



Love in the Time of OHSA

Managing Romances in the Workplace

As we say goodbye to February, the month associated with celebrating romantic love, employers should consider how to minimize the risks associated with workplace relationships.

Most employers do not ban workplace romantic unions outright. Prohibiting these relationships is ineffective and unrealistic considering the amount of time people spend together in the workplace and the increasing likelihood of meeting your partner or spouse at work. A blanket ban drives these relationships underground and leaves employers blindsided if and when the romance unravels publicly. It is also virtually impossible to prohibit office romances when the conduct occurs outside of the workplace and is not prohibited by law.

The courts have [recognized](#) that seemingly consensual sexual relationships between managers and employees who report to them should, “always be examined carefully to determine whether the manager has taken advantage of the inherent power imbalance between them” (at para 64). Employers regularly discipline or terminate employees for this behaviour. For example, in 2019, McDonald’s [fired](#) its Chief Executive Officer because his consensual relationship with an employee, “demonstrated poor judgement” and violated company policy.

If there are no elements of duress and both employees consent to the relationship then there remains the issue of the conflict of interest. Typically, the easier solution to remedy the conflict of interest of the subordinate reporting to their romantic partner has been to move the subordinate to a different job. This action could be viewed as inherently unfair to the subordinate, where both parties consented to the relationship but only one party’s career is impacted.

There are also risks when individuals who are not in the same chain of command engage in romantic relationships. Regardless of any actual conflict of interest, workplace relationships can lead to hurt feelings, allegations of



favoritism, preferential treatment, perceived conflicts of interest, and interoffice gossip that can affect productivity and morale. The end of a workplace relationship can also lead to tension and allegations of harassment, coercion, or a poisoned work environment. In addition to the workplace disruption, there is also potential legal liability for employers who do not manage the situation properly. Both the *Human Rights Code* and the *Occupational Health and Safety Act* (“OHSA”) protect employees from workplace sexual harassment.

Fraternization Policies

In addition to Workplace Harassment Policies required under OSHA, the recommended practice for employers is to implement fraternization policies that require disclosure of the relationship. These policies often prohibit romances between employees in a reporting relationship where the supervisory employee may be subject to confidentiality obligations, has the power to discipline the subordinate employee, and can affect the subordinate employee’s conditions of employment (i.e., wages, promotions, and assignments). Employers can discipline employees who violate company policies by engaging in these prohibited relationships.

Here are some considerations when developing a Fraternization Policy:

- What relationships need to be disclosed? Is it only where the employees are in a reporting relationship, or should it be broader? Is it only romantic relationships, or should close friendships or familial relationships also be disclosed (thus the policy could be a Nepotism and Fraternization Policy)
- When should the relationship be disclosed? It is recommended that individuals in a relationship be required to disclose the relationship as early as possible; employees cannot wait to disclose until they feel that the relationship is “serious”.
- What are the consequences of disclosure? We do not recommend that the policy promise that the employees will be separated as that may not be operationally feasible. The policy should list the potential options: reassignment of one or both of the employees if possible,



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demotion to ameliorate the conflict of interest, dual reporting obligations where a different manager is responsible for any decisions regarding the subordinate to avoid favouritism, leave of absence or termination if there are no feasible options for accommodation.

- What are the consequences of non-disclosure? The policy should also advise that failure to disclose an inter-office romantic relationship may be subject to discipline including termination.
- How will the Employer address the imbalance of power and confirm that both parties to the relationship are consenting?

It is also recommended that employers do the following where employees disclose that they are in a relationship that is covered by the policy:

- Consider whether the employees should provide written confirmation that the relationship is consensual and confirm that they will advise management immediately should the relationship end or become non-consensual.
- Provide copies of the harassment and sexual harassment policies to dating couples once the relationship is disclosed and reaffirm the couples' commitment to adhere to these policies.
- Managers should monitor workplace relationships for any indications of an inherent power imbalance, harassment, retaliation, or other problematic behaviours and respond to such behaviours in accordance with company policies.

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