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Love is in the Air: An Employment Attorney's Musings (or Grumblings) about Office Dating

"Is it OK to date your co-worker?" When Valentine's Day approaches, this question seems to be everywhere, whether it is being asked by our employer clients, "just curious" employees, or in the popular magazines displayed in my grocery store's check-out lanes.

As most employers know, an unqualified "yes" is not the right answer to the workplace dating question. Indeed, depending on the type of workplace and the circumstances involved, work romances may be discouraged and frowned upon, if not downright prohibited.

Employers should be thoughtful, if not apprehensive, about workplace dating, and for good reason. Federal, state and local laws prohibit workplace-related discrimination and harassment, including based on sex. An actionable discrimination claim may arise from an employee claiming that she or he was terminated, demoted or otherwise adversely impacted in her or his job based on gender. An actionable harassment claim may arise from one severe sexual comment or act, or several even seemingly minor comments or incidents.

Another possibility for a harassment action is a "quid pro quo" claim, where an employee alleges that any work-related benefits were offered or withheld based on the

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employee's submission or refusal to submit to sexual advances.

Consider workplace romances in light of these basic legal principles, and one can see how, particularly when gone awry, such romances can lead to expensive, problematic discrimination and harassment claims. Some examples of successful or triable claims from recent case law have included:

- a male employee alleging that his female supervisor subjected him to sexual advances amounting to harassment (*Turner v. The Saloon*, 7th Cir. 2010);
- a female employee who had a prior consensual sexual relationship with her boss claiming that, after that relationship ended, the boss continued to make sexual advances and, when she rejected them, terminated her employment (*Nolan v. Indus. Sorting Servs.*, E.D. Tenn. 2012);
- a female employee engaged in an affair with a co-worker whose wife also worked for the company alleging that she was terminated for complaining that the wife employee was being treated more favorably (*Keen v. Regional Emergency Med. Servs. of Georgia*, M.D. Ga. 2012).

Other similar, problematic scenarios abound, whether they may exist at the office level or have made their way to the administrative agencies and the courts.

In addition to the legal exposure and expense of defending such claims, allegations of sex harassment can powerfully, negatively affect an employer's public reputation, even if they ultimately result in settlement or a favorable legal outcome. All that is to say that despite what we see on today's most popular TV shows like *The Office* or *The Mindy Project* (among my personal



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favorites), office romances in real life usually are not a laughing matter, far from it.

So what's an employer to do? Strictly prohibit workplace romances? That may be both unrealistic, and unreasonable.

If we accept the reality that most working adults spend most of their awake time in co-ed office environments, we must also recognize that office relationships will happen. But how to minimize an employer's legal exposure and other ramifications?

The answer to that question lies in policy development and implementation. There is no better defense to a sexual harassment claim, even where the facts reveal inappropriate conduct, than well-written, consistently enforced employer policies prohibiting workplace-related discrimination and harassment and including appropriate procedures for reporting, investigating, and responding to any related issues and complaints.

Some employers also may consider implementing a policy statement on consensual relationships, to convey that while these relationships are not forbidden, they are considered as having the potential to lead to complaints of discrimination and harassment, which complaints will be investigated and remedied in the same manner as other complaints under the employer's policies. Put another way, employers should make their employees aware of the inherent risks of workplace dating, and develop and consistently implement their relevant policies.

But it's not all gloom and doom. Taking my employment attorney hat off for a moment, many of us can probably say that we have known of romantic co-worker relationships that have started, proceeded and, sometimes, even ended civilly and discreetly, without any workplace-related or legal ramifications. An employer



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should just be cognizant of the inherent risks and be smart in policy development and enforcement, to help prevent and be able to appropriately respond to any issues.

Happy Valentine's Day!