

Why office romances present legal risks for employers

LAW | Workplace policy manuals need to clearly define sexual harassment, legal experts say

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The rise of the #MeToo movement and the steady flow of news articles about sexual harassment in workplaces have made wary business owners wonder how far they can go in enforcing rules governing personal relationships in a professional setting.

Vancouver lawyers who specialize in human resources and labour law say intimate relationships between employees carry a danger for employers because once the relationship ends, sexual harassment claims can follow.

The best protection for business owners from current or former employees who sue for damages because management allowed sexual harassment to take place is to have a written policy manual complete with a section that outlines what constitutes sexual harassment.

Such policies often spell out prohibited behaviour such as unwanted touching, offensive jokes, showing sexual images, gender-based offensive comments or persistent attempts at asking a co-worker to go on a date.

"It's absolutely critical that employers have a sexual harassment policy in place that is written and distributed to employees, and that employees are routinely trained on it," said Pulver Crawford Munroe LLP partner Dean Crawford.

"There also needs to be a process in place for employees to make a complaint about harassment, and a process for the employer to investigate either internally or with

the help of an external investigator for more serious breaches."

A policy that prohibits romantic involvement between co-workers would be difficult to enforce because it would be too broad, Crawford said.

Worse, co-workers might resort to hiding their relationship from their employer, which would undermine efforts to create a culture of transparency, he said.

Instead, Crawford advises clients to create a policy manual that requires all workplace romances to be disclosed, even those that do not involve managers and subordinates.

"Perhaps the human resources adviser in the company could interview both employees to ensure that the relationship is consensual," he said. "That protects the company from [sexual-harassment] claims down the road."

If a relationship is disclosed in which a manager is involved with a direct-reporting employee, Crawford suggested that conflicts of interest are likely to arise. The manager could be seen to be lenient on the employee or to favour the employee on performance reviews and perhaps to provide an unwarranted salary increase.

To guard against those potential conflicts, Crawford said executives should try to relocate either the manager or the employee to a different department. If that is not possible, executives should at least communicate with the workers involved.

"You're having the discussion with the employees to say, 'One of the options is to let one of you go. Do you have any thoughts on this?' That might cause one of



Pulver Crawford Munroe LLP partner Dean Crawford advises employers on various workplace issues, including what to include in office policy manuals | CHUNG CHOW

them to resign."

Regardless of whether there is an office policy that requires disclosing office romances, courts are likely to find that an office manager should disclose to superiors a relationship with a direct-reporting employee.

Crawford pointed to a 2006 BC Supreme Court case that involved a branch manager with a plumbing-product wholesaler who had been having a relationship with a direct-reporting employee for three years.

"During that time, he conducted

performance reviews, giving her a salary increase and a promotion," Crawford said.

The branch manager lied to superiors and denied that he was in the relationship, according to the judgment.

The company fired the manager, and when he sued for wrongful dismissal, the court dismissed his claim because his behaviour "was sufficiently egregious to undermine the obligations of good faith inherent in the employment relationship," Crawford said.

Tevlin Gleadle Curtis lawyer Martin Sheard also advises that employers require employees to disclose office romances and said that employees owe employers a duty of loyalty.

"If you don't inform the higher-ups of the romance and then you recommend giving your girlfriend a \$10,000 bonus and she buys you a trip to Mexico, that is a loyalty and a boundary issue," said Sheard, who has represented several managers who have had relationships with employees.

He said employers often do not want co-workers to have workplace romances because they do not want the workplace to become a sexualized environment where there are public displays of affection.

It is not necessary, however, to stipulate in the office policy manual that kissing or other displays of affection are to be avoided, he said.

"You don't put it in the policy code because then it is almost as though you're condoning the relationship and saying that it is all right to have one as long as it is not on full display." ■

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