



A New Wave in the Workplace Law

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One Way or Another: Picking the Best Way to Show a Misbehaving Executive the Door

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Using New Wave Music to Guide Us through C-Suite Investigations

- The Eighties are our most disparaged recent decade
- We are here to change all that
- New Wave Music can set us free (or at least help us understand the necessary steps to handle investigations of C-Suite executives)
- Scenario: Key executive sexual harassment accusation
 - Understand nature of allegations
 - Investigate particulars
 - Decide outcome
 - If termination, determine terms of exit

Sex Harassment Scenario

- Clint, your Chief Marketing Officer, is an experienced, hard working executive who demands a lot from his staff
- He works late hours and expects his staff to work hard as well
- His 360 reviews have been mostly positive, though some seemed concerned that he can invade people's personal space and can be a little "touchy-feely"
- He is recently divorced and has spending even more time at work as a result
- Several of his direct reports are women, including Karen



Sex Harassment Scenario



- Karen works as hard as Clint and is just as ambitious
- She has noticed that Clint has stared at her in meetings and has asked her to stay late to work on projects one-on-one
- Karen is single and would like a relationship, but she can't find the time
- Clint invites Karen on a business trip to meet with a prospective customer
- Landing the customer would be a big feather in her cap
- They go on the trip, and one thing leads to another. . .

Relationships at Work

- Understandable that close relationships develop at work
- Executives are used to success and are not lacking in confidence, which can be attractive to co-workers
- Best practice: Require employees to disclose when relationships become intimate
- Best practice: Eliminate reporting relationships
- Avoid serving as “love police”
- Sometimes development of relationships fueled by. . . .



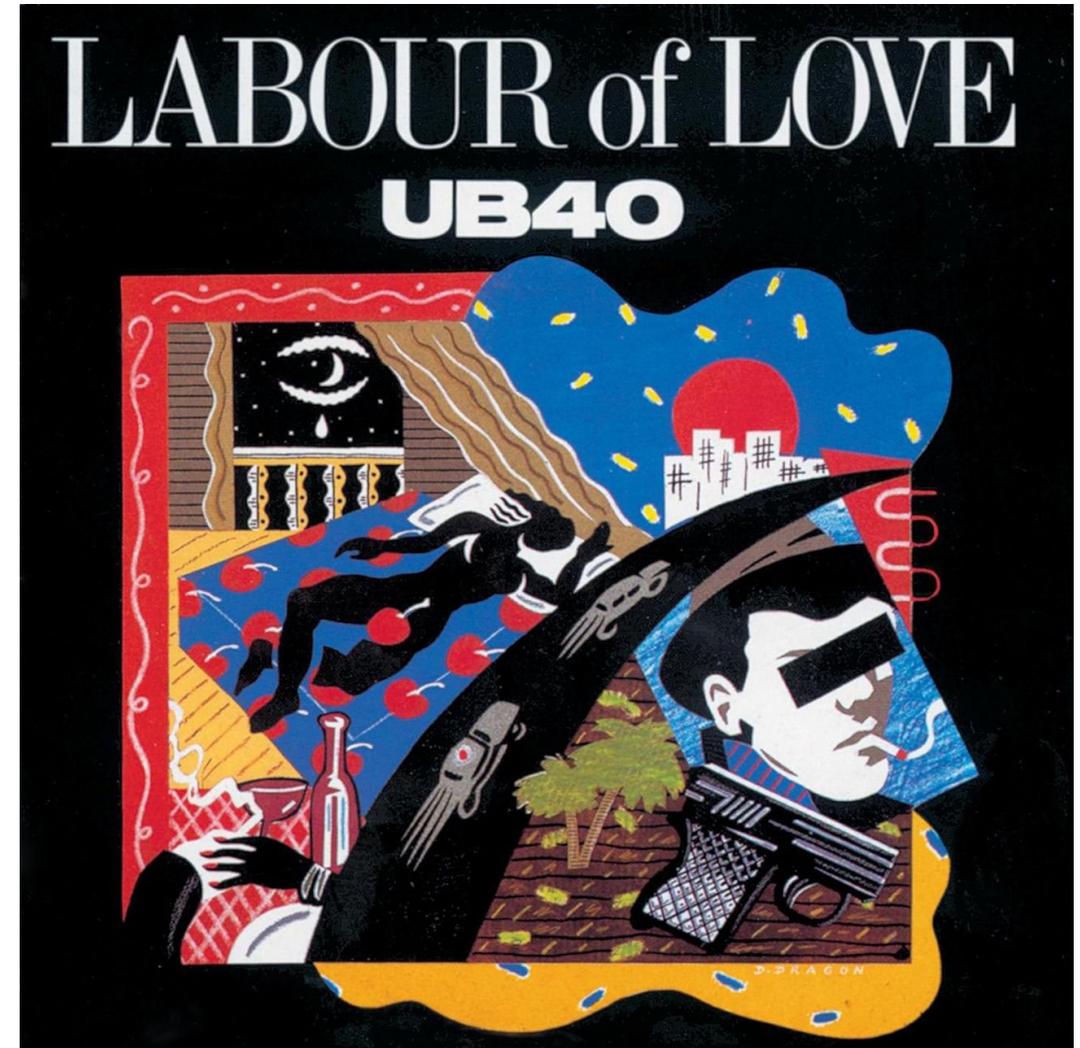
“Don’t You Want Me,” The Human League, A&M Records, 1981

Factors That Can Cloud Judgment



This might be how inappropriate work relationships get started, but they are usually fueled by the power dynamic. . . .

“Red Red Wine,” UB40, A&M Records, 1983



Harassment about Power as Much as Sex

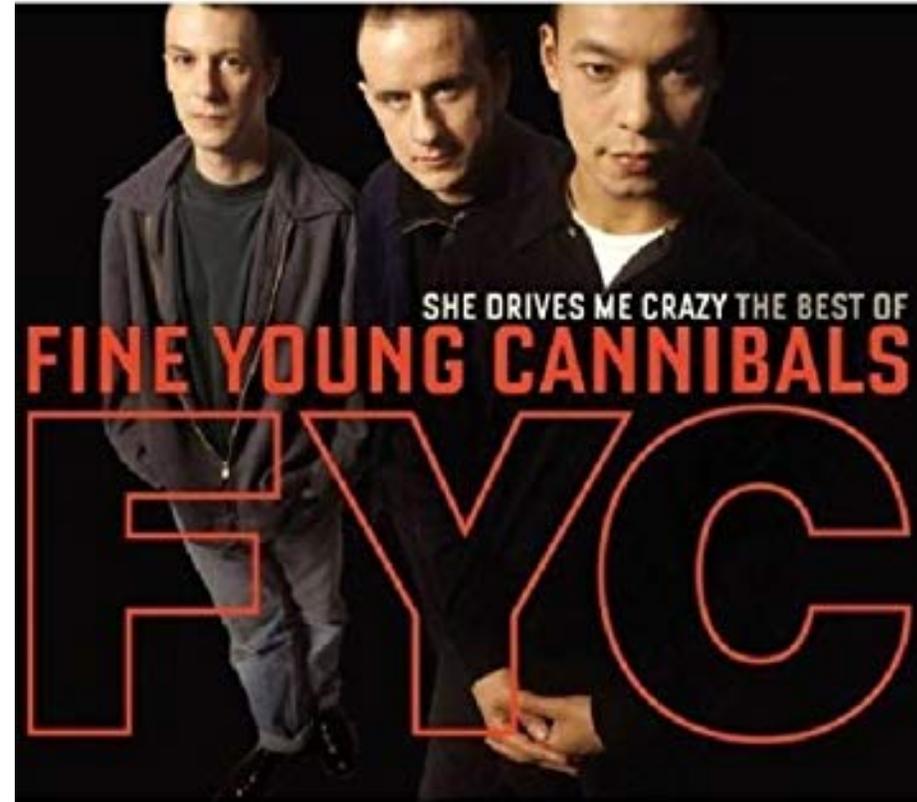


- Sex harassment at work is often an exercise in power
- *Quid pro quo* is not just the “perfect telephone call” with Ukraine’s president – it can be an exchange (whether implicit or explicit) of work-related benefits for sex
- The more highly-placed executive usually has the leverage to make the relationship happen
- But in work as in real life, even the best relationships sometimes don’t end well. . . .

“Everybody Wants to Rule the World,” Tears for Fears, Mercury Records, 1984

When the Good Times End

- When the “honeymoon” is over, but the work remains, a consensual relationship can turn into a harassment nightmare
- This is especially true when one party wants the relationship to continue
- If the reporting relationship remains, even innocuous remarks or constructive criticism are looked upon with suspicion



“She Drives Me Crazy,” Fine Young Cannibals, London Records, 1988

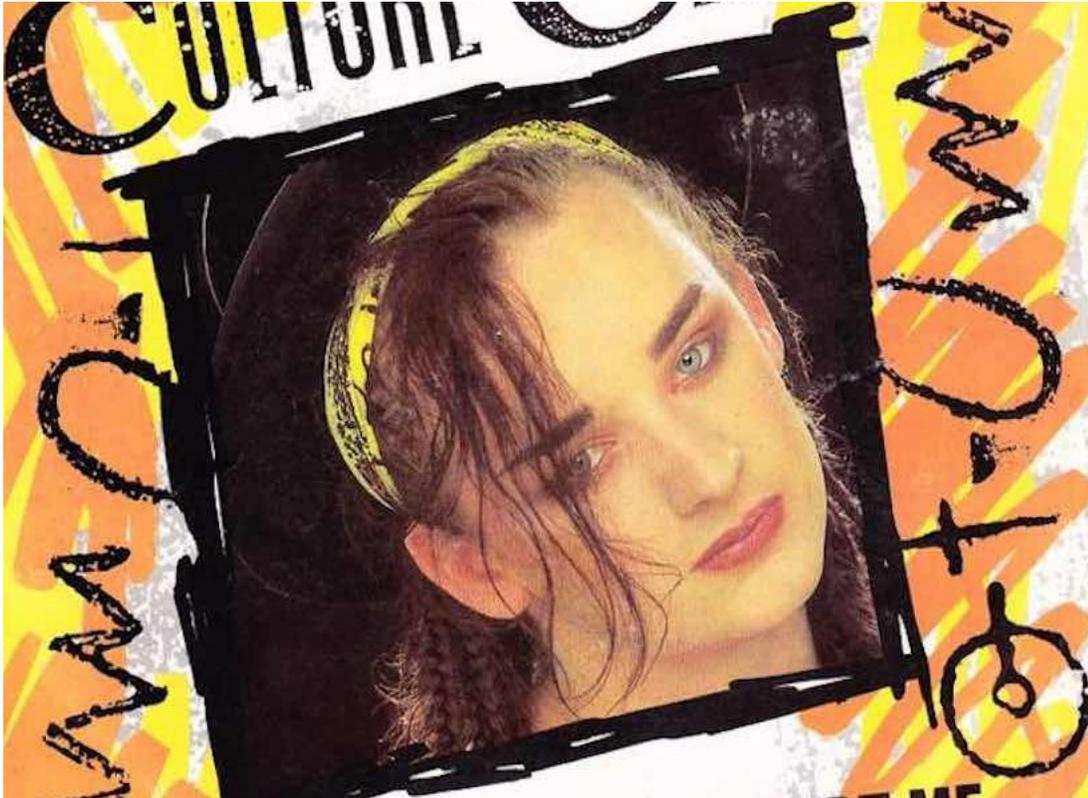
Constructive Discharge?

- Possible outcomes following soured relationship
 - Transfer
 - Resignation/Constructive Discharge
 - Lodging Sexual Harassment Complaint



"Tainted Love," Soft Cell, Warner Brothers Records, 1982

The Investigation Begins



"Do You Really Want to Hurt Me," Culture Club,
Virgin/Epic Records, 1982

- If you have a good working relationship with Clint, he may resent the fact that you are starting an investigation in response to Karen's complaint
- If you are aware of some of the facts, consider recusing yourself
- Consider getting Board involved
- Consider third-party investigator to eliminate allegations of bias

Confidentiality in Investigations



- Do not overpromise confidentiality to accused or accuser
- Explain investigation will be kept as confidential as possible
- Complete confidentiality impossible

"Our Lips Are Sealed," Go-Go's, I.R.S. Records, 1981

Attorney-Client Privilege Issues



“Voices Carry,” ‘Til Tuesday, Epic Records, 1985

- Consider outside investigator
- Investigators who are lawyers may be able to preserve privilege, though may ultimately be waived
- Usual circle for attorney-client communications regarding investigation may no longer be appropriate
- C-Suite can be insular place in which free and open discussions are common, but discussing ongoing investigation with other executives – especially accused harasser, can create appearance of bias and compromise privilege

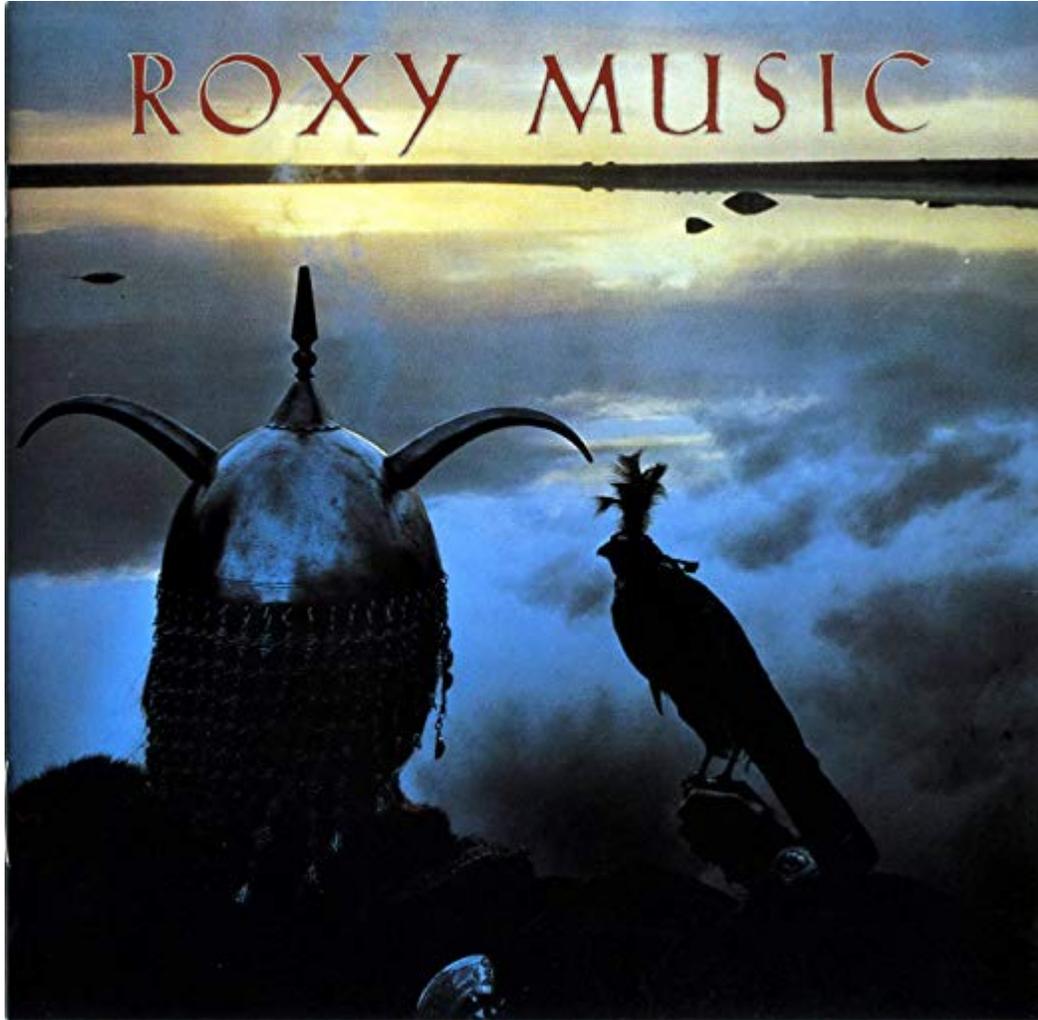
Decision Time

- Risks of keeping executive after investigation reveals violation of harassment policy:
 - Charge/lawsuit from victim
 - PR problems internally and externally
 - Emboldened executive
 - Negligent retention claims from others down the line
- Minimize risk of defamation claim brought by executive by keeping communication of departure internal, if possible.
- If company decides to terminate, separation terms must be worked out

“The Party’s Over,” Talk Talk, EMI Records, 1982



Negotiating Severance



- Determine whether severance will be paid and how much
- Consider impact paying departing executive accused of wrongdoing will have on workforce
- If money not otherwise owed to executive is paid, get release

"More Than This," Roxy Music, EG Records/Polydor, 1982

Other Post-Employment Restrictions



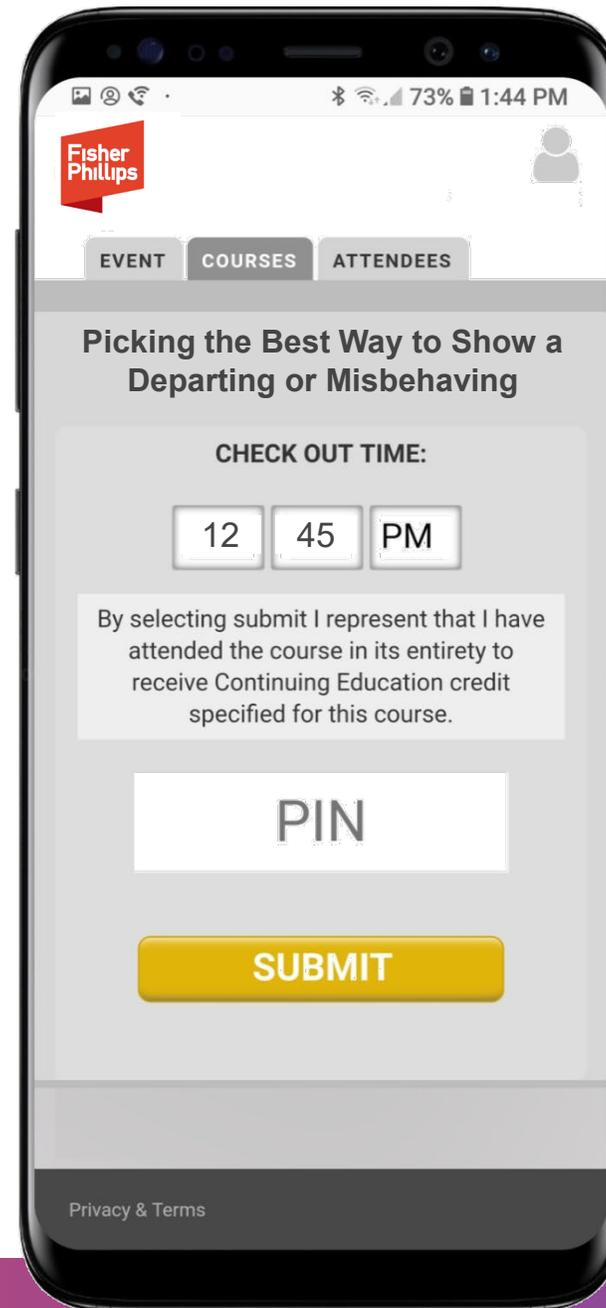
“Don’t You (Forget about Me),” Simple Minds, EG Records/Polydor, 1982

- Cooperation clause
- Restrictive covenants?
- Ongoing confidentiality and non-disclosure obligations
- Return of property and documents (hard copy and electronic)
- Tie severance clawback to compliance with other provisions

Questions?



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Thank you

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