

NLRB Okays Fraternization Policy Under The National Labor Relations Act (NLRA)

The romance and excitement of the Valentine's Day holiday is all well and good...at home. The last thing employers want to do is play matchmaker for their employees. Dating restrictions have long been put into place to avoid the risk of sexual harassment claims, complaints of favoritism, and distracted workers. Legal opposition to romance policies is pretty low. In 2005, one employer took this concept a step further and created a policy that prohibited employees from fraternizing on duty or off duty, dating, or becoming overly friendly with client employees or co-employees.

The employer, Guardsmark LLC, a security company, justified the policy by claiming: "A security officer who is overly familiar with a fellow security officer or a client's employee may overlook signals that, if detected, could be instrumental in preventing workplace violence."

The employee's union took issue with the policy, calling it an unfair labor practice. But the National Labor Relations Board sided with the company, ruling that the policy did not illegally restrict protected concerted activities, such as holding union-organizing meetings after work. The Board reasoned that employees wouldn't read it as prohibiting protected communications about terms and conditions of employment; rather, they would view it as prohibiting dating.

One could argue that, since dating is listed separately in the policy from fraternizing and becoming "overly friendly," employees could interpret the policy as limiting romantic and platonic relationships. While it might be legal under the National Labor Relations Act, it might not survive other legal challenges. Especially in states that have laws prohibiting employers from discriminating against workers based on their lawful, off-duty activities. In other words, you could prohibit employees from socializing while on-the-job and on-the-clock, but once they punch out and leave the premises, whomever they meet for dinner or a movie is entirely their own business.

Guardsmark had its security reasons for implementing the policy. For most other employers, is putting the kibosh on kindred spirits worth it, even without inherent legal risks? Probably not. In recent years, there has been much talk about engaged employees (no pun intended); it's basically just another term for discussing employee loyalty. Think employees will be more engaged in a company in which camaraderie exists or one in which they don't have friends?

A middle-of-the-road approach is probably best. Rather than instituting a blanket ban, deal with any attendant problems that crop up among cozy co-workers. If friends spend too much time chitchatting, focus on the wasted work time. If lovers engage in public displays of affection, focus on the unprofessional behavior. If ex-lovers bicker, focus on the disruptions.