Employment Law Report

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Challenges of a Workplace Romance

Love is in the air—at least according to Hallmark, the florist, and every jewelry store in the country. And regardless of whether that unique relationship is affirmed with a diamond ring or a box of candy hearts, be careful if that special couple is on the clock at your company.

At one time or another, we've all heard the admonition not to "fish off the company pier." But human attraction is strong and oftentimes irrational—and love, of course, is blind. Workplace romances are inevitable. They may spring from the bond formed by two people working closely together for months on a critical project, or just as easily from employees completely bored with their jobs and looking for a spicy distraction—even if ill-advised.

Whatever their origin, such office relationships can present significant problems to employers. There is, of course, the potential for a drop in productivity as the amorous couple takes time out of their workday chatting or spending non-working time together during office hours. Co-worker productivity may also decline as water cooler gossip about the pair increases.

More serious issues involve co-worker feelings of jealousy and perceptions of favoritism. The worst case scenario, if the relationship ends badly, can involve sexual harassment allegations that one person was coerced into the relationship, or was promised a promotion if he or she engaged in the relationship. Love may be blind, but it can also be a gateway to expensive litigation.

"Strict anti-fraternization policies are often viewed as far too intrusive, and can be exceedingly difficult to define and enforce."

So, what can an employer do to minimize the risks of the office romance? Like all other important business matters, the romance must be managed properly.

The first step, as is the case with most all potential employment issues, is to have a well considered and clearly written policy on workplace dating. Some employers have a strict "anti-fraternization" policy, which completely bans all amorous co-worker relationships.

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About the Firm

In 2012 Shapiro Sher Guinot & Sandler was named the top medium-size law firm in Maryland for "Business & Transactions" by Super Lawyers, a division of Thomson Reuters. Founded by renowned sports lawyer Ronald M. Shapiro in 1972, the firm represents clients in numerous practice areas, including employment law, litigation, corporate, real estate, tax, and banking.

Shapiro Sher Guinot & Sandler's **Employment Law Group** is co-chaired by **Eric R. Harlan** and **Renée Lane-Kunz**. They are prepared to assist organizations with a wide spectrum of employment law matters, including recruiting and hiring practices, employee handbooks, discrimination matters, executive compensation, wrongful termination claims, and issues involving Title VII of the Civil Rights Act, The Family and Medical Leave Act, and The Americans with Disabilities Act. The Employment Law Group also assists with employment, severance, non-disclosure and non-compete agreements, among other matters.

Renée Lane-Kunz offers ongoing employment counsel to small and mid-sized companies as well as schools and institutions. She works closely with clients to help them anticipate and avoid litigation and regulatory complications. From handbooks to employment agreements, to general HR policies, she is ready to provide employers the tools they need in today's legal environment. As she brings to her practice extensive HR management experience in the hospitality industry, she fully appreciates the concerns of business owners.

Eric R. Harlan is a trial lawyer dedicated to the vigorous representation of clients in litigation. He has achieved favorable results in employment-related matters including claims involving violations of federal and state anti-discrimination laws, actions to enforce non-compete and non-solicitation agreements, wrongful discharge, and wage-and-hour litigation.

However, these policies are often viewed as far too intrusive, and can be exceedingly difficult to define and enforce. For example, what constitutes "dating?" What specific conduct is prohibited?

The one strict prohibition that is most easily defined and enforced (and certainly recommended), is a ban on managers dating those who report to them. Any time one party to a romantic relationship is in a supervisory position to the other, the employer is virtually inviting litigation—be it a claim of quid pro quo sexual harassment after a breakup, or a co-employee's complaint of the manager's preferential treatment of his/her significant other over the co-employee.

The "love contract" option

A more modern trend is the "love contract" policy. Under this approach, management requires office couples to disclose their relationship, and the couple will often sign a document in which they re-acknowledge the company's sexual harassment policy and affirm that neither was coerced to date the other. The "love contract" will also contain language to the effect that the couple understands that the workplace is first and foremost a professional environment in which professional conduct is required at all times. A well written policy will outline expected behavior both during the relationship and following a breakup.

Finally, while implementing a company dating policy is important, applying that policy consistently and equally to all office relationships is critical. For example, the employer that treats a same-sex or interracial office romance different from other office romances can quickly find itself facing discrimination claims. Indeed, failure to adhere to and enforce a policy equally likely poses a greater risk than having no policy at all.

While employers cannot prevent Cupid's arrow from striking members of their work force, they can take reasonable steps to manage both the romantic and legal results.

For more information, please contact Eric R. Harlan at erh@shapirosher.comor at 410.385.0202.

The FMLA Broadened for Military Families, Flight Crews

Twenty years ago this month, President Bill Clinton signed the Family Medical Leave Act into law. On February 5, the U.S. Department of Labor acknowledged this milestone by expanding FMLA protections for two distinct groups: military families and airline flight crews.

The FMLA will now permit employees to take up to 26 work weeks of leave to attend to the needs of a current armed service member with a serious injury or illness. Additionally, qualifying employees may take up to 12 work weeks of leave to cope with common issues ("qualifying exigencies") that arise when a family member is deployed, or is about to be deployed, to a foreign country. Qualifying exigencies include a wide variety of events and developments, including attending a spouse's or child's farewell and homecoming ceremonies.

The new rule, which becomes effective March 8, also expands benefits to airline flight crew employees, who, because of their unusual schedules, had not always been eligible for FMLA-protected leave.

Look for a more comprehensive discussion of these new expansions to the FMLA in our March Newsletter.

For more information, contact Renée Lane-Kunz at rlk@shapirosher.com or 410.385.0202.