

## Memphis Business Journal

# Workplace romances can burn a company without clear policies in place

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Thinking of love and romance, especially on Valentine's Day, often produces visions of flowers, gifts and cards. Such is not the case for employers when they envision workplace romance, regardless of the day. Instead, employers see murky waters and a terrain that is fraught with more questions than clear-cut answers.

Articles written by professionals on this topic point out the pros and cons of various approaches, including potential legal liabilities, but do not define best practices to follow. What is clear to employers is that the workplace is, and will continue to be, a natural way for employees to find others to date, and that issues related to workplace romance are here to stay.

So what are some of the worst nightmares for employers? One that looms in the forefront is the potential for sexual harassment. Suppose, for example, that one employee persistently pursues another for a date and the pursuit is unwelcome. A second scenario can occur if two employees decide to terminate a romantic relationship. If bitterness ensues, one of the parties may claim that the entire relationship was unwelcome.

Employers' fears of charges and lawsuits related to discrimination and harassment are magnified when supervisors are involved. The nature of the supervisor-employee reporting relationship, especially direct reports, increases the potential for liability, since a supervisor's influence normally extends to employees' performance evaluations, pay, promotions and other conditions of employment. In addition, when supervisors enter into romantic relationships with employees, they may negatively impact the morale of other employees or an entire work team due to perceptions of preferential treatment and favoritism.

When faced with concerns related to on-the-job conduct, employers routinely implement policies to provide guidance and direction to supervisors and employees.

However, in the case of workplace dating, a 2006 study by the Society of Human Resource Professionals and **CareerJournal.com** found that 70% of organizations did not have formal written or verbal policies dealing with romantic liaisons between employees. Only 9% said that dating among employees was prohibited.

Reasons for this hands-off approach include the somewhat unique nature of workplace dating. Since dating involves off-duty behavior, employers may be hesitant to develop policies that can infringe on employees' privacy rights, especially if the conduct in question does not impact the workplace.

Some employers avoid the downsides associated with dating policies by relying on existing policies. Organizations normally have policies in place that address a number of areas associated with workplace dating. These include a harassment-free workplace, business ethics, e-mail and Internet use, workplace violence prevention, and codes of conduct.

Among the organizations that have adopted policies, there is no single preferred approach. Instead, these policies run the gamut from total bans to no restrictions on workplace dating. Some are framed in a manner that allows, but strongly discourages such dating. Some incorporate language that requires self-disclosure and/or provides for the transfer of one of the parties. One key area of focus is often on requirements for supervisors relative to dating.

Some organizations have utilized consent agreements as a means of reducing potential sexual harassment liabilities. These agreements normally have protective language that includes an acknowledgment by both employees that their relationship is voluntary and that they agree to abide by the organization's harassment-free workplace policy. The agreements may also include requirements for the employees to act in a professional manner throughout the relationship, and after it ends, and for either employee to notify management in the event that the relationship becomes unwelcome.

Since workplace dating has the potential for charges of sexual harassment, it is also timely to examine the organization's harassment-free workplace policy to ensure that it is up-to-date and includes a definition and examples of sexual harassment, an investigation process, a complaint procedure that allows employees to bypass immediate supervision, and assurances of non-retaliation for registering a complaint.

Recognizing that there are a number of alternative approaches that can be taken, employers would be well-served to examine the manner in which their organizations will approach issues related to workplace dating. Consideration should be given both

to the culture of the organization and to legal implications associated with any planned actions. Since workplace dating involves potential legal pitfalls, it is advisable to seek the advice of counsel prior to implementing policies or other guidelines, drafting consent agreements, or making decisions to take disciplinary or other actions involving individual employees.

Prior to implementing any policies or other guidelines, employers should ensure that management will be willing to apply them consistently based on the circumstances involved. Therefore, management should be willing to abide by and enforce the policies, regardless of whether the violations involve one of organization's top performers or even the CEO.

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