



FRISKY BUSINESS:

Be Wary Of Workplace Romances

*Employer options
range from dating
bans to 'love contracts'*

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It is no secret that many people find love on the job. According to a 2009 Career Builder survey, 31 percent of respondents met their spouse at work and 40 percent have dated a co-worker at least once. While many of these relationships never cause concern, workplace romances (and, alas, their demise) can impact employees' productivity and may lead to costly sexual harassment and other claims.

In light of the potential liability associated with workplace romance, clients may need your advice on handling a relationship or its aftermath. An exhaustive review of workplace romance issues is beyond the scope of this article, but below are a few points to consider when speaking to your corporate clients about minimizing the potential liability inherent in these relationships.

What should employers know? Liability from workplace romances can be very real. Relationships gone sour can lead to trouble when a former couple uses the workplace as a post-breakup battleground. Worse yet, one party may claim that the relationship was never consensual, leaving the employer vulnerable to sexual harassment claims. Also, what one person believes is a budding relationship another may see as a series of unwelcome advances.

For those outside of the relationship, real or perceived favoritism can cause resentment and lead to unfair treatment claims, and employees working in what they feel to be an inappropriately permissive environment may seek redress via a hostile work environment claim. In the worst cases, romances gone wrong can even lead to episodes of workplace violence.

Legal concerns aside, workplace romances can interfere with productivity – and not just between those romantically involved. Workplace gossip eats up work time and impacts morale. Displays of affection may offend co-workers and foster the appearance of favoritism, even among non-supervisory colleagues.

Should employers prohibit romances? There is nothing illegal about prohibiting workplace romances, but no one – and certainly no company policy – can stop people from engaging in consensual romantic relationships.

Also, prohibiting all romantic relationships may be an unnecessary administrative headache for your clients. Although some companies opt for anti-fraternization policies that prohibit all workplace dating, such policies are difficult to enforce and, in many workplaces, may not be necessary.

Are there other appropriate limits? Depending on the nature and needs of the business, there are ways to limit liability without completely banning

workplace romances. A good way to reduce both potential liability and loss of productivity is to restrict supervisors from dating anyone in their line of authority.

When even non-supervisory dating can be problematic, more restrictive policies may be appropriate. For example, a company with an internal auditing department may wish to restrict auditors from dating other company employees to prevent a potential conflict of interest. Companies might consider reserving the right to transfer or replace one or both members of the couple to alleviate real or perceived conflicts of interest or defuse otherwise tense situations. Employers may also require employees to disclose workplace relationships so the employers can take affirmative steps to avoid pitfalls by either transferring employees and/or taking steps to reduce potential favoritism.

Is an office romance policy necessary? Whether adopting a policy is wise depends on what level of restriction the employer finds appropriate. If there are no restrictions on workplace relationships, maintaining a solid sexual harassment policy will probably suffice to protect the employer's interests.

Where there are restrictive rules against fraternization, the employer will need to convey its expectations to employees and tell them what happens if the rules are not followed. For example, if a company plans on transferring involved employees away from each other, this process probably will go more smoothly if employees know this in advance. If employees are asked to disclose romantic entanglements, they will need to know how to make the disclosure and to whom. The policy should focus on making compliance as easy as possible. Well-crafted policies will also remind employees of the employer's complaint procedures and that harassment of any kind will not be tolerated.

If an office romance policy is adopted, clients should consider adding a note about its purpose. The point of a policy is not to embarrass employees or have the employer serve as the "relationship police," but to reduce disruption and potential litigation by ensuring that relationships are consensual and do not interfere with the employer's business.

What is a "love contract"? Unromantic yet practical, a so-called "love contract" is a document signed by the participants in a workplace romance wherein they affirm that the relationship is consensual, confirm that they are familiar with the company's harassment policies and will abide by them, and agree that the relationship will not interfere with work. Some companies see love contracts as the best way to combat potential claims and remind employees that their primary interest at work should be work.

Are they necessary in all cases? Probably not. However, in situations involving potential conflicts of interest or where one party is more or less senior than another, they have their place.

A word of caution – there is a fine line between proactive risk avoidance and resented intrusion. Also, when it comes to romance, what employees know they should do and what they actually do may be quite different. Most employees know that dating a subordinate is risky, but according to the 2009 Vault.com survey, 21 percent of respondents have dated a boss or subordinate.

In addition, despite the prominence of sexual harassment concerns, Vault reported that 43 percent of respondents have received unwanted romantic advances at work. Employers should be cautioned that no policy will, or should, completely control relationships or eliminate all risks. The best course of action is to enforce sexual harassment policies diligently, provide sexual harassment prevention training, and keep a rein on any workplace disruptions, regardless of their underlying cause.

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