

**Dating In the Workplace:
Avoiding A Harassment Claim From A Relationship Gone Sour
By Karen Sutherland**

Karen Sutherland is the Chair of Ogden Murphy Wallace, P.L.L.C.'s Employment Law Practice Group. She represents employers on workplace issues. Her employment law experience includes (among other things) investigating harassment and discrimination claims, sexual harassment training, employee handbooks, defending cities, counties and private employers regarding state and federal sex, age and disability discrimination law, breach of employment contract claims, Trade Secrets Act claims, tortious interference and defamation. Ms. Sutherland is licensed to practice law in Washington State only. This article is based on Washington State and Federal law.

Legal Background

Many couples' "how we met" story starts in the workplace because that is where many people spend most of their waking hours. It is also a place where one is likely to meet someone else of similar interests.

But there is a catch - workplace protections against sexual harassment have grown much stronger in recent years. For example,

- When a relationship ends, if one member of the former couple continues to pursue the other member at work after a breakup to try to "patch things up," the employer can be found liable for sexual harassment.
- When a supervisor dates a subordinate, it is very difficult to prove that the relationship was consensual because of the differential in power.
- Public displays of affection, even among consenting adults who are dating each other, can create an atmosphere that encourages other employees to engage in conduct that can constitute sexual harassment.

There are three common ways for employers to address their potential exposure to a sexual harassment claim arising from workplace dating:

- Ignore it and hope that no one claims harassment. If a claim does arise, address it under the employer's sexual harassment policy (which is often silent on workplace dating).
- Adopt a policy prohibiting dating. Unfortunately, employees still tend to date, but they hide it from the employer, which creates a liability exposure for the employer if the relationship goes awry. This is especially true in the supervisor-subordinate dating relationship.
- Adopt a policy that requires disclosure of the relationship so that the employer can document the voluntary nature of the relationship, change supervisor-subordinate reporting relationships, and provide guidance for appropriate conduct in the workplace.

Practical Guidelines

Based on my experience, I recommend adopting the third strategy - that is, adopting a policy that allows dating in the workplace but regulates the conduct of the dating couple. This may sound like an intrusion on the employee's privacy, but keep in mind that we are only seeking to regulate their workplace conduct, not their relationship outside of work. There may be reasons, based on the individual workplace and its specific needs, to follow one of the other common strategies for addressing dating in the workplace. However, every employer should at least consider the various strategies for addressing the situation and adopt a strategy before a dating situation becomes problematic.

The following is a sample dating policy:

Dating and physical relationships (1) between two employees, (2) between employees and vendors, and (3) between employees and customers can have an impact on the workplace. Keep in mind, too, that unwanted sexual advances and requests for sexual favors that are a condition of employment are prohibited under the Company's harassment-free workplace policy.

If you are dating or in a physical relationship that falls within (1) through (3) above, you must immediately inform _____ (insert name of HR director or equivalent) and, if it falls within (1) above, sign a copy execute the Dating and Relationship Agreement and Acknowledgement of Harassment-Free Workplace Policy. However, if the Company determines that the relationship interferes with the work environment, or is not in the best interests of the Company, the Company may take appropriate action, up to and including termination.

The following is a sample Dating and Relationship Agreement. Before using it, however, I strongly recommend contacting our law firm to discuss whether it is appropriate for the situation:

DATING AND RELATIONSHIP AGREEMENT AND ACKNOWLEDGEMENT OF HARASSMENT-FREE WORKPLACE POLICY

It is _____'s ("X") policy to provide an equal opportunity in hiring, employment, promotion, compensation and all other employment-related decisions without regard to race, color, being over the age of 40, religion, sex, marital status, national origin, citizenship, veteran status, sexual orientation, being a qualified person with a disability; or any other basis set forth in the applicable laws or regulations relating to discrimination in employment.

"X" does not tolerate unwelcome or offensive conduct or conduct that creates a hostile work environment that is in any way based upon or related to a person having any of the characteristics described above.

In addition, "X" does not tolerate sexual harassment, which is a form of unlawful discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. submission to such conduct is made, explicitly or implicitly, a condition of an individual's employment or advancement;
- b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. such unreasonable conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

We, the undersigned employees, have entered into a personal relationship with each other. We have read and understand "X"'s Harassment-Free Workplace Policy, part of which is outlined above, and we agree as follows:

- 1. Our relationship is entirely voluntary.
- 2. Our relationship will not have a negative impact on our work.
- 3. We will not engage in any public displays of affection or other behavior that creates a hostile work environment for others, or that makes others uncomfortable.
- 4. We will act professionally towards each other at all times, even after the relationship has ended.
- 5. We will not participate in any company decisionmaking processes that could affect the other's pay, promotional opportunities, performance reviews, hours, shifts, or career.
- 6. We will inform the company immediately if the relationship ends, or if the conduct or advances of the other person are no longer welcome.
- 7. We agree that, if the relationship ends, we will respect the other person's decision to end the relationship and not pursue that person or seek to resume the relationship or engage in any other conduct towards the other person that could violate the Harassment-Free Workplace Policy.
- 8. We understand that, after the relationship ends, one of us may choose to date others in the workplace, and that we will not react with jealousy or spite or in any manner that is less than professional with respect thereto.

Dated this _____ day of _____, _____.

Employees:

These materials are not intended and should not be used as legal advice or other recommendation. If you need a legal opinion on a specific issue or factual situation, please contact an attorney. Anyone using these materials should not rely on them as a substitute for legal advice.