

Are You Ready if Cupid Strikes at Your Company?

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If romantic comedies have taught us anything, it's that romance can blossom in the workplace, especially when colleagues spend a significant amount of time together. But the movies conspicuously omit the significant risks that office romances can cause to your company's culture and potential legal liability.

Depending on the positions, responsibilities, and reporting relationships of the employees involved, these relationships can be challenging for employers to manage. Some companies use consensual relationship agreements (sometimes called "love contracts") to try to manage this risk, and others simply require disclosure. The following reflects some recommended best practices.

Workplace Romance Is Commonplace—Even Among Company Leadership

Even sophisticated executives' judgment can be compromised by an office romance. Most recently, CNN's President, Jeff Zucker, resigned because he had failed to disclose a consensual relationship with one of his subordinates. As with many workplace romances, Zucker's relationship with one of his direct reports—CNN's Executive Vice President and Chief Marketing Officer, Allison Gollust—began as an innocent and entirely professional relationship. Over time though, it evolved into a romantic one. According to CNN's coverage of the relationship and resignation, Zucker and Gollust had worked together since 1998, and their relationship became romantic only in the last two years. Gollust remains employed at CNN; news reports suggest that CNN's policy required Zucker—but not Gollust—to disclose the relationship. The story was covered beyond mainstream news media. A People Magazine article delved into long-standing rumors about the relationship that far preceded when Zucker and Gollust claim their romance began.

This office romance among CNN's corporate leadership is not uncommon. Zucker's resignation is the latest in a series of similar separations between

high-profile companies and senior executives to draw public attention:

- The Detroit News covered the University of Michigan's termination of its President, Mark Schlissel, in January after an anonymous complaint alleged that he had an affair with a subordinate.
- The Detroit News also reported on the termination of McDonald's CEO, Steve Easterbrook, after he failed to disclose a consensual relationship with a subordinate in 2019.
- The Minnesota Timberwolves fired their President of Basketball Operations in 2021, which the Minnesota Star Tribune attributed, at least in part, to his consensual relationship with a team employee.
- The Wall Street Journal reported that Bill Gates resigned from the board of Microsoft in 2020 after an investigation was opened regarding his relationship with a Microsoft employee.

In addition to these higher-profile instances of office romances, the Society for Human Resources Management (SHRM) released survey results last year, which indicated that half of the workers in the United States have had a crush on a colleague, and more than one-third had been involved in or were currently involved in a workplace romance. SHRM's survey indicated that most workplace romances involved peers, but approximately 20% involved subordinate/superior relationships. Notably, the vast majority of employees told SHRM that their employers do not require disclosure of workplace relationships, and most had not disclosed their relationships.

How Can Office Romances Adversely Affect Your Company, and How Can You Manage These Risks?

Romantic relationships pose different kinds of risks at different phases of the relationship. Early on, the primary concern is whether the relationship is really consensual, a question that has become far more complicated as focus has increased on the effects of power imbalances. For example, Monica Lewinsky has always maintained that her sexual relationship with President Bill Clinton was consensual, but she wrote for Vanity Fair in 2018 that she now sees "how problematic it was that the two of us even got to a place where there was a question of consent. Instead, the road that led there was littered with inappropriate abuse of authority, station, and privilege." Almost certainly, the relationship between Lewinsky and Clinton would be viewed very differently if it occurred today, so it is more important than ever for companies to be aware of all adverse risks of office romances and adopt practices to manage these risks.

Assuming a relationship is consensual, once it is underway, it can create a distraction at work, present conflicts of interest, and damage employee morale. Courts have generally rejected a "paramour preference" theory (in which asserts that a supervisor's relationship with a romantic partner causes adverse action against other employees) because it disadvantages both men and women. However, consensual relationships can raise *quid pro quo* risks if other employees claim they were disfavored because they rejected romantic or sexual advances that were accepted by the consensual paramour. And, there is also always a risk that one person in the relationship may later claim it was not consensual.

Should Your Company Adopt a "Love Contract" Policy to Require Employees to Disclose Romantic Relationships?

Consensual relationship agreements, which have been colloquially referred to as "love contracts," represent one of the most common ways that employers can manage the risks associated with offices romances. These agreements require employees to disclose their romantic relationships with their colleagues. In so doing, these agreements

provide written confirmation that the relationship is voluntary and consensual at the time of the disclosure. The disclosures also allow an employer to take action, if necessary, to protect against conflicts of interest where one romantic partner can influence another's career progress, performance assessment, discipline, or compensation. The documentation may not perfectly insulate an employer from a later sexual harassment claim, but it is certainly valuable evidence in defending any later claims.

These agreements are not without potential problems though. First, at what point are employees expected to disclose that their professional relationship has evolved into a romantic one? Many romantic relationships, particularly between individuals who first meet in professional settings, evolve slowly and in a nonlinear fashion. This can make it difficult for employers, and those involved in the office romance, to determine exactly when they are required to disclose their relationship. Second, enforcing these policies can be very challenging for human resources departments that are already busy managing other aspects of employee relations. Consistent and equal enforcement of these policies is key—they can do more harm than good if exceptions are made for the C-suite or high performers.

All companies, especially those subject to sexual harassment laws, should have robust anti-harassment policies and procedures in place. A “love contract” policy can be a helpful tool for some. Generally, larger organizations are better served by disclosure requirements and consensual relationship agreements. Small, family-owned businesses and start-ups are more likely to begin with family members or romantic partners working together, so transitioning to a policy requiring disclosure may require careful attention to existing relationships. In deliberating whether to require disclosure and documentation of consent, employers should begin by considering:

- What existing office romances are you already aware of?
- What problems or risks are you hoping this new policy will help remediate?
- Who is required to disclose their relationship and at what point in the relationship should such disclosure be required?
- Whether your company is committed to uniformly enforcing such a policy, at all levels of the organization.

The statistics are clear that Cupid's arrows will most likely strike in your office if they haven't already. Proactive planning and management create far less risk than reacting when an office romance goes awry.

Fortunately, Nexsen Pruet's employment team is here to help. We can analyze the specific risks that office romances could cause to your company and help you institute policies to proactively remediate these risks.