

News For Employers

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On Valentine's Day, Cupid Will Be Circling the Office *What can Employers do to Mitigate Risks?*

For employers, Cupid's arrow only points one direction.....to the Company's Sexual Harassment Policy. While Valentine's Day may be a holiday to celebrate love and romance, it can quickly become an employer's worst nightmare. Whether it is a consensual office romance between co-workers that has other employees feeling slighted or an innocent box of chocolates from a manager to a subordinate, this time of the year creates increased stress for employers about sexual harassment claims. According to data from the United States Equal Employment Opportunity Commission (EEOC), 11,364 charges were filed in 2011 alleging sexual harassment in the workplace. Considering those statistics, and the increased number of employment related lawsuits in recent years, most employers discourage Valentine's Day celebrations in the workplace.

What is meant as an innocent gift or card to show an employee appreciation for their efforts and talents can easily be misinterpreted as an inappropriate gesture of love or affection. What one employee considers a funny Valentine's Day email might be highly offensive to another employee who receives the email. Also, some employees use Valentine's Day as a good excuse to romance a co-worker in hopes that a friendship will lead to something more. However, for the employer, this conduct might just lead them straight to the courtroom. Due to the increased risks associated with this type of conduct, employers should encourage employees to leave their "Happy Valentine's Day" sentiments outside the workplace. Employers should be proactive and head off such conduct by reminding employees, especially at this time of the year, of the legal perils involved.

One of the biggest areas of concern for employers is interoffice dating and how to handle those relationships in order to reduce company exposure. No matter how much employers fret about interoffice romance, one this is for sure, it's not going away. According to a 2011 research study conducted by *CareerBuilder*, nearly 40 percent of workers say they have dated someone they worked with over the course of their careers. For those who had dated a colleague, 30 percent went on to marry that person. Therefore, employers must be realistic when it comes to workplace relationships and be prepared to take affirmative steps to reduce potential sexual harassment claims.

Lexington employment lawyer, Tammy Meade Ensslin, who regularly consults with companies on employment matters, said she is frequently asked about workplace policies concerning interoffice dating and how employers can mitigate risks of sexual harassment claims. "In this day and age, I have found that most companies have abandoned their anti-fraternization policies and instead are taking proactive steps to address those relationships," Ensslin commented. She added that since anti-fraternization policies typically encourage employees to hide relationships for fear of reprisal, they can actually interfere with workplace harmony and lead to even more discourse in the workplace.

With Valentine's Day around the corner, and since employers know that cupid's arrow is going to strike in the workplace, they should make sure it's aimed at the Company's Sexual Harassment Policy. According to attorney Ensslin, "the best defense for employers is a well drafted sexual harassment policy and regular training for managers and employees. The policy should set out a reporting procedure that is easy to follow and allows for alternative avenues of reporting." She also notes that employers should promptly investigate each and every claim of harassment and take appropriate disciplinary action when the policy is violated.

Finally, the risks associated with interoffice romances have prompted some employers to direct cupid's arrow at the signature line on a "love contract." While this is probably not what Stevie Wonder was referring to in the lyrics of his 1966 hit song "Contract on Love," in the employment law world, it takes on a whole new meaning. A "love contract" is a document signed by two employees who are in a consensual dating relationship. The contract outlines the expected conduct of the parties at the workplace and declares that the relationship is consensual. It is typically used in combination with an employer's policy that establishes workplace guidelines for interoffice dating. Under the contract, employees relieve the employer of any liability for sexual harassment during the time period of the office romance prior to signing the contract. Attorney Ensslin believes such agreements can "provide an additional layer of protection for the employer. When faced with a claim for sexual harassment, a 'love contract' may be used as evidence of the state of mind of the parties involved." However, even in instances where employers are using "love contracts," it is still important for management to consult with an attorney and monitor the relationship in case other issues arise that might create liability for the employer. And, like any other employment policy, "love contracts" should be applied "fairly and consistently."

With Valentine's Day approaching, this is a great opportunity for employers to revisit their sexual harassment policies with employees. The legal perils at stake should be emphasized as Cupid circles the workplace this Valentine's Day.

***For additional information on Employment or Labor Law issues,
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