

Can we implement an anti-nepotism policy?

Q. To prevent productivity and morale problems, we would like to adopt a policy stating the company will not hire the spouses of current employees. Would this be lawful?

A. A blanket prohibition on the hiring of spouses may conflict with a provision of California's Fair Employment and Housing Act (FEHA) that prohibits employers from discriminating on the basis of marital status.

The regulations interpreting the statute, however, provide that an employer can limit spouses from working "in the same department, division or facility" based on "reasons of supervision, safety, security or morale."

The regulations further state that the employer can prohibit someone from working under the direct supervision of his or her spouse, or refuse to allow the couple to work in the same department or facility, if the work creates potential conflicts of interest or other problems that would not be an issue for workers who are not married.

If current employees marry, the FEHA regulations state that the employer should make "reasonable efforts" to organize job duties to avoid supervision, safety, security or morale problems. Thus, any policy that regulates the employment of spouses should distinguish between a spouse of a current employee applying for a job and two existing employees who marry.

Keep in mind that state and federal laws prohibit discrimination on the basis of gender. Thus, an anti-nepotism rule that has an adverse impact on members of one gender may be subject to challenge. For example, an employer should not adopt an across-the-board practice of transferring the female spouse to another department when current employees marry.