I Heart You! Office Romance and Risk Management

Labor & Employment Law Update

By Beverly Alfon on February 13, 2018

As most turn their thoughts to love and romance this Valentine's Day, we remind you of the potential liability that Cupid's arrow may unleash. In this post-Weinstein and #MeToo period, the thought of office romance may catapult an employer into sheer panic.

Although a recent CareerBuilder survey indicates that office romance is at a 10-year low, the stats are still telling: 36% of workers admitted to having dated a colleague in the past year. Of workers who had an office romance, 30% dated someone in a higher position. *Yikes.*

A soured relationship at work can result in a broken heart for the employer – usually in the form of a sexual harassment claim. How can an employer address this?

A Love Contract?

These things exist. They are written relationship agreements that employers seek from employees to confirm the existence of a *consensual* relationship. The employer's goal is to mitigate risk by documenting the employer's expectation that they comply with all existing policies, including anti-harassment policies. They can also be used to set ground rules for other conduct, including public displays of affection (PDA), favoritism – and retribution (in case the relationship turns sour).

However, while these contracts can be a good "band-aid" for addressing the relationship, if a company does not have an anti-harassment program or policy regarding office relationships; it is not the best option.

A love contract alone will not likely defeat an employee's claim of harassment. Most sexual harassment plaintiffs can claim that they were coerced into signing one because their employer presented the agreement in the context of their at-will employment.

Practically, a love contract is also difficult because it requires employees to admit to the existence of a relationship in the first place. In the same CareerBuilder survey, 41% of the workers kept their romance a secret – and almost 25 of survey respondents admitted to an affair with a colleague where one person involved was married at the time.

Snap out of it!

You can more effectively mitigate legal risk by focusing on your anti-harassment program. If you don't have a written policy in place, invest the time and dollars to get one. Having a policy on the books is not enough. It should be supplemented with annual interactive training courses (a legal requirement for California employers) – ones tailored for non-supervisory and supervisory employees. The goal is to document that employees have been trained on the internal complaint procedures.

Equally important is training your supervisors on how to avoid harassment claims and how to properly handle claims if the supervisor receives knowledge of a claim. A solid anti-harassment/discrimination program demonstrates employer good-faith and can form a defense against such claims.

A general workplace romance or "fraternization" policy can address concerns over PDA and favoritism. Don't play footsie over this. Specifically address office relationships to make it clear that you expect professional and respectful behavior of all employees, regardless of any personal relationship between them. You can prohibit PDA in the office or on company time. And yes, you can forbid romantic relationships between supervisors and subordinates.

According to a 2013 survey conducted by SHRM, of businesses that had a romance policy, 99% banned supervisor-subordinate relationships. And, it's no wonder. In addition to harassment claims, soured relationships can result in claims of assault and battery, false imprisonment and defamation against the alleged harasser. Inevitably, the employer will be rolled into any related litigation.

Bottom Line: Love contracts are uncomfortable and not very effective. It is more effective to prohibit the risky conduct in the first place. Implementing a strong anti-harassment program and addressing employee relationships in a policy will go further in mitigating risks.