

NEWS & INSIGHTS

“Love Stinks” - Navigating the Pitfalls of Romance in the Workplace

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As Valentine’s Day quickly approaches, many employers are reminded that workplace romance can be a minefield, especially if they aren’t prepared to address the permissible parameters of employee romantic relationships or handle the potential fallout from a breakup.

While love itself may be blind, employers are certainly not immune from legal liabilities arising out of workplace relationships, including claims of sexual harassment, retaliation, favoritism, and in extreme cases, even workplace violence.

But when employees refuse to heed the adage, “Don’t get your honey where you get your money,” what’s an employer to do?

“Love’s gonna find you, yes it is, you just can’t hide”

The most effective way to manage consensual romance in the workplace is to address the issue head-on through implementation and consistent enforcement of a romance in the workplace policy.

Although some employers try to prohibit all romantic relationships, a total ban is rarely feasible and nearly impossible to police. The better, more measured approach is to set forth a policy that prohibits *certain kinds* of relationships, namely those involving a supervisor and subordinate or any other relationship where one employee exercises control over the terms and conditions of the other employee’s employment. For those relationships that are permissible (such as coworkers of equal rank/power), a romance in the workplace policy should also include:

- Reaffirmation of the company’s anti-harassment policy (including complaint procedures and prohibition of retaliation)
- Reporting requirements, if the company elects to require disclosure of romantic relationships
- How the company will deal with the employment of spouses
- Under what circumstances the company will consider transferring one of the employees to another position/location during the pendency of the relationship and/or if the relationship ends and the process for such a transfer
- Consequences for violation of the policy

“This thing they call love, it’s gonna make you cry”

When company policy dictates mandatory reporting of romantic workplace relationships, some employers also consider the use of a “love contract,” which allows the company to obtain confirmation from the employees that their relationship is consensual. While not a bar to all legal claims, a love contract can provide another layer of protection for employers, especially if the romantic relationship later sours and one of the parties asserts sexual harassment or related claims. These contracts typically encompass provisions that:

- Reaffirm the company’s equal employment opportunity and anti-harassment policies
- Acknowledge the parties’ agreement to abide by the company’s anti-harassment policy and promptly report any unwelcome advances should the relationship end
- Affirm the consensual, voluntary nature of the romantic relationship
- Confirm the parties’ agreement not to engage in inappropriate physical touching or other displays of affection while at the worksite

- Affirm the parties' agreement that the relationship will not interfere with or negatively affect the workplace
- Outline the expectation and agreement that the parties will remain civil and professional with one another if the relationship ends

Love contracts can be instrumental in easing the burden and friction of a romantic relationship in some situations. However, they may not be well-suited for all businesses or even all relationships in the workplace. Employees may feel undue pressure to enter into such agreements, viewing the agreement as an invasion of privacy. Employers should assess the pros and cons of a love contract with counsel, taking into account the company's workplace culture and other business considerations.

In all cases, employers should regularly train managers and employees on the company's sexual harassment policy, emphasizing the company's strict stance on preventing retaliation and ensuring employees know how to report violations.

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