



POURING THE WATER COOLER ON WORKPLACE ROMANCE

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INTRODUCTION

As long as men and women have worked together, there has been workplace romance. While all employers should prohibit harassment and discrimination, the question becomes whether, and to what extent, an employer should have an additional “fraternization” policy. A fraternization policy can be useful in limiting or prohibiting workplace romance, depending on the culture and circumstances of a particular organization. Many companies may be content to do nothing, while others forbid supervisors from interacting socially with subordinates outside of work completely. With this in mind, an employer should examine its options and apply the best choice for its own culture and circumstances.

OPTION I: FRATERNIZATION POLICY

A primary advantage of a fraternization policy is its usefulness in defending sex harassment or discrimination lawsuits. When the policy is clear and appropriately distributed to employees, the employees are on notice as to what kinds of behavior are prohibited. Sex harassment lawsuits often arise from a workplace relationship which began as consensual but then went bad. The existence and consistent enforcement of a fraternization policy, over and above a policy prohibiting harassment and discrimination, is strong evidence that the employer is serious about preventing sex harassment.

The primary disadvantage of a strong anti-fraternization policy is its perceived intrusiveness into the privacy of the employees. This could affect morale within the organization. (Where is the line drawn? Can the employer follow employees off-premises and after-hours in order to investigate whether a violative relationship exists?) These are issues employers must weigh in deciding whether to enact a strong formal policy.

OPTION II: EMPLOYER DISCOURAGEMENT

Many employers simply discourage workplace relationships without actually banning them. For instance, in a sex harassment policy or in training, the employer may acknowledge the possibility of such relationships while noting the distinction between welcome conduct and that which constitutes illegal harassment. The employer may also discuss the need for productivity and a harmonious effort among the employment team and the fact that disruptions due to personal relationships will not be tolerated.

An advantage of the “discouragement without prohibition” method is being able to retain talented employees who become romantically involved but remain productive. The primary disadvantage of this option, on the other hand, is the need to determine whether or not specific conduct is appropriate. Employees will scrutinize the employer’s actions for consistency and fairness. Any time a relationship is on-going, employers must also continuously be on the alert for signs of jealousy and perceptions of favoritism by co-workers.

OPTION III: NO POLICY

For better or worse, the vast majority of employers have no policy at all related to workplace romance. By enacting a policy which is perceived as unnecessary, the employer runs the risk of harming workplace morale -- the “if it’s not broken, don’t fix it” argument. Not having a policy also allows the employer some flexibility in handling future issues rather than applying a policy, which was drafted based on theory, to real-life relationships.

The disadvantages of not having a policy include the potential appearance as an “anything goes” workplace under any future scrutiny. This is particularly true if the employer has not distributed and consistently enforced a discrimination and harassment policy.

CONCLUSION

Workplace romance is a fact of life which employers need to acknowledge and consider in the context of their own cultures and circumstances. All employers should have a written discrimination and harassment policy in place, distributed to employees, which is strictly and consistently enforced by the employer. A good employment attorney can help with the drafting and implementation of a discrimination and harassment policy, as well as a fraternization policy if the employer chooses to take that next step. While there is no one-size-fits-all answer for all employers, there is a right answer for each employer individually, depending on its own culture and circumstances.

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