

# **Sexual Harassment Claims & Complications with Relationships at Work**

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**1:00-2:00 p.m.**



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## Agenda

### Defining the Issue

*What is unique about workplace romances and relationships?*

### Assessing Risk

*What liabilities do workplace romances & relationships impose on my organization?*

### Best Practices

*What can I do to mitigate risk and manage workplace relationships?*

## Poll

Have you had experience with or handled a situation involving a workplace romance/relationship?

☐

Yes

☐

Not Yet

## Workplace Romances & Relationships

## Unique Issues with Workplace Romances

- Power imbalance between participants
- Impact on those both in and outside the relationship
- Conflicts and ethics issues
- Technology
- Negative publicity

## Legal Risks & Liability

## Who Can Bring Claims?

- Co-workers
- Employee
- Direct Report
- Supervisor/Manager
- Vendor/Client

## Applicable Laws and Definitions

- Title VII of the Civil Rights Act of 1964
- State laws prohibiting sexual harassment/discrimination
- Other laws prohibiting
  - Retaliation
  - Hostile Work Environment
  - Constructive Discharge
  - Reputational Damage
  - Intentional Infliction of Emotional Distress, etc.
  - Workers' Compensation\*



## Two Types of Sexual Harassment

- *Quid Pro Quo*
  - Seeks sexual favors in exchange for an employment benefit to a subordinate employee
  - Unwanted/unwelcome
  - Strict liability
- Hostile Work Environment
  - Protected class
  - Unwelcome
  - Based on sex/gender
  - Severe or pervasive
  - Objectively/subjective offensive
  - Basis for employer liability
  - Possibly defense

## Hypothetical 1

- Alice is hired as a direct report to Supervisor Sam
- Sam starts calling Alice into his office, closed-door, to discuss seemingly non-work-related things
- Sam's attention makes Alice uncomfortable
- Sam asks Alice to get a drink with him after work
- Alice doesn't want to, but fears for her new position



## Hypothetical 2

- Jason is hired as the new Development Officer at a non-profit
- Jason reports to Executive Director Madison
- On the first day, Madison comes into Jason's office and comments on how well his slim-fit shirt fits him
- Jason is uncomfortable and asks Madison to remain on professional topics, please
- Madison's comments on Jason's physique and looks continues, unabated
- Jason complains to the Board Chair
- Jason receives a bad review from Madison and is recommended for demotion to Assistant Development Officer, as a new Development Officer, Oliver, is quickly hired



## Claims by Third Parties

- Sexual harassment
  - Hostile work environment
- Favoritism and its effect on others
- Isolated vs. widespread behavior
- Retaliation

## Hypothetical 3

Manager John and Manager Joan are in a relationship.

Joan regularly shares intimate details about her relationship with John with Employee Erin and Employee Emma. Emma participates in the discussions, but they make Erin uncomfortable. Erin has confided in another manager that she is close with that Joan's behavior makes her uncomfortable.

Erin and Emma apply for a manager position, and Emma (but not Erin) gets the promotion.





## Workplace Violence

## What Can Happen If Violence Results

- Negligent Hiring
- Negligent Supervision
- Negligent Retention
- OSHA
  - Safety Policy
  - General Duty Clause
- Workers' Compensation
  - Exclusivity provision

## Best Practices

## Handbooks, Policies, & Procedures

- Draft appropriate and realistic policies for your workplace
  - Anti-harassment policies
    - Consider state requirements for sexual harassment policies
  - IT/social media policies
  - Romance policies
- Address conduct/reporting by employees and supervisors
- Ensure policies are widely available
  - Employee acknowledgements
- Apply policies uniformly
  - What will penalties be for violation?

## Conduct Regular Trainings

- Sexual harassment training for employees and managers/supervisors
  - Faragher-Ellerth defense
- Consider state requirements for sexual harassment training, including frequency and content required for trainings

## Contractual Issues

- Explicit policy barring relationships for direct-reports/spouses
- “Love Contracts”
- Contractual Arbitration
- Settlements/Separation Agreements
  - Requiring non-disparagement/non-disclosure
  - Liquidated damages
  - Side Agreement on Workers’ Compensation settlement

## Investigating Harassment Allegations

- Follow internal policies and procedures
  - What are the allegations?
  - Who should be interviewed?
  - What should interviewees be asked?
  - Take remedial action
  - Results and confidentiality
- Internal vs. external investigations
  - Anticipate discovery and privilege issues



**Questions?**

Thank you