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# Workplace Romance: Beyond the Headlines

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With the internet ablaze over the recent apparent outing of a workplace romance among executives during a Coldplay concert, employers may be reviewing the legal implications of workplace relationships and considering options for managing such relationships. For those who prefer their content in podcast form, check out February's episode of [Conn Maciel Carey's Terms & Conditions™ podcast \(Looking for Love in the Wrong Place – What Employers Need to Know About Managing Workplace Dating and Romance\)](#).

While there are no laws that strictly prohibit consensual romantic relationships between adults in the workplace, there are numerous reasons employers may choose to regulate romantic relationships and dating at work. And at all stages, employers may need to consider the impact on company culture and morale, power dynamics within the organization, and the legal risk involved.

## Workplace Relationships Raise Many Questions for Employers to Consider

Initially, employers may ask whether and how they even want to regulate workplace romances:

- How might this work in family-run businesses, or companies founded by married partners?
- Is there an intent to regulate executive/supervisory/management level employees or other groups of employees with the power to impact the terms and conditions of others' employment?
- Alternatively, is there an intent to regulate all employees?
- How should violations of company policy be handled?
- What should the response be to circumstances that may circumvent attempts to manage, for example concealed relationships or extra-marital affairs?

Before a relationship begins, there may be questions about whether the relationship is truly consensual:

- Are there concerns about violations of sexual harassment prevention laws/company policy, for example from unwanted flirtations or advances?
- Are there power dynamics at play between individuals that may impact actual or perceived expectations for success, for example, when a superior shows interest in a subordinate?
- Even among co-workers at a similar level within the organization or entirely different departments, could someone feel pressure to consent to avoid offending a co-worker or creating challenges at work?

During a relationship, there can be concerns about the impact of the relationship:

- What is the impact on productivity – does the relationship distract from the task at hand?
- Is there actual or perceived favoritism?
- Is the relationship creating an environment ripe for harassment, discrimination, and retaliation claims by those outside the relationship?
- Does the relationship itself create any conflicts of interest?
- What is the impact of the relationship on public perception and reputation within and outside of the organization?
- How will the company handle complaints about the relationship, if any?

The most tenuous time for workplace romances is often when they end:

- What is the impact of the breakup on the individuals, their teams, and third parties with whom the organization interacts?
- Is there any risk of harassment/workplace violence?
- How would the company respond if one individual needed to obtain a restraining order against the other former partner?
- Could the breakup of the relationship lead to a harassment, discrimination, or retaliation claim, even if the relationship was at one time consensual?

### **Options Employers Can Consider Before an Issue Arises**

While workplace romances raise numerous questions, employers also have a myriad of options to consider in how to manage, including:

Even for companies that chose not to regulate workplace romances at all:

- Employment handbooks can set the expectations for how people behave at work. If a policy is adopted, it should be followed and enforced consistently to be effective and to manage the risk of harassment, discrimination and retaliation claims.
- Harassment prevention policies and training can specifically address concerns about sexual harassment. Harassment prevention training provides a key opportunity for companies to tailor examples of unwanted behavior/dynamics specific to their workplace and industry.

For companies that chose to specifically regulate workplace romances:

- Policies can address romantic relationships in the workplace, but should be specific in the expectations, easy for employees to understand, and enforced consistently across the workforce. Other key factors to consider:
  1. Defining the scope of the policy. For example, if it prohibits relationships between a superior and subordinate or requires disclosure if co-workers work in the same department, ensure the parameters are clearly defined (i.e. who is a superior and who is a subordinate).
  2. Defining what's required – is there a blanket prohibition, required disclosure, procedures for changing

who someone reports to/position/department, etc.

3. What happens if there are disagreements among the parties on how to proceed?
4. What are the protections against claims of discrimination and retaliation. For example, are only the female members of a relationship asked to change positions, could someone be retaliated against for disclosing a relationship if that disclosure results in an unintentional demotion.
5. Manage for other operational issues. For example, is moving a manager accused of engaging in an inappropriate relationship to another department creating an issue elsewhere.

Whether a company has a policy regulating workplace romances or not, companies can:

- Have leadership that sets the tone.
- Empower all employees to speak up if they are concerned about a policy violation or other issue.
- Have a plan if something goes wrong:
  1. Have trusted outside attorney to call in an emergency.
  2. Decide how the company will handle investigations. What might trigger an investigation and what factors will determine if the investigation can be handled internally or by an outside consultant or attorney. For example, an external investigation may be more appropriate for matters involving leadership or those responsible for reviewing claims of harassment, discrimination, and retaliation.
  3. Consider the options for responding.
    - Are any of the employees involved owed contractual obligations?
    - What is the full range of action that can be taken and be effective in addressing the issue (for example, counseling, retraining, leave pending investigation, termination, and more).

## Takeaways

Workplace romances are a fact of life. Organizations are best positioned to deal with the challenges that arise by thinking through their company values, what policies and procedures they may want to implement, and how to respond to both expected and unexpected events.

Trusted employment counsel is always a good resource when thinking through this topic, when crafting language for a handbook, stand-alone policy, or disclosure forms (or “love contracts”), and when navigating a particular challenge that’s arisen at the workplace.

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