



Love (And Litigation) Is In The Air

Insights

5.05.14

June is traditionally a popular month for weddings. This June will some of your employees be celebrating the fact that they've found romance at the office? Love may be a wonderful thing, but in the workplace, it can put your company at risk.

Two romantically involved employees can create a variety of workplace challenges. For example, if one half of the couple holds a managerial position and the other is a subordinate, the obvious concerns are potential conflicts of interest, or favoritism and clouded judgment.

And, regardless of the employees' position on the corporate ladder, employers must prepare for the potential ramifications of a less-than-amicable future breakup between the two. After a split, one person from the former couple may redefine as sexual harassment, the very behavior that he or she previously welcomed. If a lawsuit results, companies face attorneys' fees, negative publicity, and workplace disruption.

Flirting With Disaster

Take these proactive steps to insulate your company from the liability that can arise from such relationships:

- Update the company's harassment policy, distribute it to all employees upon hire, and keep a signed acknowledgment-of-receipt form in each employee's file;
- Consider implementing a policy that discourages dating between coworkers and forbids it among supervisors and subordinates with a direct reporting relationship;
- Require employees who are dating to disclose it to a company official (by requiring disclosure of such relationships and publicizing the requirement, the company gives other employees some assurance that processes are in place to prevent harassment, favoritism, or retaliation due to personal relationships); and
- Use "love contracts," which document in writing the disclosures and acknowledgments from employees involved in a workplace romance.

Contracting Love

If love blossoms at work – and surveys show that it often does – employers can require the two

employees involved to sign a written confirmation that their relationship is voluntary, and that they both understand and agree to abide by company policies that deal with harassment in the workplace.

These so-called love contracts (an unfortunate name for a good concept) can protect an employer from liability for harassment and retaliation claims when workplace romances go south. A typical love contract confirms that neither party harassed or threatened the other to enter into the relationship and that neither employee feels compelled to maintain the relationship to retain his or her job or to receive employment opportunities or benefits of any kind.

Love contracts also may include:

- Both parties' acknowledgement of their understanding that either one may terminate the relationship at any time without any adverse employment consequence;
- Both parties' acknowledgement that neither will take adverse action against the other, nor will they engage in any form of favoritism or preferential treatment for the other in connection with their employment;
- Each person's affirmation that they will not allow their personal relationship to interfere with their job performance;
- An agreement from the romantically linked employees that they will not engage in workplace conduct that other employees could perceive as intimate physical conduct, such as kissing or hugging;
- An agreement that, if the employees have a future dispute with each other or the company, they will resolve it through confidential, binding arbitration rather than through the court system.

When Cupid's arrow strikes in the workplace, love contracts – coupled with meaningful enforcement of well-written sexual harassment and non-retaliation policies – are an employer's best shield.

For more information, contact the author at MBaker@fisherphillips.com or 503.242.4262.

Related People





Mitchell C. Baker

Partner

503.205.8080

Email