

From the Archives: Employers Should Beware Of Valentine's Day

By [Daniel Schwartz](#) on February 13th, 2012

Who would've thought that Valentine's Day could be dangerous for employers? Alas, the day is built for lovers — and sometimes the boss is trying to do the loving. Not good.

Last year, I recapped the dangers of the holiday for employers. It's one of my popular posts so I reprint it here. Beware!

I've warned you about the [dangers of Halloween](#) and the [holiday party](#), when it comes to employment-related lawsuits.

Often overlooked is the day for lovers — Valentine's Day.

There are, of course, a few of you who are scratching your head and thinking "How can that be? it's a holiday full of love and romance!"

And therein lies the problem. It seems to be a day that brings out the inner sexual harasser in far too many instances.

Cases in point:

- So, as an HR rep, a secretary shows you a Valentine's Day card she received from her boss that says: "But somehow it seems only right To say, today of all days, You're someone close in thought and heart, Not `now and then,' but always." Suggesting that the employee may lose (allegedly) some vacation days as a result of her complaint is probably not the best way to handle the issue. [Gallagher v. Delaney, 139 F. 3d 338](#) (2d Cir. 1998.)
- But imagine how you'd handle this one. According to the court records, "When [the secretary] asked [her boss] whether he had gotten his wife a Valentine's Day card, he responded that he had not but he should because it was lonely in his hotel room (his wife had not yet moved to Chicago) and all he had for company was his pillow. Then [he] looked ostentatiously at his hand. The gesture was intended to suggest masturbation." [Baskerville v. Culligan Intern. Co., 50 F. 3d 428](#) (7th Cir 1995).
- Valentine's Day cards seem to be a theme too. In one case, a supervisor gave his female subordinate 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." The Seventh Circuit reversed a district court's decision that had found in the company's favor. [Johnson v. West, 218 F. 3d 725](#) (7th Cir. 2000). In another case, the alleged victim received a large red Valentine card reading, "On Valentine's Day, remember — candy is dandy ... but sex won't rot your



teeth! So what do you say!" [Pucci v. USAir, 940 F. Supp. 305 \(M.D. Fl. 1996\)](#).

- Sometimes, others are upset at alleged romantic relationships. Some, even take out a personal ad in the Pottstown Mercury Newspaper containing a Valentine's Day message which read, "Dear Sgt., Spring is right around the corner, just like me. Look outside, see your Robin by the tree. Love, Azalea." Not too subtle when the woman's first name is "Robin" and she lives on "Azalea Court". [Schlichter v. Limerick Township \(E.D. Pa. 2006\)](#).
- And cards aren't the only thing handed out on Valentine's Day. Sometimes it is cookies ([Seats v. Kaskaskia College \(S.D. Ill. 2008\)](#)) or flowers ([Lowry v. Powerscreen USB, Inc. 72 F. Supp. 2d 1061 \(E.D. Mo 1999\)](#)) or flowers AND chocolate ([Burrell v. CUNY \(S.D.N.Y. 1995\)](#)).
- 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 \(S.D. Ohio 1998\)](#).
- Of course, in a few instances, the alleged victim send the Valentine's Day card — somewhat negating the inference of harassment, particularly when accompanied by a "sternum adjustment". (You cannot make this stuff up, even if you tried.) [Escue v. Northern OK College, 450 F. 3d 1146 \(10th Cir. 2006\)](#). Note: Accepting Tiffany gold earrings on Valentine's Day will also not bolster a harassment suit against a company. [Bogdan v. New York City Transit Authority \(S.D.N.Y. 2005\)](#).
- Not to be outdone, Valentine's Day also served as the basis for a national origin discrimination claim. How so? Allegedly, "Hispanic [Cuban] employees were served after the American employees when the company provided a dinner for employees on Valentine's Day." The Court didn't buy the argument. [Lescailles v. Ann Taylor \(W.D. Ky. 2007\)](#).

So what's an employer to do?

Each year, send a reminder to your employees with a copy of the harassment policy. And be sure to do the sexual harassment prevention training to your new employees as required under Connecticut law. [I've done a primer on it here](#). But, as always, be sure to consult with your counsel or one that you trust for particular issues you have and implementation.

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