

Fraternization, Romance, and Liability

Reasons to Tighten Up Your Employee Handbook Right Now

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In the past few months, two high-profile celebrities have been in the news for having affairs with co-workers and/or staff. David Letterman admitted on national television that he had an affair with a staff member in response to an alleged \$2 million extortion threat. Steve Phillips, former New York Mets general manager and ESPN baseball analyst, was fired by the network after news surfaced about his affair with a production assistant. Phillips and Letterman are only the very public tip of the iceberg when it comes to affairs with co-workers, assistants, or subordinates.

Such conduct should be no surprise to employers, as employees often spend more hours at work than they do anywhere else. It is an environment that is usually non-threatening and allows for employees to get to know one another. The work environment in some respects is very similar to Facebook, Twitter, or other social-networking Web sites because people become comfortable and are allowed to be themselves. However, as the above examples suggest, office romance is wrought with problems and peril.

Such conduct should bring pause to any business owner because the results can be costly to the company's reputation and bottom line.

While it is very difficult to prevent the unforeseeable, business owners can learn from the mistakes of others and take a few simple steps to insulate their company from such conduct and the potential liability that can accompany it.

You should thoroughly review your employee handbook for policies associated with this type of behavior. Every company handbook should include the following policies:

Sexual Harassment

Massachusetts law requires that a sexual-harassment policy include certain elements to prevent the employer from exposure to additional liability under a sexual-harassment claim. Business owners should be reminded that, unlike sexual-harassment claims between co-workers, a sexual-harassment claim between a subordinate and manager carries a strict liability component for

employers. In the Phillips example, if the production assistant wanted to bring a claim for sexual harassment arising out of conduct at the workplace, she would have an easier time proving it and attaching liability to ESPN.



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Conversely, if the harassment is between co-workers, then the employer is not automatically implicated.

Employee Socialization and Fraternization

Some companies include a policy that expressly prohibits co-workers from engaging in socialization and fraternization that could blossom into an office romance. While this may seem odd, the policy is designed to protect a company because such conduct could be detrimental to the reputation of the business and its bottom line. Office romances often end badly, leaving behind hurt feelings and possibly bruised egos. Those feelings can translate into adverse behavior. In the Phillips example, the production assistant took action when he cut off the affair. She allegedly contacted his wife and began acting irrationally. Most of the time, the problem is not with having a policy, but with enforcing it.

Social Media

You should also consider a policy regarding fraternization between internal and external resources. For example, you may want to consider implementing a policy regarding the social-media 'friending' of clients and customers of your organization, vendors, and other people related to your company. What do you risk if you allow your employees to develop relationships with your clients with-

in a social venue? For example, do you want teachers at your private school befriending parents of your kids and potentially exposing them to internal issues and culture? Is it appropriate to allow such relationships to develop?

A code of conduct for your employees while engaging in social media may be helpful in deterring some forms of conduct. While you should refrain from restricting the conduct of your employees outside the scope of your business, you can impose a code of conduct that encourages professionalism in the workplace. The code of conduct can be implemented with an eye toward conduct outside the scope of business. For example, since your employees are public representatives of your company, is a bathing-suit profile picture appropriate on Facebook if the site is used for business? Do you want your employees tweeting about how wasted they got last night at a party if they use Twitter for business?

If you have employees officially representing your company via social-media channels, it is very important that you implement guidelines concerning their use. Remember, if your employees haven't been told what is wrong, you can't discipline them for it later. Think about creating guidelines regarding confidentiality, transparency, disclosure, honesty, accuracy, conduct, handling negativity, and tone. It's important that these are interpreted as guidelines that aim to minimize your company's risk while maximizing positive business exposure.

E-mail and Internet Use

It is strongly advised that business owners maintain a zero-tolerance policy relating to personal use of the company's e-mail and Internet. This will serve as a deterrent to office romance because, in theory, the parties will be unable to communicate about non-business matters. The rules should be closely tied to a privacy policy.

Discipline

Both sexual-harassment policy and socialization/fraternization policies should be directly tied into a discipline policy.

Therefore, any individual violating a business's sexual-harassment, socialization/fraternization, or e-mail and Internet policy would be subject to discipline.

In addition to reviewing their handbook, business owners should also take the added step of educating their company's employees through meetings, seminars, and conferences. Many people don't consider the effect that social media may have upon their reputation and future employability. It might be prudent

to train your employees about the perils of social media and the potential consequences to their own reputation as well as your company's. This will reinforce the information in your handbook, allowing employees to be reminded of your business' policies. ■

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