
Valentine's Day Edition: Is Office Romance Forbidden?

Legal Alert

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It is Valentine's Day and love is in the air, but also at the water cooler. A recent study found that—even in the age of online dating—the largest percentage of spouses met through work (21 percent). Another study found that 18 percent of couples who meet at work get married. Although it is inevitable that romances will develop out of workplace relationships, it is not all champagne and roses for employers, especially if a relationship sours.

From a legal perspective, consensual romantic relationships between coworkers, or even between a supervisor and an employee, do not, constitute sexual discrimination or harassment. Nonetheless, workplace romances can create particularly tricky situations for employers because:

- Good relationships gone bad create risks (example: when a sexual harassment claim arises out of a failed relationship between a manager and subordinate, there may be extensive evidence of sexual or sexually suggestive conduct that is subject to multiple interpretations, some of which are unfavorable to an employer)
- Disparity in work assignments arising from the relationship can negatively affect employment (example: upper management wants to discipline an employee who never works the night shift when, in reality, the employee's schedule is a consequence of his romantic relationship with his direct supervisor who wants to keep the employee's nights free for dating)
- Favoritism causes peers to perceive they are being discriminated against (example: a paramour is not disciplined for late arrivals such that when her co-worker is disciplined, the co-worker believes she is a victim of discrimination)

Each situation is unique, but the underlying commonality is that romantic relationships between coworkers can throw off office equilibrium.

Due to the host of potential risks that may arise, employers should consider adopting policies to mitigate the risks caused by employees' romantic relationships. However, there are no one-size-fits-all solutions. Larger employers may have the capacity to prohibit employee-supervisor relationships and adopt a policy of reassigning one of the employees, but many smaller employers simply cannot create that kind of separation.

Though an outright ban on office romances is not always necessary (and often impractical), employers should make sure they are aware of and document relationships by, at the very least:

- Adopting a policy requiring employees to disclose a workplace romantic relationship to human resources or a chief officer immediately, especially when the employees are in the same chain of command

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- Requiring the employees to acknowledge their relationship in writing (often with an agreement called a “love contract”), including, among other things, a statement that the relationship is consensual, that the employees understand they are still subject to and protected by the employer’s anti-harassment policies, and that the employees may be subject to discipline if they allow the relationship to interfere with their employment duties
- Seeking a release of all potential legal claims

The key is for the organization to implement disclosure and response policies that fit the culture and manage risks.

Once an employer is on notice of a romantic relationship in the workplace, it should take steps to evaluate and reduce the risk, including enforcing its policies consistently. The consequences of inconsistent enforcement can be real. In a recent California case, an employee involved in a workplace romance alleged that his employer disciplined him differently from similarly-situated employees who also had workplace relationships. The employee claimed he was treated differently due to discriminatory motives. This is just one example of the many ways inconsistent enforcement puts an employer at risk even if there is no discriminatory intent.

Does this mean there’s no place for love in the workplace? Certainly not. A number of studies have found that workplace romance can have a positive effect by increasing job performance, overall job satisfaction, an employee’s level of involvement, and organizational commitment. Well-tailored policies help employers maintain stability in the workplace and limit the risks that arise from office romances.

We simply suggest that employers create and enforce strong policies that meet their situation. If you have any questions, please feel free to contact Adam Gersh at adam.gersh@flastergreenberg.com.

ATTORNEYS MENTIONED

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