

Valentine's Day Themed Office Parties – Truly A Bad Idea Unless You're Promoting Business For A Plaintiff's Employment Law Firm

With February 14th quickly approaching, employers are no doubt considering whether or not to hold some sort of Valentine's Day festivity, whether it be a party, themed game, or chocolate exchange. The temptation to acknowledge the holiday in some form is understandable, given that a good employer is constantly looking for ways to boost employee engagement and office moral. After all, organizations with highly engaged employees outperform those with low employee moral by 202%.¹ Hosting any holiday themed event or employee activity may seem like an easy opportunity to boost morale; however, as far as Valentine's Day is concerned, a closer look at the legal landscape and the reality of workplace relationships should cause employers to think twice before celebrating this romantically-charged holiday.

Foremost, employers should know that Cupid Day shenanigans in the workplace have spawned a plethora of litigation. Take for example, a case in the Southern District involving a secretary who received an inappropriate Valentine's Day card from her boss and upon complaining, was threatened with loss of her vacation days.² Or a California case involving a man who was demoted after allegedly gifting his boss a stuffed animal, chocolates, and a romantic greeting card.³ These and several other cases demonstrate that Cupid's arrow can often miss its mark and have unwanted consequences in the workplace. It is precisely for this reason that employers generally try to limit romantic and sexual interactions among employees.

Yet, despite these efforts, the reality is that people flirt, build romantic relationships, and sometimes even fall in love at work. In fact, according to one recent study approximately 15% of all couples in the U.S. met at work.⁴ This is not surprising. The average American spends 90,000 hours of their lifetime at work. This means that nearly one third of our time on this planet is spent in the office.⁵ It is therefore only natural that people sometimes develop romantic relationships there. The realities of romantic interactions in the workplace potentially expose employers to substantial liability if and when things do go wrong.

Generally, employers are liable to employees for not taking prompt and remedial action to address a hostile work environment that is created by the sexualized behavior of co-workers.⁶ Moreover, employers are strictly liable to employees who are subjected to coercive sexual conduct by their supervisors.⁷ Given the state of the law why would any prudent employer encourage workplace romance in any form?

¹ <https://risepeople.com/blog/employee-engagement-statistics/>

² *Gallagher v. Delaney*, 139 F.3d 338, 1998 U.S. App. LEXIS 5056, 76 Fair Empl. Prac. Cas. (BNA) 700

³ *Phan v. CSK Auto, Inc.*, 2012 U.S. Dist. LEXIS 121457, 2012 WL 3727305

⁴ <https://www.reportlinker.com/insight/finding-love-online.html>

⁵ <https://www.businessinsider.com/disturbing-facts-about-your-job-2011-2>

⁶ See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S. Ct. 2257, 141 L. Ed. 2d 633 and *Faragher v. Boca Raton*, 524 U.S. 775, 807, 118 S. Ct. 2275, 141 L. Ed. 2d 662.

⁷ *Id.*

While it might be nice for a company to demonstrate its friendly environment by pointing to the happily married couple that met at the office, it's more likely than not that such an example will be overwhelmed by the numerous lawsuits that spawn from the failed romance between supervisor and subordinate, which likely results in the spurned boss treating his assistant badly; or, the rejected assistant seeking revenge against his or her boss. Either way, it's a messy situation. A recent survey found that 62% of HR executives have dealt with a failed or inappropriate relationship between employees. One-third of those occurrences ended in at least one person's separation from the company, 17% resulted in one party being moved to a different department, and 5% led to law suits.⁸

Given the legal landscape, employers should do everything reasonably possible to mitigate romantic activity and thereby limit their exposure. Some companies may adopt strict no fraternization policies that completely prohibit workplace relationships. These policies however may prove ineffectual as they ignore the realities of the statistics discussed above. For this reason, some organizations now opt for dating policies that set out a clear code of conduct and require employees to disclose their status as a couple to HR.⁹ Many HR departments have completely overhauled their fraternization policies in light of the #MeToo movement -- a recent social phenomenon that makes the need for proper policies all the more apparent.

All in all, it is best for employers to avoid complicated situations and reduce liability by steering clear of Valentine's Day celebrations. One could easily imagine a scenario in which an employee suffers some unwanted advance or harassment at an office Valentine's Day party. In such case, the employee may have a persuasive argument that by hosting such event, an employer created a romantically-charged environment that opened the gates for problematic behavior.

Despite the above, old habits die hard, and an employer may insist on keeping with tradition by holding some type of Valentine celebration. If this is the case, they should at the very least be sure that their sexual harassment policies are up to date and legally compliant. Last year, New York enacted significant measures regarding workplace sexual harassment. Specifically, employers must adopt written sexual harassment prevention policies and hold annual anti-harassment training for all employees. New York State also published a useful Toolkit¹⁰ that provides a summary of employer obligations related to the new regime.

In short, romantic activities in the workplace are almost certain to occur, regardless of an employer's policies. These activities present employers with a constant threat of liability. Though romantic relationships and advances cannot be entirely stopped, a prudent employer should not fear being labeled a prude by its employees and forgo promoting any Valentine's Day workplace activities that may create a romantically-charged environment that opens the flood gates for unwanted behavior. For most employers, this necessarily means skipping Valentine's Day festivities. If employers are truly feeling festive this February, they may consider celebrating a

⁸ <http://fortune.com/2018/07/18/metoo-office-romance-workplace-policy/>

⁹ <http://fortune.com/2018/07/18/metoo-office-romance-workplace-policy/>

much overlooked, yet very important, holiday that falls just four days after Cupid Day. Truth be told, celebrating the birthday of George Washington -- the United States President who could not tell a lie -- is, after all, much less likely to yield any controversy. Then again, in today's times, perhaps not.

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