

## Workplace (aka "fake") spouses -- a lot of hype, but here's how to avoid problems.

By **Robin E. Shea** on February 23, 2011

This February ("Valentine's Month"), there was a lot in the news about "workplace spouses." Last week, I was interviewed about this by Denis and Shelli of WSBT radio in South Bend, Indiana.

My own opinion is that the "workplace spouse" phenomenon is an overhyped way to put a new spin on the very old problem of sexual attraction in the workplace. (Sexual harassment and workplace dating are so '90's.)



What is a workplace spouse? The news accounts define it as a closer-than-normal relationship between two co-workers. But for the term to have any real meaning, it has to apply to co-workers who at least have the possibility of becoming sexually attracted to each other. For example, two heterosexual girlfriends who spend a lot of time together and talk about everything may be BFFs, but they are never going to be faux "spouses."

I have long held the view that extramarital affairs at work are the number one cause of sexual harassment lawsuits against men. They have an affair, she wants to get married, he chickens out, and she's angry and wants revenge. I'm not saying that every sexual harassment *complaint* fits this scenario (by no means!), but just about every *lawsuit* I've been involved in did. Because workplace "spouse" relationships can lead to extramarital affairs, folks need to be very careful not to let these relationships escalate.

How can you have a close friendship with a co-worker without letting it destroy your marriage or your career? Here are a few tips:

**1-Create a dividing line that you won't cross.** Be friends if you must, but don't talk to your fake spouse about things like your sex life or your marital problems ("My wife doesn't understand me"). Your fake spouse shouldn't know anything about you that your real spouse doesn't know (unless you're telling your fake spouse about the awesome gift you purchased for your real spouse for a birthday or anniversary). Nor should you violate your real spouse's privacy with your fake spouse.

**2-Don't idealize your fake spouse.** At work, we are all clean, groomed, fragrant, dressed nicely, and well-behaved. (Most of us, anyway.) We may or may not be so at home, and none of us are able to be that way all the time. Your fake spouse probably looks just as bad first thing in the morning as your

real spouse does, also has "issues," and burps and watches bad TV shows. Remind yourself of that as often as needed.

**3-If you're single and your fake spouse is married, respect the marriage.** If you sense that a "crush" is developing (either from your end or his/hers), start distancing: talk about the real spouse and kids frequently (in a positive way), refer to your own boyfriend/girlfriend, etc., etc. If necessary, limit your contact with your workplace "spouse."

**4-Be sensitive to your co-workers' feelings.** One big risk involved in "workplace spouse" relationships is the perception of co-workers that you are being cliquish. If one party to the fake spouse relationship is a supervisor, even worse -- there may be perceptions of favoritism or discrimination. Even if your fake spouse is your "favorite," include your co-workers in conversations and activities as much as you can. The presence of co-workers will also help you with Tips 1 and 3.

**5-Be sensitive to your real spouse's feelings.** Just about every article on workplace spousehood mentions that real spouses are uncomfortable with these relationships. Why wouldn't they be? If your real spouse feels jealous or threatened, *BACK OFF!* Your real spouse ought to come first. Even though some articles suggest that you and your workplace "spouse" and your real spouses can get together as a foursome, even that is risky if there is already a strong attraction between you and the workplace "spouse."

## NEWSWORTHY NUGGETS . . .

Here are some legal developments from the past week.

**Defense of Marriage Act no longer defensible, Obama Administration says.** Attorney General Eric Holder has said that the Administration no longer intends to defend challenges by legally married same-sex couples against the Defense of Marriage Act, which interprets "marriage" for purposes of federal law as being between one man and one woman. The Administration, which contends that the DOMA violates the equal protection clause of the Fifth Amendment to the U.S. Constitution, does intend to continue complying with the law, however. The new position (and future evolutions) should be closely watched by employers because it will have an impact on the definition of "spouse" for purposes of the Family and Medical Leave Act and the Genetic Information Non-Discrimination Act, as well as many other laws.

In a related development, the *Wall Street Journal Law Blog* reported yesterday that the State of Hawaii has legalized same-sex civil unions.

**Mea culpa.** I closed last week's post with a snide remark about Madison, Wisconsin, school teachers calling in sick so that they could protest Governor Scott Walker's budget initiatives. I felt (and, honestly, still feel) that the teachers should be willing to make some concessions to help keep the state from going under. But this week, I saw that some attorneys are now charging an obscene \$1,000 an hour for their services, so as an attorney (though not a \$1,000-an-hour one), I feel bad for picking on the teachers.

**Nagging employee about return to work from FMLA leave is *not cool*, court says.** A federal judge in Arkansas recently denied summary judgment to an employer on an "interference" claim under the Family and Medical Leave Act. The employee was out of work for back surgery (apparently legitimate), but her supervisor called her once a week to ask when she was going to return. At one point, the employee allegedly asked whether her job was at risk, and the supervisor allegedly responded, "You need to come back as soon as you can." Worried about her job, the employee returned to work a week early but was terminated a short time later for suspected theft. (The court found in the employer's favor on the termination, however, saying that there was plenty of evidence to support the employer's good-faith belief that the employee had stolen or tried to steal from a co-worker.) Hat tip to *ABA Journal Weekly Newsletter*.

**Bad PR.** Monique da Silva Moore has filed a putative class action against international public relations firm Publicis Groupe and its U.S. public relations affiliate, MSL Group, for systemic sex discrimination. Ms. Moore's suit alleges that the work force is approximately 70 percent female but that only 15 percent of its leadership positions are held by women. The suit also alleges that women are paid less than similarly situated men. The suit has just been filed, so the defendants have not had a chance to respond yet.

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