

When the Love Bug Bites in the Office

“They swarmed around her like bees to honey.” “Everyone knew, but it didn’t *really* impact the office environment.” “It is none of my business.” “That’s just Jim. It’s how he acts with his assistants.”

We’ve all probably heard comments like these from our employer clients more times than we would care to recall. Courts and Human Resource departments alike have wrestled with intraoffice dating for years in the context of sexual harassment suits and general office management. Where is the line between “none of our business” and “hurts our business”? Should employers implement a no-dating policy? There is room for courts to expand on an occasionally-acknowledged “marital status” protected class if employers allow two employees to be married but prohibit dating. There is also room for liability by the supervisor or managing partner when the love fades. Should we as lawyers avoid the pitfalls of office romance despite the countervailing reality of increased “together” time spent at the office?

Although we’ve all heard stories about couples who met in the office and are living happily ever after, consider the following scenarios:

Kenneth, an employee at ABC company begins a casual relationship with Nancy, another employee with ABC. Kenneth is able to bring in some additional business to ABC and is welcomed as a partner at the end of the year. Now, Kenneth has become Nancy’s superior, and has input into Nancy’s future with ABC.

If the two employees were not successful in secretly keeping the affair to themselves, what ramifications exist when Nancy does not make partner. What happens if she does? What happens if Nancy makes partner first?

Even without Kenneth’s move up the ladder, how will colleagues and subordinates react when they witness a flirtatious remark or gain insight into the relationship?

What happens if Nancy decides that she is no longer interested in a relationship with Kenneth, but fears that she will not continue to receive the “better projects” or will not be invited out to social gatherings with the partners (a prerequisite to making partner in many instances) if she discontinues the relationship?

Recent cases make it all too clear that there is no precise way to predict what may happen when office romance doesn't blossom. If the two involved are supervisor/subordinate, there is no way to predict that the subordinate won't later feel obligated to continue the relationship in order to keep his/her job or to climb the corporate ladder. What if feelings are not returned and, in extreme cases, a restraining order becomes necessary? Although these issues may be easy to disregard as mere "feelings", these "feelings" may later become the basis of an adverse employment action, a hostile work environment claim or even a criminal matter and cost the company a large settlement or verdict. Short of that, soured office romance could damage a formerly collegial office environment beyond its repair or cause a formerly valued employee to leave the company.

Before taking the risk, consider the following:

- Check to see if there is a dating policy in place. Courts, while reluctant to monitor consensual adult relationships, are not completely unwilling to chastise employers who let employees' behavior go unchecked. "No dating" policies, whether implied or express, can provide a basis for discipline against employees who date co-workers.
- Remember that what is consensual today may not always remain so. Just because two employees are happily in love in January does not suggest, upon a souring of their relationship, that the situation will remain amicable. If you are an owner and choose to allow two office sweethearts to date, prepare yourself for a suit later when things take a turn for the worst. If you are adamant about allowing the two employees to continue to date, consider securing sworn statements from both parties concerning their voluntary relationship. Even then, be mindful that such statements could become mere atmospherics later on, should litigation ensue.
- Or consider the easiest and most risk-free of all alternatives: Ask your co-worker if he/she has any friends that are single.

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