

# It's Complicated: Mixing Romance and Work

*When it Comes to Love on the Job,  
Tread Lightly and Go Slow*

**I**t's amazing how active Cupid is in the workplace and not just on Valentine's Day. Romance is alive and well in the world of work. Focusing my practice in the employment area, the stories I have heard run the gamut of romantic activity from the tame to the outrageous – all at work. For the individuals involved, this mix – though delightful – can and often does turn into a perilous activity on all counts – professionally, emotionally and as a legal matter. The highest risk for all involved, including the employer, likely will be from the fallout when the romantic involvement ends.

That is not true for all relationships that develop at work. Some trysts do have happy endings. According to research in this area, 15 to 20 percent of couples found their mates at work. The annual Office Romance Survey conducted by Vault.com, however, found that more than twice that percentage – 46 percent of respondents – admitted to having an office romance, 82 percent have known of an office romance between their co-workers and 48 percent report to having known a married coworker having an affair.

Many people have asked me for advice about workplace romance. Love is a wonderful thing but when it's at work, it's complicated, so if the opportunity presents itself for you, tread lightly, go slow, pause and reflect.

Ask yourself whether the relationship is truly voluntary and if there is work-related pressure to consent to participation. Consider also that if the relationship falls apart [and most do] then you'll need to walk into the office on Monday morning and see him or her

plus all manner of inquiring looks from everyone else down at the office who's wondering "what happened?"

Employers, pull out your anti-harassment policies. Under Cupid's spell, people do things that their better judgment and discretion would, under other circumstances, keep them from pursuing. The feelings people have – love, sexual attraction and romance – are complicated by also having individuals' jobs, careers and livelihoods in the mix.



Employers have legal duties during the life of the relationship and afterwards. The federal law of sexual harassment provides for vicarious liability such that the employer is responsible for harassment by its supervisors and managers. See *EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, Notice 915.002, June 18, 1999. The definition of a "supervisor" is broad encompassing the person who "has the authority to direct an employee's daily work activities" (assign work and

projects) and the one who has "authority to undertake or recommend tangible employment actions."

Although under federal law there is no individual liability in harassment cases and the employer is the responsible party, many state anti-discrimination statutes provide potential liability for individual supervisors for "aiding and abetting" the harassment.

## IS IT OR ISN'T IT SEXUAL HARASSMENT

Title VII of the Civil Rights Act of 1964 prohibits unlawful employment practices "because of . . . sex" 42 U.S.C. § 2000e-2(a)(1). It was not until 1986 that the U.S. Supreme Court in *Meritor Savings Bank v. Vinson* recognized a cause of action for sexual harassment ("when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex,") effectively making sexual harassment a subset of sex discrimination.

From a legal perspective, Title VII does not proscribe all conduct of a sexual nature in the workplace. Only "unwelcome" sexual conduct constitutes a violation. So

long as romantic relationships at work are truly consensual, then there is no sexual harassment because the element of unwelcomeness required for sexual harassment is missing.

Can a romantic relationship involving a manager, partner or owner ("manager") together with a staff person, associate or other supervisee ("staff") ever be truly consensual? Does the manager's power over the staff person's conditions of employment – evaluations, raises, promotions and bonuses – negate that possibility? If the staff person believes

or if it is true that the only way to succeed at the job is by engaging in sexual conduct with the manager or accepting sexual solicitations, then the relationship is not consensual and, therefore, not actually welcome.

Relationships are complicated and things can change. What used to be welcome can become unwelcome. Or the couple may part ways thereby presenting new challenges for the employee and employer. Unless the relationship leads to marriage or long-term cohabitation, then a break up is virtually inevitable (although some work liaisons last a very long time). True, sometimes it's a joint decision but often one person ends the relationship and the other may not be so happy about it.

If the manager ends the romantic relationship, and the staff person is angry or quite unhappy about it, the staff person may file allegations of being coerced into the relationship – perhaps it was welcome at the start but devolved into a situation where the manager refused to quit – and the staff person complains of sexual harassment.

On the other hand, if the staff person ends the relationship and is dissatisfied or angry with the employer or manager thereafter, then they may claim that their manager is retaliating against them for ending the relationship. Poor reviews, low raises and undesirable assignments are alleged to be brought on not by anything the staff person did but in retaliation for the unilateral ending of the relationship.

As a legal matter, the employer's obligation in general is to take reasonable care to prevent sexual harassment and to take prompt and appropriate remedial action to stop the harassment should it occur. See *EEOC Enforcement Guidance*.

Is there anything the employer could have done to prevent this situation?

The employer could make a rule prohibiting all romantic relationships where one person supervises the other or between all employees. In my experience this is a rule that is honored far more in the breach than in the observance. Plus employers are often reluctant to enforce the rule when it means breaking up a love affair. Some employers require the staff person to sign a statement attesting that the relationship is welcome and consensual. This solution is good only so long as the relationship remains consensual. Things change and do go wrong with romances. What was once desirable may become unwelcome making the statement then worthless.

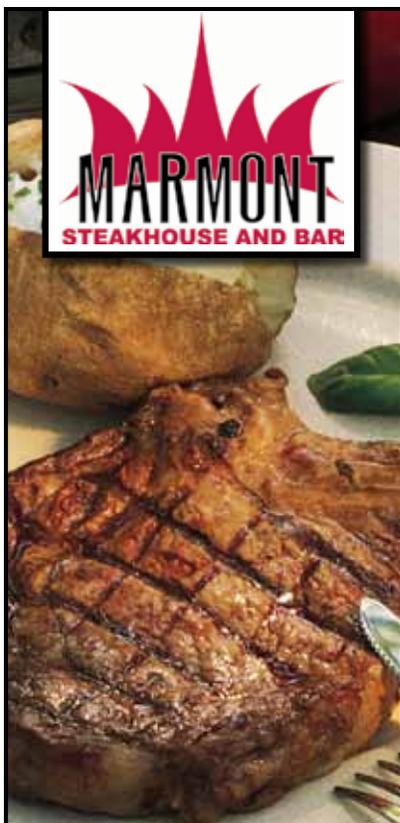
Another solution, the one I recommend, is anti-harassment training for the entire workforce. Employees at all levels should understand the pitfalls and challenges, both to them and the employer, of romantic relationships at work. The message should be loud, clear and promulgated often that employees must proceed with great caution when mixing romance and work and that if the staff person believes they are being coerced into unwanted sexual activity, then they should make an internal complaint of

sexual harassment. Supervisors and managers should receive periodic training so that they understand their responsibilities.

The employer should also adopt, distribute and enforce an anti-harassment policy that includes a complaint procedure encouraging employees to report incidents to someone in authority other than the alleged harasser. A truly effective anti-harassment "program" must include more than just a policy. It is comprised of the policy, training, a complaint procedure, assurances of non-retaliation and confidentiality, an investigation into complaints, prompt remedial action if the investigation determines that harassment has occurred, and follow-up to make certain that the employee who lodged the complaint has not been retaliated against. The court has also made clear that to be effective there must be top-down, genuine support for the program, "not mere lip service." For legal authority and details concerning these requirements, see *Burlington Industries v. Ellerth*, 542 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

An effective anti-harassment program, then, is the best way to avoid work-related harassment and liability for sexual harassment claims, including those arising from romantic involvements, and to provide your workforce with an environment free of sexual harassment. ■

*Deborah Weinstein (dweinstein@weinsteinfirm.com), president of The Weinstein Firm, is creator of SmartMoves™ anti-harassment training programs and a member of the Editorial Board of The Philadelphia Lawyer magazine.*



**MARMONT**  
STEAKHOUSE AND BAR

## OLDE CITY'S ONLY STEAKHOUSE

- Enjoy a casual dining experience with exceptional quality. The 22oz Rib eye is unbeatable, and the Filet Oscar might be the best steak you'll ever have.
- Menu also contains a variety of delicious hand-crafted salads, exciting daily specials, "catch of the day" and our legendary crab bisque.
- Marmont's reasonably priced international wine list will perfectly complement your experience.

Whether you're dropping by for one of our signature martinis after work, hosting a corporate event or enjoying a romantic dinner, we promise you'll be coming back again.

Contact us to make your reservation or book your private party today

222 MARKET ST, PHILADELPHIA  
(215) 923-1100 | [www.marmont.net](http://www.marmont.net)  
Reservations may be made on OpenTable