

# Love is in the Office Air

## Exceptions may be required

By Tyler Volm

What can you do if cupid's arrow happens to strike two employees? Relationships are not stagnant. And, while a relationship that may initially be harmonious or consensual (at least in one party's opinion) it may not always remain that way.

This played out recently in a courtroom in New York, resulting in a February 5, 2015 verdict in favor of associate attorney Alexandra Marchuk against Faruqi & Faruqi LLP, and its partner Juan Monteverde, on Ms. Marchuk's claims of sexual harassment and hostile work environment. Monteverde claimed that kissing and fondling that occurred outside a Manhattan bar was consensual. Whereas, Alexandra Marchuk insisted that it was not, claiming that the firm created a hostile work environment by tolerating Monteverde's sexual advances and lewd comments.

After eight hours of deliberation, the jury awarded Alexandra Marchuk \$90,000 (for back pay and front pay) and punitive damages of \$50,000. The defendants were found liable for violating New York City's hostile work environment law, however, were cleared on similar federal and state law claims.

Developing an appropriate relationship policy and educating your workforce about that policy is an essential step in reducing liability for sexual harassment. Employers must balance concerns about claims of sexual harassment, hostile work environment and favoritism against respect for employee privacy. Most employers choose to forgo a complete ban on relationships between their employees, as such a policy is likely to push relationships underground. However, employers should require disclosure of certain relationships, especially if one of the employees supervises the other.

In that situation, the policy should explain that one of the employees will be transferred to a different department or supervisor to avoid claims of favoritism.

Employees should also be reminded of the employer's policies regarding confidentiality and use of company property for personal purposes, emphasizing that these policies remain in full force and effect regardless of an office romance (or a romantic relationship with a competitor's employee). Employers should also consider limiting public displays of affection in office as displays of affection may make other employees uncomfortable and affect their generate morale and can cause legal issues.

In addition to disseminating the policy in the employee handbook and at employee meetings, it is also important to educate supervisors on the appropriate response to office romances. Supervisors must be prepared to issue appropriate discipline for a violation of the policy, and also must be made aware that they are particularly susceptible potential targets for claims of sexual harassment or discrimination based on quid pro quo claims (an employee claiming that they were promised a promotion or pay raise if they consented to unwanted sexual advances from his or her supervisor). Anti-harassment and anti-discrimination policies should draw a clear line between asking a co-worker out on a date, and persisting with such actions despite the recipient's failure to reciprocate. All employees need to understand where this line is, and how to effectively report behavior that crosses that line.



Ultimately, the specifics of the policy will depend on the culture and work environment of the organization. A successful policy will make clear that any office romance must not negatively impact performance or other employees, that the organization will not tolerate sexual harassment or discrimination, and spell out the appropriate reporting mechanism for any concerning behavior.

Love may be blind, but an employer cannot turn a blind eye to office romance. Establishing and enforcing appropriate policies and promptly responding to any complaints or violations will help keep the employer out of heartbreak hotel. **L&C**



**Tyler Volm's** practice focuses on employment litigation and advice. He works with business owners and managers to ensure compliance with changes in the law, and defends employers against complaints when they arise. With a background in business law, he has a unique perspective on how an employer's business needs naturally blend with employment law.

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