

Employment Law Trending Now -

With Valentine's Day on the Horizon, Employers Should Consider and Address the Risks of Workplace Romances

With Valentine's Day on the horizon, and in light of the #MeToo movement, employers may be wondering how to handle office romances. Workplace romances are a challenging issue for employers because of the risk that one or more of the employees in the romantic relationship could raise a claim for sexual harassment or unfair treatment, among other claims, when the relationship sours. Worst yet, an employee who is not part of the romantic relationship could allege a claim for unequal treatment in the workplace where a person in the romantic relationship is being treated more favorably because of the romantic relationship. Office romances could also negatively impact company culture or the work atmosphere as a whole. So, what is an employer to do?

Implement and Enforce a Sexual Harassment Policy

Sexual harassment is a form of discrimination under Title VII of the Civil Rights Act of 1964, as well as the human rights laws of most (if not all) states. Sexual harassment is generally defined as any: (a) unwelcome sexual advances; (b) requests for sexual favors; (c) any conduct of a sexual nature when submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment (otherwise known as quid pro quo harassment); or (d) any conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

All employers should have a strongly worded sexual harassment policy and code of conduct outlining the types of behavior that are and are not appropriate in the workplace. The policy should also have clear procedures for reporting, investigating, and addressing sexual harassment.

But, simply having the anti-harassment policy is not enough. Employers must actually comply with and enforce their policies. The risk of not doing so could expose the employer to potential claims of harassment and discrimination.

Take a Position on Workplace Romances

Employers are encouraged to take a position on workplace romances and advise their employees of that position. There are three main positions employers often take with respect to workplace romances:

1. Prohibit dating in the workplace altogether;

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2. Prohibit employees in a supervisory capacity from dating their subordinates; and
3. No prohibition on dating.

There is no right or wrong approach to addressing workplace romances and there are positives and negatives to each of these positions. The type of policy an employer should choose is generally dependent upon the employer's culture, values, and goals.

If an employer decides to allow some types of workplace romances, those employers may wish to require employees who are in a relationship to sign a "love contract." A "love contract" is a document signed by the employees which acknowledges that the relationship is consensual. These contracts can be used to combat claims against the employer for sexual harassment or discrimination arising out of the romantic relationship. Employers interested in utilizing such contracts should ensure that the contracts include the following provisions, among others:

- An acknowledgement that the relationship is entirely consensual and free from coercion and harassment;
- An acknowledgment that the relationship can be ended by either employee without fear of retaliation;
- An acknowledgment that the employees will abide by the employer's code of conduct governing professionalism;
- A summary of the employer's sexual harassment policies;
- A provision establishing acknowledgment of receipt, review and understanding of the contract; and
- A place for the employees to date and sign.

Although "love contracts" cannot prevent claims for sexual harassment or discrimination, they can be used as a tool by employers to defend against such claims.

Regardless of whether employers choose to utilize "love contracts," they are encouraged to proactively address the issue of workplace romances to ensure a safe and productive workplace for all and to better protect themselves from claims of sexual harassment and discrimination.

If you have any questions about this Alert, or if you would like assistance in updating and implementing your workplace romance or sexual harassment policies, please contact the authors listed below or the Aronberg Goldgehn attorney with whom you work.