

Dating in workplace essay



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A coworker dating problem is an extremely controversial issue, particularly in contemporary context. While employers have taken steps to recognize the serious problems associated with sexual harassment, they have increasingly accepted dating among coworkers. As women continue to expand their numbers in the work force and acquire positions of equality, coworker dating will continue to increase. In recent years, concerns about the ambiguities and complexities related to sexual harassment liability have fueled employer apprehension about coworker dating.

These concerns are not unfounded – the greatest potential for liability involving coworker dating is sexual harassment liability. Absent clearly articulated policies addressing romantic alliances between coworkers, the employer may find itself the target of a sexual harassment suit when a relationship turns sour. Further, employers should recognize the potential for workplace violence stemming from a relationship gone bad, namely, the scorned lover who seeks violent revenge in the workplace.

An employer's decision to ignore coworker dating issues may also have adverse effects on productivity and morale, especially if employees perceive favoritism and unfair treatment resulting from romantic alliances between coworkers. This perception, in turn, may contribute to an atmosphere of jealousy and resentment among coworkers. Unfortunately, many employers do not have clearly articulated coworker dating policies. Instead, employers have relied on unwritten rules or some other ambiguous approach to coworker dating issues.

Some employers accept coworker dating, refusing to acknowledge the litigation risks and other potential pitfalls resulting from complete acceptance of coworker dating in all employment situations. Other employers offer tacit approval to coworker dating, but have no articulated policy. Some employers prohibit coworker dating outright, determining that the benefits of prohibiting all workplace romance outweigh the potential risk of litigation.

Finally, many employers consider coworker dating policies but refuse to adopt them because they feel it is too difficult to enforce or constitutes an unjustified intrusion into their employees' personal lives. The paper recommends that employers adopt a written coworker dating policy that restricts coworker dating only in supervisor-subordinate or other power-differentiated relationships as the only viable answer to the significant dilemma. Perhaps the greatest justification for restricting coworker dating is to avoid sexual harassment claims.

What at first blush may seem to be an innocent office romance may eventually provoke a claim of sexual harassment when the relationship comes to a bitter end. Moreover, a slighted employee may assert a "reverse harassment" claim against the employer, complaining that he or she was passed over for advancement or raises in favor of a coworker who is having a romantic affair with a supervisor or other member of management. In view of the U. S.

Supreme Court's recent decision applying a "totality-of-circumstances" approach to "hostile-environment" sexual harassment claims, employ-

should recognize the potential legal liability associated with unrestricted coworker dating. Sexual harassment claims under Title VII have developed under two distinct theories: “quid pro quo” and hostile-environment claims. The quid pro quo theory involves situations where an employee is forced to choose between submission to sexual demands or the loss of job benefits, promotions, or employment. The employee suffers an adverse consequence because of a superior’s discriminatory behavior.

The second, more complex, category of sexual harassment claims involves a hostile or offensive working environment. The U. S. Supreme Court has concluded that workers have a right to work in an environment which is not sexually hostile or offensive. In *Harris v. Forklift Systems, Inc.*, 114 S. Ct. 367, 370-71 (1993), the Court recently affirmed that sexually discriminatory verbal intimidation, ridicule, and insults may be sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment that violates Title VII.

The Court also determined that whether an environment is “hostile” or “abusive” can be “determined only by looking at all the circumstances . . . [such as] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” Under the Harris totality-of-circumstances test, if a romantic relationship between a supervisor and subordinate turns sour, the employer may be charged with condoning inappropriate and unwanted behavior.

Acceptable behavior in the setting of a consensual relationship between employees can become harassing behavior if one party to a relationship no longer welcomes the conduct. This risk of substantial liability exposure for sexual harassment gives an employer a strong incentive to adopt a coworker dating policy. In recent years, employers have become increasingly concerned about the impact of employees' off-duty activities upon their jobs. In the context of coworker dating, employers should consider when an office romance might result in a job-site domestic dispute and the potential for workplace violence.

The National Institute for Occupational Safety and Health issued a report on November 29, 1999, revealing that homicides were the leading cause of workplace fatalities in five states and the District of Columbia. Nationally, homicide was the leading cause of death for several occupations, including sales, service, executives, administrators, and managers. In the last decade, 7,603 workers have died from work-related homicides. Plainly, a jealous or scorned coworker-lover could bring a domestic dispute into the workplace.

This real possibility is yet another reason for an employer to develop a coherent coworker dating policy that promotes a dialogue between management and employees, while not interfering with the employees' private lives. Romantic relationships between coworkers do not exist in a vacuum - the relationship affects other employees. Coworkers may perceive favoritism and bias resulting from romantic relationships between supervisors and subordinates. In turn, when employees perceive that they are treated unfairly, the perception of unfairness can lead to jealousy, resentment, and diminished employee morale and productivity.

In the end, the coworker romantic alliance may have profound effects on the employer's operations and productivity, especially when the employer chooses to ignore the relationship and its potential disruption of the workplace. A coworker dating policy can obviate the employee morale problems by restricting power-differentiated, romantic relationships between supervisors and subordinates. Articulated restrictions on coworker dating, particularly in the supervisor-subordinate setting, would also place employees on notice about the consequences of their romantic alliances.

Absent an explicit company policy restricting coworker dating, employees who contemplate or are engaged in romantic relationships with coworkers will have no idea what consequences they may face because of their relationship. For example, if an employer disciplines an employee for dating a coworker, the employee may complain that the company failed to provide adequate notice, which constituted an invasion of the employee's reasonable expectation of privacy. Moreover, a company that does not have a written coworker dating policy may subject itself to charges of disparate treatment discrimination under Title VII.

For example, an employer may prohibit a female manager from dating a coworker in one situation and, one year later, allow a male supervisor to date a female employee in another situation. By doing so, the employer faces liability for sex discrimination under Title VII and other possible common law tort claims. In short, a consensual relationship that would not have exposed the employer to litigation if addressed by company policy at the outset may eventually cause severe problems for the employer and its workers.

Some employers have also adopted coworker dating policies based on amorphous justifications related to “family values” or the employer’s concept of morality. For example, Bentonville, Arkansas-based Wal-Mart, the nation’s largest retailer and self-styled champion of “family values,” has applied employment rules prohibiting nepotism and fraternization to approximately 520,000 of its employees. Under the fraternization policy contained in Wal-Mart’s 1989 employee manual, the company observed that “fraternization can lead to favoritism, integrity problems, or business decisions based on emotions or friendships rather than facts.

[It] can cause tension and uneasiness among associates both during and after a relationship” (Samborn, 1). The policy continued: “Wal-Mart strongly believes and supports the ‘family unit.’ A dating relationship between a married associate and another associate, other than his or her own spouse... is prohibited” (Samborn, 33). Therefore, employers like Wal-Mart have not only asserted justifications for restricting coworker dating that are based on practical concerns, but also based on normative value judgments related to “family values” and the employer’s concept of morality.

Romantic relationships between coworkers, especially when one of the employees is a supervisor, create a dilemma for the employer. By failing to formulate and implement any policy concerning coworker dating, the employer is vulnerable to sexual harassment actions if the relationships turn sour and to “reverse” harassment actions when a coworker romance adversely affects an employee’s chances for advancement.

If, however, the employer adopts a blanket policy that strictly prohibits all coworker dating or fraternization, the employer may subject itself to liability under a state “ legal activities” law and a common-law invasion of privacy action. Further, a blanket prohibition on coworker dating would impede healthy coworker interaction and communication – factors that create good employee morale and sus-tain productivity.

To strike an appropriate balance, the paper contends that an employer may effectively restrict dating between coworkers in power-differentiated working relationships and protect employees against sexual harassment, without chilling employee interaction and communication, which might include off-duty social and romantic relationships. In view of the real potential for costly sexual harassment and tort litigation, it is recommended that employers formulate and disseminate a reasonable coworker dating policy that balances the concerns of employer and employee.

The written policy should clearly articulate the employer’s policy concerning coworker dating. In this way, employees are placed on notice about the restrictions embodied in the policy, and the policy becomes a condition of each worker’s employment. The employee should be required to verify that he or she has received and read the policy and, as a result, the employee will be hard-pressed to later claim that the dating restrictions violate any expectation of privacy or implied covenant of good faith and fair dealing.

If, however, the employer already has policies that protect an employee’s privacy interests regarding off-duty conduct, the employer should either create an expressed written exception to that policy and disseminate it to all

employees, or revise and amend the previously disclosed “right of privacy” policies. In short, the employer should ensure that its written, coworker dating policy and accompanying restrictions are consistent with its other policies and neutrally applied to all employees.