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Employment Law Update: Romance in the Workplace: You, Me and our Employer?

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As Valentine's Day approaches, here are some interesting facts for employers to consider: Statistics indicate that over 10 percent of married couples met at work. Almost a third of respondents in a recent survey by Monster Worldwide indicated that they had had a relationship in the workplace; roughly half of those employees surveyed said they would be open to office dating in general.

Certainly, an "office romance" is not nearly as stigmatized as it has been in the past. To current generations, if it worked out well for Bill Gates, maybe it will work for them, too. However, company management, and even employees themselves, often fear that dating a co-worker can lead to workplace conflicts, distractions and, perhaps, even lawsuits. Those concerns heighten when the relationship involves employees with different levels of authority or unequal rank within the organization.

It is becoming increasingly common for companies to address, in advance, the issues and potential problems caused by workplace dating relationships. Some employers may consider it sufficient to adopt, publicize and enforce a general policy prohibiting harassment. For example:

The company prohibits harassment based on an individual's race, color, age, religion, sex, pregnancy, national origin, disability, veteran status or any other consideration made unlawful by any applicable federal, state or local laws. This commitment to a harassment-free environment applies to every aspect of the employment relationship. The company does not tolerate unwelcome or offensive conduct or conduct that creates a hostile work environment that is in any way based upon or related to a person having any of the characteristics described above.

In some cases, employers may consider including specific language addressing and prohibiting sexual harassment in the workplace. Sample language might include:

The company does not tolerate sexual harassment, which is a form of unlawful discrimination. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

a. Submission to such conduct is made, explicitly or implicitly, a condition of an individual's employment or advancement;

b. Submission to or rejection of such conduct by an individual is used as the basis for employment (including promotion, demotion and compensation) decisions affecting such individual; or

c. The conduct creates an intimidating, hostile or offensive working environment.

Some companies altogether prohibit dating among employees with different levels of authority or unequal ranks. Still others extend their anti-dating policies to relationships with company vendors, contractors and customer owners and personnel, particularly where there is a risk of a conflict of interest arising. The goal of all such policies is to preempt appearances of impropriety and to draw a line between company business decisions and "decisions of the heart."

Finally, some companies require that employees who date must inform management about the relationship so that they can be monitored, especially when people of unequal ranks are concerned. Often, company policies involve reporting dating relationships to a designated human resources point of contact, and having written employee consents regarding dating conduct. Many of these "love contracts" are designed to offer certain self-serving protections to companies from future sexual harassment or related claims. Many offer an opportunity for an employer to restate its general anti-harassment policies. In addition, some "love contracts" require the dating parties to make certain written representations to the company, including, for example, attestations that:

1. The relationship is entirely voluntary.
2. The relationship will not have a negative impact on either party's work.
3. The employees will not engage in any public displays of affection or other behavior that creates a hostile work environment for others or that makes others uncomfortable.
4. The employees will act professionally toward each other at all times, even after the relationship has ended.
5. The employees do not and will not participate in any company decision-making processes that could affect the other employee's terms and conditions of employment.
6. The employees will inform the company immediately if the conduct or advances of the other person continue after they are no longer welcome.
7. The employees understand that the company's anti-harassment policy will continue to govern their conduct as an employee, even after the personal dating relationship ends.

The appropriate approach for a company depends on a number of factors, including experience with workplace dating, company culture and business goals. Regardless of the policy adopted, however, companies must be sure to enforce it on a consistent basis. Nexsen Pruet's employment and labor law attorneys are available to help construct a policy that serves your business interests and that your employees may actually like - and perhaps even love.