
LABOR AND EMPLOYMENT LAW UPDATE



DO EMPLOYERS NEED TO BE CONCERNED ABOUT OFFICE ROMANCES?

Office romances may be an inevitable fact of life in the workplace. In a Career Builder survey of more than 7,000 workers conducted between November 9 and December 5, 2011, 38% confessed they had dated a co-worker at least once over the course of their career.

Many employers have sexual harassment policies which prohibit unwelcome conduct amongst coworkers, but do they also need to be concerned about apparently consensual relationships? After all, if consenting adults are involved what is the harm?

The recent scandal at the University of Arkansas is but one example of the harm which can result from a workplace affair. When an affair has apparent consequences at work for the romantic partners or other employees, claims of unlawful discrimination are possible.

So, what issues do employers need to be concerned about with respect to office romances in general or specific relationships in particular? What can employers do to address these issues? It is the modest goal of this update to provide a starting point for employers seeking answers to these questions.

IS OFFICE ROMANCE WELCOMED BY PARTICIPANTS? Even a seemingly consensual romance can be sexual harassment in disguise. One employee may be consenting to sexual activity based upon a fear or threat of reprisal by the other employee. Under these circumstances, the sexual activity is unwelcomed and can still expose the employer to potential liability for sexual harassment.

EXAMPLE: A company vice president begins dating an account manager from a department not under his direct or indirect supervision. The vice president, however, is part of a management team charged with selecting candidates for a company-wide reduction in force. If the vice president is secretly using this position to obtain sexual favors from the account manager, the account manager is being sexually harassed.

HOW IS OFFICE ROMANCE BEING TREATED BY OTHER EMPLOYEES? The attitudes of other employees toward an office romance can include disapproval, amusement, and jealousy. They can even include prejudice if romantic partners are of the same gender or different races. If these attitudes are manifested in workplace behavior or decisions, an employer can face discrimination or harassment claims by one or both of the romantic partners.

EXAMPLE: Two customer service representatives of equal rank begin dating. Co-workers persistently tease the new couple with sexual innuendos and gestures. If the teasing is unwelcomed by either employee, it is sexual harassment.

EXAMPLE: A waiter and waitress at a restaurant become engaged to each other. A recently promoted supervisor, who unsuccessfully tried to date the waitress before his promotion, begins criticizing her work performance and ultimately fires her. The employer is now vulnerable to a claim of sex discrimination by the fired waitress.

IS THERE AN OPPORTUNITY FOR AN APPEARANCE OF SEXUAL FAVORITISM? Even if an office romance is welcomed by its participants, it may not be welcomed by applicants or employees who fear the loss of employment opportunities because of the relationship. If one romantic partner supervises the other romantic partner or is in a position to make or influence employment decisions regarding the other romantic partner, claims of sexual favoritism may be unavoidable.

EXAMPLE: An assistant manager and a sales clerk at a clothing store begin dating. The assistant manager cannot make employment decisions but her input is used by the store manager in sales clerk evaluations. These evaluations are instrumental in determining bonuses. If the sales clerk receives more favorable evaluations than his counterparts, a claim of sexual favoritism is possible.

IS OFFICE ROMANCE CREATING A HOSTILE WORK ENVIRONMENT FOR OTHER EMPLOYEES? Overt displays of affection, or suggestive talk or actions, at work can be offensive to other employees and be the basis of sexual harassment complaints..

EXAMPLE: Two computer programmers in a romantic relationship frequently joke about what they are going to do after work hours. An employer would need to take prompt remedial action in response to an employee complaint regarding such jokes.

WHAT IS POTENTIAL FALLOUT IF OFFICE ROMANCE ENDS BADLY? Even a welcomed and seemingly promising romance can end bitterly. The emotions of the romantic partners toward each other after a breakup may include antagonism, jealousy or vengefulness. One romantic partner may even refuse to acknowledge the affair is over. If these emotions are manifested in workplace behavior or decisions, the employer could face potential claims of sexual harassment or sex discrimination.

EXAMPLE: Two adjusters, who work in adjacent cubicles, have an affair which ends bitterly. Thereafter, one adjuster complains to the employer that the other adjuster is talking loudly and suggestively on the telephone to a new boyfriend. To avoid a sexual harassment charge, the employer must respond to the complaint.

WHAT IS THE ANSWER FOR EMPLOYERS? Well-crafted and enforced harassment and fraternization policies can help minimize the legal risks associated with office romances. For some employers a strict non-fraternization policy may be appropriate; for other employers a more narrowly tailored policy may be the answer, especially when the price of enforcement is the loss of two key employees. Consultation with legal counsel can help determine which policy language best suits an employer's needs.

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