

Love Among The Cubicles

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More than half of the employees in the United States admit to having a crush on a co-worker, with nearly 50 percent admitting they would consider an office romance, says a recent survey by Monster.com. From brief trysts to long-term relationships, office romances run the gamut and certainly are difficult, tricky and uncomfortable to “manage” from a human resources perspective.

Love By Contract

Fearing lawsuits when office romances go bad, some employers require the signing of a “love contract.” The love contract typically includes an acknowledgement that the relationship is consensual, that both parties will behave professionally in the workplace and that preferential treatment will not occur. Love contracts are by no means a cure-all, however. They only work, if at all, when the relationship is disclosed. Moreover, love contracts place human resources personnel in the untenable position of approaching employees with proposed contracts to sign based on mere office rumor.

Such love contracts also raise some real practical dilemmas. For instance, at what point during a consensual relationship should employees sign a love contract? When they sneak away for their first happy hour? Will a married employee disclose a consensual romantic work relationship to an employer before telling his or her spouse? With these questions and others, love contracts seem to have limited utility.

Even beyond these practical concerns, love contracts may not provide the protection that employers expect. The love contract may be unenforceable if the employee claims it was signed under duress while in a vulnerable emotional state. Love contracts also do not immunize the company from claims made by co-workers who complain that they received less favorable treatment than the employees in the relationship.

Relationship Policy

Rather than a love contract presented to individual employees, employers

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should consider implementing a narrowly tailored relationship policy to maintain company morale and productivity and to more effectively limit the company’s liability for workplace romances.

Any relationship policy should discourage relationships between managers and subordinates. The policy should also require that, if such a relationship develops or continues, the manager and subordinate will be removed from a reporting relationship in the workplace. A transfer or resignation is one way to address the situation. However, employers must consider the specific contours of their workplace to determine whether conflicts of interest may still occur even if the people in the relationship are not direct reports.

The relationship policy should specifically prohibit preferential treatment, require professional behavior and refer to the employer’s acceptable computer-use policy. A policy specifically prohibiting displays of affection or romantic e-mails is discouraged because of the difficulty in uniform enforcement.

Managing The Impact On The Workplace

The appropriate manager should meet with office couples discreetly and advise them of the relationship policy, as well as the employer’s anti-harassment policy. Steps should also be taken to confirm from the employees that the relationship is consensual. This discussion should be documented. The employer should not police or become involved in the personal aspects of the relationship. Although managers should be alert for any potential harassment or retaliation arising out of the relationship, the focus should be on the impact on the office.

Souring Relationship

The biggest risk to employers, however, is when the consensual relationship goes sour. Suddenly what were once romantic gestures now become unwelcome sexual advances perpetrated by a superior – an instant sexual harassment claim. Both during and after the relationship (or even rumors of a relationship), management should monitor the work situation and make sure employees know to promptly report any



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harassment. When an employee in a relationship does come forward, such complaints should be investigated and reviewed just as any other sexual harassment complaint.

Boulevard Of Broken Hearts

When the relationship ends, the workplace often becomes the sandbox for hurt feelings, romantic retribution and petty behavior. This post-relationship phase spawns the greatest headaches for employers. Co-workers take sides, turning the office into the Hatfields versus the McCoys. Employees who used to communicate with and

work collaboratively with each other often stop doing so. The raw feelings manifest into name calling on Facebook, late night cell phone hang-ups and even confrontations in the company parking lot.

Co-workers may also complain that they were treated less favorably than the employee in a relationship, and these complaints can lead to litigation for some employers. Relationship and anti-harassment policies specifically prohibiting preferential treatment can be useful in the defense of such claims. There should be closer scrutiny of any promotion, salary or other personnel-related decisions proposed by an employee in an office relationship.

Conclusion

Over 70 percent of the surveyed employees acknowledged that an office romance could have a negative impact on their career and workplace. Yet over half indicated they would proceed with the romance anyway, perhaps because many office romances result in marriage. In fact, President Obama and the First Lady met at the office, while working together at a law firm (and it is uncertain whether they were asked to sign a love contract). Despite the risks involved, office romances are a reality that employers must proactively manage in order to address potential legal risks and the impact on workplace productivity.

Partners Notes

Former SEC Assistant Director Joins Stradley Ronon As Partner

Michael Mundt, former Securities & Exchange Commission assistant director of the Office of Investment Company Regulation, has joined Stradley Ronon as a partner in its nationally recognized 43-attorney investment management/mutual funds practice group. He will also work in the firm’s exchange-traded funds (ETFs) group and will be based in the firm’s Washington, DC, office.

While at the SEC, Mr. Mundt managed one of the offices that reviews applications for orders under the Investment Company Act of 1940. In particular, he supervised the review of applications to permit ETFs and was involved with the regulatory review of all major ETF product innovations over the past 12 years. Mr. Mundt received the SEC’s prestigious Paul R. Carey Award, which honors a staff member who demonstrates exceptional personal commitment on a significant policy matter.

With more than 18 years of experience, Mr. Mundt will assist clients with complex legal issues under federal securities laws, with a particular focus on ETFs. Already known for its representation of investment company clients – with more than 700 separate funds and assets under management exceeding \$1 trillion – Stradley Ronon’s investment management group continues to grow to meet the changing needs of its client base. The practice has increased its attorney count from seven attorneys in 1994 to 43 attorneys today – all of whom are exclusively dedicated to serving investment management clients. Mr.

Mundt’s experience in federal securities laws, particularly in ETFs, will expand Stradley Ronon’s capabilities in these areas.

Stradley Ronon attorney Jana Landon has been appointed as vice-chair of social media for the Defense Research Institute’s (DRI) E-Discovery Committee. Ms. Landon will be responsible for increasing the committee’s presence on Facebook, Twitter and other social media sites, as well as facilitating questions and requests from individuals on those sites. DRI is the international organization of attorneys defending the interests of business and individuals in civil litigation.

As of counsel in the firm’s litigation practice group, Ms. Landon is co-chair of the firm’s e-discovery task force and focuses her practice on representing clients in products liability, insurance and complex commercial matters.

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