

Workplace dating policies: Employer's guide

Office romances can not only have an adverse effect on workplace productivity, but can engender claims of favoritism, sexual harassment and retaliation. So employers should consider implementing a policy covering this topic.

However, it is important to assess the pros and cons of strict workplace dating policies, and take into account how to handle both managers and subordinates under such a policy, as well as the steps to take to prevent such policies from raising privacy concerns.

1. Can an employer legally demote or transfer a manager who is dating one of his subordinates even though the company doesn't specifically have a no-dating policy?

While it's not illegal to demote, transfer, or even fire an employee who is dating a co-worker, supervisor, or subordinate in his/her department, if you don't have a specific no-dating policy, you could be setting yourself up for future legal battles.

For example, if you demote the subordinate employee, and that employee happens to be female, you could wind up with a sex discrimination claim on your hands. One way you can avoid such trouble is to tell the two employees that their seeing each other while working in the same department is unacceptable and that one of them will have to be moved to another department. Then let them make the decision.

2. What considerations should an employer take into account before disciplining an employee under its no-dating policy?

Policies that impinge on employees' private lives always carry legal risks, including discrimination and invasion of privacy claims. It's usually when such a policy is enforced inconsistently that companies run into trouble. Avoid such trouble by calling the following tips to mind before disciplining employees for violating your no-dating policy.

- Is the policy clearly stated in your employee handbook, or is it one of those vague rules that is mentioned during employee orientation and never brought up again?
- Have there been previous violations? If so, how have you handled them? If you can show that you disciplined violators consistently, there should be no legal repercussions. But if there is any instance in which you looked the other way during a previous romance, you had better not try and make an example of other employees.
- Have other managers enforced this policy consistently? Every manager has the right to enforce policy in his/her department. But a dating policy is one that must be followed in every department or a judge may decide it can't be upheld in any department.
- Do managers and company officials also follow the no-dating policy? Are they disciplined in the same manner as employees? In one case a clerk was fired for dating her manager. Nothing happened to the manager, so the clerk sued for discrimination and received a hefty sum to soothe her heartbreak.
- What sort of evidence do you have that the employees are breaking the dating policy rule? It has to be more than rumor or speculation. If the dating is hurting their performance, or resulting in favoritism or unfair treatment of other employees, document it.

3. What are an employer's options when creating an office romance policy?

When it comes to creating an office romance policy, there are a number of options from which to choose. When deciding what type of policy to institute, make sure you: 1) weigh the pros and cons; 2) have a legitimate business need for the policy; 3) keep all related information confidential; and 4) share an employee's personal information only with those who have a legitimate need to know.

1. No policy. Employees may appreciate the freedom, and the lack of a policy does not automatically support a harassment charge. But you'd be better off having some guidelines in place that will show a court you took preventive steps against harassment.
2. Forbid any kind of dating between employees. It's a clear policy with little room for misinterpretation. But is it realistic? One judge wrote that to require employees to eliminate co-workers from the dating pool in today's society "would doom the majority of the population to the life of a Trappist Monk."
3. Also, you may wind up running into problems if employees start hiding their relationships. Beware of requiring workers to inform you of an office romance. It may be considered an invasion of privacy - whether illegal or not, it could cause great damage to employee morale.
4. Forbid relationships only between supervisors and subordinates. This policy makes the most sense for preventing claims of favoritism and harassment without being considered unreasonable by employees. Just be clear on what the company will do if the situation arises. Will one party be transferred or terminated? Who? What if there are no positions available? Who is responsible for alerting upper management?
5. Have involved parties sign written contracts (aka love contracts). Such contracts attest to the fact that the relationship is consensual, thus reducing employers' liability for harassment claims. However, the contracts don't cover future harassment if the relationship sours. And any time you delve into contract territory, you open up another can of legal worms.

Regardless of the type of policy you choose, inform employees about the policy upon hiring, clearly spell out what's forbidden or required, and outline the consequences of violating the policy.

4. When creating a no-dating policy, what's the best way to avoid running afoul of discrimination laws?

Such a policy should balance your interest in maintaining a productive workplace with your employees' reasonable expectations of privacy. Also, it should prohibit romantic relationships that could potentially lead to charges of sexual harassment, create a conflict of interest, or interfere with other employees' productivity. In other words, dating policies should focus on preventing problems in the workplace, not on preventing individuals from falling in love. Consider the following policy pointers.

- If you're wary of banning workplace relationships, at least prohibit superior/subordinate couplings. You do not want to take a chance that an employee will later claim a relationship was not consensual. An employer's potential liability for sexual harassment is much greater when a supervisor is involved.
- Explain to employees that the company discourages (as compared to bans) workplace romances. You can't go over your sexual harassment policy too often; describe how friendly advances or overly-attentive behavior can be misinterpreted and create a hostile environment. Point out the horrors of a relationship that sours - and how much worse it could be when the pair must work together every day.
- Inappropriate behavior can be policed. You can advise employees to limit their public displays of affection (read: act professionally) and to keep sexual liaisons out of the office.
- Apply your no-dating policy consistently and in a way that will not burden one sex more than the other. Similarly, do not allow your policy to discriminate on the basis of marital status.