

FLIRTING WITH TROUBLE: HOW ONE THING LEADS TO ANOTHER...

How companies need to control inter-office romance through well-defined policies and procedures

In every professional environment, flirtation between co-workers can and does happen. In survey after survey more than half of the respondents polled confessed to having crushes at the office. Flirting may be an invitation to chat, or it may mean nothing. Even if you have not experienced a workplace romance, chances are you are aware of one.

Employers are beginning to take notice and as well they should, as flirting can and often does lead to more complicated situations including sexual harassment. Once flirting reaches that level, employers can be held potentially, for millions of dollars in legal fees, settlements and penalties often sufficient enough to cripple or bankrupt most companies.

In today's complicated professional environment, office romance is increasingly popular and, if not handled carefully, can lead to untidy results. With more employees in the workplace working more hours and with more people being single, the office water cooler has replaced the singles bar as the local watering hole where workers mingle. Studies also show that about a third of all romances begin at work and that about half of those romances also end at work.

The idea here is that an employer cannot entirely control this conduct by a manual. Managers who have sexual relationships with subordinates can be risking their career interests in favor of an office romance. Hostile environment situations generally involve allegations by an employee that he or she is the victim of hostile or pervasive sexual harassment in the workplace. Too often, joking, playful or suggestive behavior that starts with a flirt goes over the line to create an unwelcome or uncomfortable environment, thus creating the potential for costly lawsuits.

Employers cannot stop office romances, but they can create anti-fraternization clauses or "romance" clauses requiring workers to inform their employers if they become involved with a co-worker. Such a goal is not unattainable yet stopping people from engaging in relationships may be unlawful. Employers need to establish various policies to deal with office romance that begins with a flirt. Here are some examples of proactive measures taken by corporations when faced with employee romance:

1. A handful of companies that this law firm represents have gone so far as to establish "no dating" policies, prohibiting affairs between supervisors and subordinates of the company and employees and or employees of vendors, clients or competing businesses. Such efforts, in order to eliminate these types of potentially problematic situations, communicates the message that management is concerned and serious about the issue of office romance.

2. Some companies have created a “date and tell” policy that requires employees to report office romances to the most senior operations manager or human resources professional in the hierarchy of the organization who is otherwise responsible for addressing such conduct. Such a policy makes the company aware of the situation and communicates to the employees that they are being scrutinized by “big brother.” In the case of a supervisor-subordinate affair, the subordinate is advised of her rights under the company’s sexual harassment policy. By doing this, the company is somewhat protected by obtaining written confirmation that the relationship is consensual and confirmation that the relationship is not considered to be harassing. If that situation should change, the policy obligates the subordinate and the manager to inform the company accordingly.

3. Along the lines of the “date and tell” policy some corporations have established a “love contract” between employees where the employer creates a legal record of the relationship between the two involved employees and requires both participants to execute an agreement to abide by a consistent and explicit set of ground rules. This is a particularly good option if one of the employees is an executive of the firm.

4. The newest line of defense from companies is the “consensual relationship” agreement, which can include guidelines on how love struck staff should behave including the need to limit any displays of affection and safeguard corporate secrets.

An “Ally McBeal” type of workplace is certainly not desirable in the real corporate world where image and protocol remain key priorities. In any event, it is questionable whether such policies can really deter employees from engaging in relationships. In reaction to such policies, employees who want to date will do so surreptitiously. The best way to minimize and contain the reality of workplace flirting and its progeny, dating, is to have ongoing preventive programs in place. An employer should adopt a strategy of training employees about sexual harassment issues and making them aware of the effects of dating in the workplace as an integral part of an overall risk management effort. In applying a preventative, educational approach to the issue, employers can impart to employees the dividing line between romance and harassment so that employees are better able to navigate the precarious corporate dating waters.

In today’s corporate workplace, if your company is not prepared to deal with the realities of today’s social world your company may very well be flirting with trouble.