

5 Tips to Help Employers Avoid Workplace Romance Mishaps

Related Professionals

Ashley Parr
864.282.1138
aparr@nexsenpruet.com

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Employment & Labor Law

02.06.2019

With Valentine's Day quickly approaching, love is in the air. As an employer, do you know which of your employees might be celebrating together on Feb. 14?

Romantic relationships between co-workers are common. In fact, according to a recent survey, more than 1 out of 3 employees report dating a co-worker at some point.¹ Unfortunately, employee relationships – especially those that are unsuccessful – can lead to disruption and loss of productivity in the workplace, decreased employee morale, claims of discrimination and harassment or even costly sexual harassment lawsuits.

It is simply impractical to ban workplace relationships altogether. So employers must recognize the reality of romance at work while managing potential risks. Here are five tips for proactive employers looking to mitigate potential liability arising from workplace romance:

1) Implement Effective Anti-Sexual Harassment Policies

First and foremost, employers should implement well-developed sexual harassment policies in order to curtail inappropriate behavior and prevent liability arising from potential sexual harassment claims. Such policies demonstrate to employees, as well as to courts and administrative agencies, that the employer is serious about preventing harassment.

A policy must clearly prohibit harassment, define what constitutes harassment in terms easily understood by employees and require employees to report harassment. A well-drafted policy also provides methods and procedures for reporting harassment, including procedures to follow when the complainants believe the person to whom they are to report is part of the problem. It also should contain a statement prohibiting retaliation against any person who reports or participates in an investigation of sexual harassment. The policy should be made accessible to employees, through employee handbooks or otherwise, and should be

redistributed regularly to remind employees of its existence and terms.

2) Set Specific Rules Governing Workplace Romance

Employers may also choose to implement policies outlining permissible and prohibited conduct concerning dating among co-workers. Companies often prohibit relationships between employees in supervisory/subordinate roles given the inherent issues that can arise. Other companies disallow relationships between employees and clients/vendors. Another option is to require employees to inform management of workplace relationships.

Regardless of the specifics, such policies should reference the company's anti-harassment policy and remind employees how to report unwanted conduct. In addition, employers must be diligent in making sure that the policies are enforced fairly and without a disparate impact.

3) Take Complaints Seriously

If employees come forward with complaints, employers should avoid the temptation to write off a complaint stemming from a failed romance as a mere lovers' quarrel. Take complaints seriously. Conducting a fair and thorough investigation of any complaint of sexual harassment or gender bias that grows out of an office romance will not only help the employer defend itself in court if a lawsuit is ultimately filed, but will also give the employer the chance to put a stop to behaviors that can harm workplace morale and cause decreased productivity.

4) Consider Love Contracts

Some companies may have employees engaged in consensual relationships sign "love contracts." In essence, a love contract is a written employee consent regarding workplace relationship conduct, and constitutes an individualized non-harassment policy. The contracts can serve to remind employees of conduct that is appropriate in the workplace. They also allow employees to acknowledge that a relationship is consensual, and are designed to offer self-serving protections to an employer from future sexual harassment or related claims.

For companies with policies outlining the permissible parameters for workplace relationships, those policies often determine the scope of a love contract. Regardless, the contracts typically contain:

- A restatement of the company's anti-harassment policy
- An acknowledgement of the employees' commitment to comply with the anti-harassment policy
- Affirmation that the relationship is voluntary, consensual and welcome
- An agreement to not engage in public displays of affection
- Agreement that there will be no negative impact on work due to the relationship
- A commitment to maintain professionalism even after the relationship ends
- A commitment to inform the company of "unwelcomeness" of advances.

When a workplace romance fails, one employee (often the subordinate employee in the case of a subordinate/supervisor relationship) may claim to have been pressured into the relationship. A love contract, if signed after the relationship began, might help refute such claims, as it provides evidence that the employee making the claim entered the relationship voluntarily. In other words, a love contract could potentially mitigate risk of unlawful harassment liability.

Obtaining a signed love contract from employees engaged in a romantic relationship does not guarantee protection from liability for sexual harassment under Title VII. However, if nothing else, a signed love contract may help maintain a functional office environment in the event that a relationship ends badly.

5) Train Your Workforce

Even the most effectively drafted policies are meaningless if employees are not aware of them or managers do not know how to follow them.

Managers should be trained on how to deal with problematic situations that can arise when employee relationships sour or when a claim of harassment is made. Manager training can also be an effective tool in thwarting managers from engaging in a relationship with a subordinate.

With respect to employees in non-supervisory roles, companies may want to train these employees to ensure that they know the correct channels to complain about harassment or other issues arising from office romance. Such training should remind employees of the employer's anti-sexual harassment policy and the employer's procedures for handling sexual harassment complaints. It also should emphasize the responsibilities of each employee in combating sexual harassment in the workplace.

¹Career Builder. (2018, Feb. 1). "Office Romance Hits 10-Year Low, According to Career Builder's Annual Valentine's Day Survey." Retrieved from <http://press.careerbuilder.com/2018-02-01-Office-Romance-Hits-10-Year-Low-According-to-CareerBuilders-Annual-Valentines-Day-Survey>.

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