

## **Managing the Risks of Workplace Romances – A Guide to Appropriate Policies**

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It is no secret that love and romance can blossom just about anywhere, including in the workplace. A recent Vault.com survey reported by The Fiscal Times, examined employers in a variety of industries and professions and found that a significant number of employees reported they have had, or are having, consensual romantic relationships with other employees.

These relationships run the gamut from the “random office hookup” to ongoing casual relationships, long-term relationships, and/or marriage. While it may already be obvious from a human resources standpoint, it’s inevitable that relationships like this will at some point impact the workplace. It is, therefore, necessary to take action to ensure inter-office relationships are carefully monitored and managed, especially if the work relationship outlives the romantic one.

### **The Risks**

A number of different and legitimate concerns flow from the existence of workplace romances, even when they’re fully consensual and in no way implicate sexual harassment, which requires different handling. These concerns include:

- The development of perceptions of unfair treatment and favoritism if a supervisory relationship exists;
- Personal discomfort that other employees may have over public displays of affection;
- The potential that if the relationship deteriorates, claims of sexual harassment will later develop;
- Allegations of conflicts of interest, impaired business judgement, and confidentiality breaches on the part of a supervisor involved in such a relationship.

Some argue that all such relationships should be prohibited. However, if such a policy is implemented, claims of invasion of privacy or improperly interfering with the off duty conduct of the employees could result. It is perhaps more prudent given the likelihood that these relationships do, or will, exist in your nonprofit, to create policies to discourage, yet monitor and control the effects of the relationships that do exist.

## The Policies

The best place to start is with a comprehensive conflict of interest policy, which should be designed to deal with the potential negative effects of workplace relationships, particularly if it involves a supervisory relationship. Such a policy should state several important points, including:

- Consensual romantic or sexual relationships between a supervisor/manager and an employee may at some point lead to unhappy complications and significant difficulties for all concerned, and therefore may be contrary to the best interests of the employer;
- The employer discourages such relationships. However, if these relationships do exist, the privacy rights of the employees will be respected outside of the workplace and only conduct in the workplace will be monitored and subject to compliance with applicable policies;
- If a romantic or sexual relationship between a supervisor and an employee should develop, it shall be the responsibility and obligation of the supervisor to promptly disclose the existence of the relationship to management;
- Upon being informed or learning of the existence of such a relationship, management reserves the right to take all steps necessary to eliminate the conflict of interest that it, in its sole discretion, deems appropriate;
- The supervisor must agree to withdraw from participation in any activities or decisions (including, but not limited to, hiring, evaluations, promotions, compensation, work assignments and discipline) that may reward or disadvantage any employee with whom the supervisor/manager has or has had such a relationship;
- Displays of physical or verbal affection in the workplace are prohibited.

In addition to prohibiting displays of physical affection, employees involved in a workplace romance should be reminded to avoid communicating to other employees explicitly and/or implicitly that their relationship works to either party's advantage. In fact, the California Supreme Court has ruled that extensive sexual or romantic favoritism, if pervasively displayed in the workplace, can be the basis of a hostile work environment sexual harassment claim (See [Miller v. California Department of Corrections](#)).

Concern that the involved employees' relationship can make other employees uncomfortable can also be managed by the implementation of a policy that mandates that all employees act in a way that is, at all times, professional. Many nonprofits already have these policies in place, but they can and should be revised to include that physical or verbal displays of affection are considered to be unprofessional and in violation of the policy.

Another, and perhaps the most effective way to manage the risks of these relationships is to have the employees enter into a written acknowledgement of the relationship, and committing to a number of responsibilities to avoid the risks and concerns associated with the relationship. This so-called "love agreement" should, among other things, contain acknowledgement of the sexual harassment policy and an agreement to report any change

in the relationship or any non-consensual behavior that may violate the sexual harassment policy.

### **When Things Go Wrong**

To the same extent it should be expected that consensual romantic relationships will develop in the workplace, it is to be expected those relationships will sometimes come to an end – with less-than desirable results. When this happens, the risk that a complaint of sexual harassment will follow increases. If one does arise, these complaints should be handled like any other complaint made by an employee, which would include assuring the complainant that they will be protected from any retaliation.

At that point, the policies and agreements that have been implemented to avoid the risks will be critical to the defense of any claim that arises from the end of the relationship.

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All members have unlimited access to risk management and loss control consultations, and those members with Directors & Officers coverage (who also have employees) have access to unlimited consultations with our employment risk managers on issues such as HR, labor and employment.