedule change, termination)



# Regular Training is Key

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- Sexual harassment training is relatively inexpensive way to reduce legal exposure
- Require sexual harassment prevention training
  - Require employees to sign acknowledgement that received and understood training

# Ensure Relationship is Consensual

- Separate conversations with each individual:
  - Confirm relationship is consensual and free of coercion
  - Review company's harassment policy (and other applicable policies)
  - Ensure employee has signed applicable policies
  - Stress importance of professionalism at work
  - Caution against favoritism or activities which could create conflict of interest
  - Advise employee to report any harassing conduct at any time (particularly after relationship ends)

# Love Contract

- What is it?
  - Signed agreement which two parties agree relationship is consensual and does not involve any sexual harassment
- Why use it?
  - Limits liability when/if romantic relationship ends



# What to include in love contract?

- Acknowledgement that relationship is consensual, voluntary, and no sexual harassment exists
- Agreement to behave professionally in office and at work events
- Acknowledgement that relationship will not interfere with work performance
- Acknowledgement that employee is aware of company's policy and reporting procedures – and employee will follow both
- Signed by both parties

# Limit Employer Involvement

- Respect employees' privacy
- Employer concern should be only with the potential or actual negative effect of relationship on the *employee*





# Document Everything

- Existence of documents, along with employee's knowledge of documentation, protects employer from future lawsuits
- Documents should include:
  - Recording performance issues of romantically involved employees
  - Love contract
  - Company policy acknowledgement

# Communications Monitoring

- Make sure employees know emails, phone calls, etc. may be monitored
- Ensure policy includes language notifying employee that they have no expectation of privacy in workplace electronic communications



# Harassment Reporting

- Ensure employees know that *any* harassment should be reported immediately
- Provide harassment hotline for anonymous reporting – or other resource
- Be committed to investigating reports made

# Thank You

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