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a ford & harrison blog about the popular television series "the office"

Pushing the Limits of PDA

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When last night's episode originally aired on February 10, 2011, I noted that the Scranton office more closely resembled a nightclub at the height of the sexual revolution than a reputable place of business – see my original commentary entitled "Let's Get It On." I discussed recent findings on the prevalence of workplace dating, as well as the inherent liability risks with office romances.

This time I'm going to focus more narrowly on the issue of PDA, or "Public Display of Affection," as Michael and Holly's exhibition is worthy of the record books. Their fondling, caressing, heavy breathing, etc., made everyone around them nauseatingly uncomfortable. Michael and Holly were so engrossed in each other that they were oblivious to their own PDA – an intervention was required just to bring it to their attention.

In watching Michael faun over Holly and everyone else squirm, I couldn't help but wonder if anyone had ever sued over coworkers' PDA. The answer, you might not be surprised to know, is yes. Recently, in Nielson v. Tropholz Technologies, Inc., a plaintiff filed a suit in the Eastern District of California, alleging that he was subjected to a hostile work environment when his supervisor openly doted on a co-worker. The plaintiff claimed that he observed the coworker "float[ing] around like a butterfly," from the attention. According to the plaintiff,

the supervisor also showed his paramour favoritism by lightening her workload and giving her assignments to others. The court dismissed the plaintiff's claim before a jury could hear it. Quoting another case, the court explained that where "there is no conduct other than favoritism toward a paramour, the overwhelming weight of authority holds that no claim of sexual harassment or discrimination exists."

However, lest anyone take this commentary as license to nauseate through office PDA, I point you to Miller v. Department of Corrections, where the California Supreme Court found that the plaintiffs had been subjected to harassment through their coworkers' romance. In that case, the supervisor showed little, if any, discretion. As explained in another decision,

"in Miller, there was "widespread" sexual conduct in the form of three simultaneous and open affairs with significant favoritism that permeated the working environment. That favoritism involved unfettered abuse and harassment against both plaintiffs by one of her supervisor's paramours, flagrant boasting by the favored women, eyewitness accounts of public fondling, admissions by the supervisor that he could not control his paramours based on the sexual relationship between them, and repeated promotions based on sexual favors rather than on qualifications."

Thankfully for Saber/Dunder-Mifflin, Michael's love-life has never spiraled out of control to the degree of the supervisor in Miller. Standing by itself, while Michael's doting may lead to nauseated stomachs, it should end there and not in a judgment of liability against the Company.