



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Office Romances – Employers Beware

by **Aoife Bradley**

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In recent months there has been an unprecedented surge in the number of allegations of sexual assault and sexual harassment being made against high profile individuals including politicians, celebrities, social media influencers and high-ranking executives.

Employers should be aware that a seemingly innocent Valentine's card or unwanted flowers might lead to allegations of harassment in the workplace. Whilst such gestures may be perceived as harmless or even welcomed by the recipient in certain circumstances, employers should be aware that if the gesture is unwelcome to the recipient and is regarded as creating an "offensive, humiliating or intimidating" environment for that person, it may constitute sexual harassment under the Employment Equality Acts.

Depending on the circumstances, employers may have concerns that a relationship in the workplace could lead to claims of sexual harassment, discrimination or favouritism. In addition, it could lead to improper sharing of confidential information between employees. Acrimonious break-ups or personal problems between the couple could also potentially lead to conflict in the workplace, revenge motivated complaints or to a harassment/sexual harassment claim against the employer.

Why should employers be concerned about office romances?

The scope of employers' potential liability is vast:

- They can be liable for employee behaviour, regardless of whether their actions were undertaken with the employers' knowledge or approval. This liability can extend to work related social events such as the office Christmas party.
- An aggrieved employee (or former employee) may bring a claim of discrimination/harassment on the grounds of gender to the Circuit Court which has unlimited jurisdiction in terms of the award of compensation that it can make in such cases.
- There is also the prospect of multiple claims to the Workplace Relations Commission with awards of compensation of up to four years' salary being made.
- In certain circumstances, harassment may constitute a criminal offence and the employer may be obligated to report such offence to the Garda Síochána. An employer who is so obligated and who fails to report the harassment may be guilty of an offence.
- In addition to the financial implications, there is the prospect of serious damage to the employer's business and reputation by costly and protracted claims and litigation.

How can employers protect themselves and their employees?

The ability to demonstrate that you have taken reasonably practicable steps to prevent harassment from occurring is a defence to a harassment claim.

While some employers may think it prudent to impose a ban on office romances, this may be considered to be in breach of the employees' right to respect for their private and family life (provided for under Article 8 of the European Convention of Human Rights). In practical terms, such a prohibition may be deemed invasive, inappropriate and unnecessary and it is difficult to see how employers could justify or even police such a

policy.

An emerging practice in the US is having employees enter into “consensual relationship agreements” or “love contracts” in which the employees are required to confirm to their employer that the relationship is consensual. The aim of such agreements is to prevent a claim of harassment being made. However, employees may be reluctant to sign up to such arrangement, and, as with the imposition of a ban on office romances, privacy considerations would have to be taken into account.

A more realistic and practical approach for employers to adopt may be to ensure that their existing policies and procedures can address problems as they arise on a case-by-case basis. Employers should have strong policies and procedures in place to ensure that both they and their employees are protected.

Such policies should be clearly written and should set out the procedures that will be followed when allegations of harassment/sexual harassment are made. However it is not enough merely to have such a policy. It is imperative that employers ensure that all of their employees are aware of the policy, that the procedures outlined in it are followed consistently and that practical steps are taken to implement the policy.

With a growing spotlight on these issues, now is the time for employers to dust down the relevant policies and procedures so that they are able to properly address any difficulties that arise in a proactive and constructive manner. A failure to do so can result in complex, costly and protracted litigation that is often embarrassing to the employer and damaging to its business.

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