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Employers Can't Ignore Cupid's Arrow this Valentine's Day What Can Employers Do to Mitigate their Risks?

This Valentine's Day, employers should take extra precautions to make sure chocolates, cards, and confessions stay out of the workplace. With Cupid's arrow ready to launch, this is the perfect time of year to remind employees of the Company's Sexual Harassment Policy. Despite being known as the holiday of love, romance, and sweet sentiments, it can quickly become an employer's worst nightmare. Whether it is a consensual office romance between co-workers that has other employees feeling inferior or an innocent card from a manager to a subordinate, this time of the year can increase stress for employers about sexual harassment and other claims. What might be intended as an innocent gift or card to show an employee appreciation for their efforts can easily be misinterpreted as an inappropriate gesture of love or affection. Likewise, what one employee considers a funny Valentine's Day email or card might be highly offensive to another employee as it makes it way around the office.

Why should employers be concerned? The United States Equal Opportunity Commission had 7,571 charges of sexual harassment reported in 2012, resulting in settlements of \$43,000,000 (which does not include settlements reached in litigation). And, yes, you are reading that correctly...\$43 Million Dollars. And, statistics show that 17.8% of the charges were filed by males, an increase from 16.1% reports in 2011. So, as cupid circles the workplace, employers should keep a couple of things in mind. First, due to the increased risks associated with potentially harassing conduct, employers should encourage employees to leave their "Happy Valentine's Day" sentiments outside the workplace. This means employers should discourage exchanges of cards, gifts, and candy. Secondly, employers should be proactive and head off such conduct by reminding employees of the Company's Sexual Harassment Policy.

Lexington employment lawyer, Tammy Meade Ensslin, who regularly consults with Companies on employment matters, said she is frequently asked how employers can lower their risks of sexual harassment claims. According to 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 since it is often alleged that the supervisor is the harasser." She also advises clients to promptly investigate each and every claim of harassment and take appropriate disciplinary action when the policy is violated.

So...if you are thinking about giving your subordinate or co-worker a Valentine's Day card or a box of chocolates? Think again. Remember, this is 2013 and we are a long way from the sweet lyrics of Frank Sinatra's "My Funny Valentine." Pat Benatar's "Love is a Battlefield" is probably more appropriate these days as you review a few cases that highlight the risks involved:

- In Illinois, a Valentine's Day card was the final straw for a female employee who claimed she was repeatedly the victim of sexual harassment. She failed to report the conduct until her supervisor gave her a Valentine's Day card, which read "I can't imagine loving you more than I do today . . . but tomorrow I will. HAPPY VALENTINE'S DAY, SWEETHEART." After receiving the card, the employee reported the conduct for the first time to her employer and eventually made claims for sexual harassment and retaliation. The Seventh Circuit Court of Appeals reversed a finding in favor of the employer and allowed the case to proceed. Johnson v. West, 218 F. 3d 725 (7th Cir. 2000).
- In Florida, a female employee received a large red Valentine's Day card which read: "On Valentine's Day, remember — candy is dandy ... but sex won't rot your teeth! So what do you say!" This, along with other alleged acts of alleged harassment from co-workers and her superior, resulted in multiple claims against the employer which were allowed to proceed. Pucci v. USAir, 940 F. Supp. 305 (M.D. Fl. 1996).
- A New York employee filed suit against her employer alleging sexual harassment and retaliation based, in part, on a Valentine's Day card from her boss which read: "But somehow it seems only right To say, today of all days, You're someone close in thought and heart, Not `now and then.'" The female employee showed the card to the male HR Manager who didn't see a problem with the card. The case was allowed to proceed to a jury for a decision on whether sexual harassment took place. Gallagher v. Delaney, 139 F. 3d 338 (2d Cir. 1998).
- And, remember that men can also raise complaints of sexual harassment. In one such complaint (later dismissed), the male employee said that on Valentine's Day, a female worker told him that "she had sex with a particular truck driver once a year and briefly described her favorite sexual position." The male employee said he complained – and the case focused on the response of the company. Armstrong v. Meijer, Inc., 40 Supp. 2d 923 (S.D. Ohio 1998).

The above cases just scratch the surface on the various types of claims that have arisen from Valentine's Day incidents. In fact, a Kentucky employee filed a lawsuit alleging national origin harassment based on an allegation that Hispanic employees were served after the American employees at a company sponsored dinner for employees on Valentine's Day. Lescailles v. Ann Taylor Distribution Services, Inc., 2007 WL 2725972 (W.D. Ky. Sept. 14, 2007).

Accordingly, with Valentine's Day approaching, this is a great opportunity for employers to revisit their sexual harassment and discrimination policies with employees. Hopefully, pointing out the legal perils at stake will reign in bad behavior this time of year. And, when in doubt, always consult with legal counsel to ensure proper compliance with employment laws.

For additional information on Employment or Labor Law issues,

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