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Romance in the Workplace: Tips to Minimize the Legal and Practical Risks for Employers

Workplace romances, even consensual ones, create a variety of legal and practical risks including: (a) potential quid pro quo and/or hostile environment sexual harassment claims; (b) actual or perceived conflicts of interest or favoritism (that can later become discrimination lawsuits); and (c) potential negative impact on the productivity and morale of the people involved in the relationship as well as co-workers.

Instead of banning such relationships, we recommend a common sense approach to workplace romances that starts by recognizing a simple fact of workplace life: realistically, employers cannot ban workplace romances altogether. With people spending more and more time at work, more and more find themselves involved in romantic relationships with their co-workers. In fact, surveys suggest that people are more likely to date a coworker than anyone else. Some surveys indicate that 59 percent of employees have had a romantic relationship with a co-worker and that one-third of all romances started in the workplace.

The following steps will minimize the legal and practical risks associated with workplace romances:

Consider adopting a realistic policy. Do not pull a policy off-the-shelf or Internet. Work with legal counsel to develop a lawful policy appropriate for your company given its size, industry, and unique culture. A formal policy could: (a) prohibit relationships that create an actual or perceived conflict of interest such as a supervisor dating any employee who reports directly to him or her; (b) state your expectation that people behave in a professional manner and keep their personal relationships separate from the work environment; and (c) spell out potential consequences for violations of the policy.

Confirm the consensual nature of the relationship. When a romantic relationship is discovered or disclosed, a human resource professional should meet with each employee separately and discreetly to: (a) confirm the consensual nature of the relationship; (b) advise both employees of the company's sexual harassment and any other applicable policies and have them sign those policies; (c) stress the importance of being professional in the workplace and at work-related functions and avoiding even the appearance of favoritism or a conflict of interest; and (d) advise the employees that they should immediately notify the company if and when the relationship ends. A company may also consider appointing an ombudsperson (in or outside the company) who the employees can talk to if either becomes uncomfortable with the relationship at any time.

If a manager and subordinate are involved, a genuine conflict of interest exists. This would also be true in cases involving a manager and a subordinate who is not a direct report but whose terms and conditions of employment the manager has input on and can impact. In these cases, we recommend that clients strongly discourage the relationship and advise the employees that one of them will have to move to a different position if a position is open (so that the manager can have no direct impact on the subordinate's terms of employment) or be terminated if another position is not open.

Legal counsel should always be consulted when a company is considering steps to deal with workplace romances.