

LOVE and LAPTOPS:

Information for Employers in Dealing with Office Romances

**By Jeff Burgess, Program Coordinator
Technical Assistance for Employers
Bureau of Labor and Industries**

It is that time of year; St. Valentine's Day is upon us. Love is in the air. Many of us spend about half of our waking lives at work, at least from Monday through Friday. It should come as no surprise, then, to find that office flirtations bloom into romances from time to time. Should employers even care about this phenomenon? After all, we have a right to privacy in our lives and we don't check all of those protections at the door...or do we? Employers should care, particularly if the romantic relationship is between a supervisor and a subordinate. Technically, it is not unlawful for a supervisor to embark upon a romance with a subordinate. It is just a spectacularly bad idea! Even if that romance lasts forever, there can be costly implications for the organization, the supervisor, and even the subordinate. Other subordinates of the supervisor may feel as though they have less access to the supervisor than the object of the supervisor's affections. There may be allegations of preferential treatment giving rise to the perception of discrimination. The romance could also contribute to a hostile work environment and a claim of sex- or gender-based harassment. If the romance does not end happily ever after, as most do not, there are other likely outcomes that can adversely affect the organization and the people involved. Productivity may suffer and former lovers may have a difficult time dealing with each other professionally. If affections are no longer mutual, continuing unwelcome romantic overtures could lead to harassment claims if they are sufficiently severe or pervasive.

A word about employee privacy is in order. Employers have many occasions to appropriately intrude on the private affairs of employees. From drug testing to searches to surveillance and monitoring of emails and internet browsing, if an employer has a clear policy (ideally in writing) and a legitimate business reason for the intrusion, and if the intrusion is no greater than necessary, it will usually be considered lawful. Sometimes employers can even regulate off-duty conduct within the bounds of the law, if the reasons for doing so are compelling and if the intrusion is reasonable. Clear policies diminish employees' otherwise reasonable expectations of privacy, both at the workplace and at home. Some employers choose to have strict anti-fraternization policies to try and regulate relationships between employees. While these policies, if carefully drafted, can be an effective means of preventing unwise supervisor/subordinate relationships, and disciplining employees who violate their terms. But they often go too far. Overbroad policies can lead to liability for the employer. Section 7 of the National Labor Relations Act, applicable to all employers even in non-union environments, prohibits employers from restricting "protected concerted activity for mutual aid and benefit". This activity may be as simple as meeting to complain about management or working conditions. These types of "fraternization" are protected by the act. Employers should also keep in mind that family relationship and marital status are protected categories under the civil rights laws. Employers need not place employees in either supervisory or subordinate positions over or under the employees' family members, but otherwise they are prohibited from making employment decisions on the basis of family or marital relationships. Some courts have even held that policies prohibiting adulterous relationships are unlawful because to commit adultery requires that one be married, and marital status is protected in many states, including Oregon.

Therefore, such policies have been considered to be discriminatory since they are only directed toward married employees. And sometimes our employees are married to other employees of ours. Government employers also may be required to provide limited constitutional protections to employees, and one of those protections is the right to freely associate with whom we choose. So this is a tricky area for employers to regulate. It would be wise to have policies drafted by experienced employment counsel. Guidelines that suggest rather than require certain behaviors may be an effective middle ground. These guidelines could discourage inappropriate workplace behavior such as public displays of affection or quarrels involving intimate matters. Policies could require employees in romantic relationships with supervisors or subordinates to disclose them to management, and that disclosure might result in reassignment to avoid the pitfalls mentioned above. Affairs of the heart are delicate for those who engage in them and for employers who seek to manage those who engage in them.

For more information about this subject and a full schedule of seminars and other services provided by the Technical Assistance to Employers program, visit our website at www.oregon.gov/BOLI/TA or call 971-673-0824.