

Office love stories—exploring the legality of the workplace romance

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Employment analysis: What legal issues should employees working for the same company consider before embarking on a relationship? Fudia Smartt, senior associate at Russell-Cooke, explains that, despite the absence of obvious laws overseeing workplace romances, there are several legal matters employees and employers need to consider.

Are there any fundamental laws around workplace romance?

There are no explicit laws governing workplace relationships in the UK. However, workplace relationships can potentially give rise to a host of employment law issues including, but not limited to:

- o sex discrimination
- o sexual harassment
- o harassment under the Protection of Harassment Act 1997
- o breach of contract, and
- o unfair dismissal claims

Has the American-led trend towards contracts to limit the liability of an employer taken hold in the UK? Are there any similar trends in the UK?

About ten years ago there was much talk of 'love contracts' (as they are colloquially referred to in the US) being introduced in the UK. Love contracts are usually agreements which are signed by members of staff engaging in a romantic relationship to confirm that the relationship is voluntary and that they are aware of the employer's sexual harassment policies. Such contracts are entered into in the hope of reducing the risk of sexual harassment claims being brought by either party in the relationship. It is important to note that even if employees enter into such contracts, neither party would be prevented from complaints of discrimination or harassment by its mere existence, as one cannot contract out of statute law in the UK.

Some employers in the US also have policies which prohibit staff members from engaging in romantic relationship with colleagues. I am not aware that any employers in the UK have introduced 'love contracts' or policies prohibiting workplace relationships. However, staff members are often required to disclose intimate relationships with job applicants, or with anyone they work closely with. This is done in order to minimise:

- o risk of favouritism
- o conflicts of interest, and
- o abuse of position

I suspect that most employers consider that their policies covering equal opportunities, bullying and harassment and conflicts of interest provide sufficient protection against issues arising from workplace relationships.

What other options are available to employers seeking to protect themselves from office romance issues?

I would recommend that training is offered to all staff, but particularly those with line management responsibilities, about the issues which can arise from workplace relationships—eg employment claims, conflicts of interest and inappropriate behaviours, as well as the perception that someone may not be acting entirely impartially. In some circumstances, one or more of the individuals involved may also be leaving themselves open to blackmail.

In my view, prohibiting workplace relationships altogether is unrealistic—a survey conducted by the Institute of Leadership and Management in 2015 discovered that 41% of office workers have experienced a workplace romance of some sort. Consequently, I recommend that employers encourage staff to notify them of office romances as soon as possible, so that

appropriate steps can be taken—eg changing line management structures. It would also help to remind employees of their obligations, such as:

- o complying with policies and procedures and confidentiality/conflicts of interest requirements
- o making other people aware who might need to be aware

What is the legal recourse if someone breaks the guidelines set by a company? Can employees challenge the guidelines based on the right to privacy?

Employees can be disciplined, or even dismissed, if they fail to comply with employers' reasonable management instructions. If, for example, a senior manager has failed to disclose, in accordance with an employer's policies, a personal relationship with a subordinate, the employer would be entitled to take disciplinary action against the manager for their non-compliance. Depending upon the circumstances, this could result in the employee being dismissed, perhaps even without notice. Of course, the relationship at work guidelines in the employer's procedures would need to be reasonable in order for the employer to be able to safely rely upon them. One can think of circumstances in which an employee could conceivably be dismissed for having failed to mention a relationship even in the absence of any relationship at work guidelines, such as where the employee has been involved in bonus, salary or promotion discussions about the employee with whom he or she is involved since that relationship commenced.

Whether an employee can challenge the validity of such guidelines on the grounds of privacy will depend on the circumstances of each case. There may be circumstances in which an employee can demonstrate that their employer has no need to know about a relationship with a colleague. This could be the case, for instance, if neither employee is involved with anyone else, or has any ability to influence the other's career—because they work in different departments, for example. However, I can envisage that in many cases an employer will be able to assert that any breach of an employee's right to privacy is necessary and proportionate. It is important to bear in mind that the right to privacy under the Human Rights Act 1998 is a qualified right which can be limited lawfully in a number of scenarios, including where this is necessary for the protection of the rights of others.

What are the concerns surrounding conflicts of interests?

Employers are likely to be concerned about members of staff putting their relationship above the needs of the organisation. As stated above, perception is as important as anything else. For instance, if a senior member of staff is in a relationship with a more junior colleague there will be a perception that there is an increased risk of a breach of confidentiality, even if both employees act entirely appropriately. In order to minimise the risks outlined above, employers should:

- o request members of staff, particularly those with line management responsibilities, to notify them of any personal relationships at work
- o change reporting lines and management structures where it seems to make sense to do this
- o ensure that members of staff who are engaged in relationships with colleagues are not involved in any management decisions involving their partners (because of the importance of such decisions being seen to be impartial)
- o remind staff of their confidentiality obligations, and
- o take disciplinary action where necessary

Have there been any key developments in this area?

I am not aware of any recent key developments in this area. This is probably due to the fact the policies many employers currently have in place (equal opportunities, bullying and harassment, confidentiality and conflict of interests) are fit for purpose and cover most of the risks arising from workplace relationships. At present there does not seem to be a rush in the UK to endorse 'love contracts' or to introduce policies banning workplace relationships, but only time will tell if things will move in this direction.

Interviewed by Ioan Marc Jones.

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