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Helena P. Amaral  
*University of Rhode Island*

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# **WORKPLACE ROMANCE AND FRATERNIZATION POLICIES**

**HELENA P. AMARAL**  
**University of Rhode Island**

With the ever increasing number of hours Americans spend at work, many are finding romance at the workplace. What should the employer consider when deciding whether and to what extent it should control romantic relationships between supervisors and subordinates and among co-workers? This paper addresses some of the social and legal issues surrounding these relationships and whether fraternization policies are a viable tool for handling the complex human issue of romance in the workplace

Romance in the workplace is not a novelty. However, it is believed to have increased as a result of the influx of women into the labor force in the last 50 years. In 1950, less than 30 percent of the 64 million labor force participants were women. Between 1950 and 2001, six out of ten additions to the labor force were women. As of 2003, women composed 46.6 percent of the labor force (Kaufman & Hotchkiss, 2003).

Not only are more women than ever before in the labor force working alongside men, but the average number of hours spent at work has also increased since the 1980s. The *average* hours worked per week in 1982 were 38 (Kaufman, et al., 2003). It increased to 39.2 by 2001, with forty percent of employees working exactly 40 hours per week, approximately 12 percent working 50 hours, and 7.8 percent working 60 hours or more. In addition, the “ratio of the number of persons at work to the number employed has also been rising since the early 1970s. This means that among those employed, fewer people are taking time away from work for vacation, sickness, and other reasons” (Kaufman et al., 2003). While time, in theory, is perpetual, we are placed in the confines of a zero-sum game. The more time we spend at work, the less time we spend with our friends and families – unless you are one of the lucky (or cursed) few who work with your family.

The combination of a gender-mixed workforce and time spent at the workplace has the effect of conjuring up human emotions that often give birth to romance between co-workers and between subordinates and their supervisors. This may have significant consequences in the workplace. Employers are primarily concerned

with potential sexual harassment suits. Employers have vested interests in protecting the firm from lawsuits they deem preventable. If a relationship has the potential to breed a lawsuit, then the reasonable thing to do is to prevent the relationship. Of course, it is not always that simple. Employees, on the other hand, are concerned with pursuing their interests as long as it has no bearing on their performance at work. Is there a way to balance everyone’s interests while simultaneously protecting both the employer and the employee?

## **EMPLOYER’S INTERESTS**

Employers may be concerned about office romances for a variety of reasons. Office romance has the potential to negatively affect behavior in the workplace in ways that conflict with both the business and legal interests of the employer.

### **Business Interests**

A relationship between a supervisor and subordinate may lower the morale and productivity of other employees. Morale may suffer as a result of alleged favoritism, the extent of which may or may not arise to the level of a recognizable legal claim. Nevertheless, this may cause some resentment towards the preferred employee. Employees may also lose motivation to work harder or go the extra mile, because they believe that the supervisor has “blindness” when it comes to other employees’ accomplishments. This loss of motivation quickly turns into a loss of productivity.

The employer has a vested interest in maintaining morale because it affects the overall productivity. One unproductive employee may

be easy to handle. The employee may feel pressured by other employees to “pull his weight,” or management can simply pluck him out. Morale, however, is like an infectious virus that permeates the atmosphere and soaks up the employee’s positive mental and physical energy. There is no simple solution to remedy lowered morale.

In a relationship between two co-workers, resentment may also set in if the two employees socially withdraw from the group and become more secluded. Lack of productivity would most commonly be found amongst the two dating employees. There’s a risk that they may pursue the relationship on company time. This also depends on how discreetly the relationship develops. Most couples make the extra effort to not socialize at work and only pursue their relationship in private. Here, and for the time being, the business interest is not affected.

### Legal Interests

The purpose of adopting an anti-fraternization policy is to avoid sexual harassment liability. There are two kinds of sexual harassment: “quid pro quo” and “hostile environment.” In quid pro quo the “submission to or rejection of [unwelcome sexual] conduct by an individual is used as the basis for employment decisions affecting such individual.” “Hostile environment,” is the circumstance in which “such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” 20 C.F.R. §1604.11(a)(2) and (3). “Title VII covers mandatory sexual conduct [quid pro quo] as well as severe and pervasive hostile environments. The statutory basis is that such situations constitute a ‘term’ or ‘condition’ of employment ‘because of’ the individual man or woman’s ‘sex’ within the meaning of the Act” (Rothstein, Craver, Schroeder, & Shoben, 1999).

A relationship between a supervisor and subordinate presents some legal issues. Is the subordinate truly a consenting party? Will it result in favoritism? If an employee makes a claim, but one that is legally recognizable, it still

has the effect of drawing the employer’s resources to investigate the claim and defend itself against it, even if it wins. If the elements support a legally recognizable claim, not only are there costs associated with defending the claim, but the employer may be found liable by a trier of fact and be subjected to an uncertain amount of damages.

If the relationship is between co-workers, the prevailing legal issue is sexual harassment if and when the relationship should cease and one of the parties continues to pursue it against the other’s wishes. The conduct exhibited in pursuit of the relationship then becomes unwelcome.

Let’s take a quick look at these individual scenarios.

**Consent is not a synonym for welcome.** When we ask whether the subordinate in a relationship with a supervisor is a consenting party, what we really mean and should ask is whether the supervisor’s advances were welcomed and whether the subordinate’s continued consent was voluntary. A woman<sup>1</sup> may consent to a sexual relationship, but not welcome it. In *Meritor Savings Bank*, the plaintiff had a sexual relationship with her supervisor for a number of years. The supervisor was a vice-president of the bank. The plaintiff was initially employed as a teller and was gradually promoted to branch manager over a four-year period. She was then fired for taking excessive use of sick leave. She filed suit for sexual harassment claiming she was constantly subjected to sexual harassment during those four years. She refused his advances at first, but soon developed a fear of losing her job, so she consented. The U.S. Supreme Court stated that “[t]he fact that sex-related conduct was ‘voluntary,’ in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.” *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 68, 106 S.Ct. 2399, 2406 (1986).

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<sup>1</sup> In the 21<sup>st</sup> Century the supervisor may well be a woman and the subordinate a man. For simplicity, I will make references to parties in the traditional supervisor-male, subordinate-female role.

To minimize the potential of similar claims, some employers have set in place a policy discouraging supervisor/subordinate relationships, but takes prophylactic measures when it occurs. The common approach when supervisor and subordinate enter into a *consenting* sexual relationship is to assign the subordinate to another supervisor. This does three things. First, it allows both the supervisor and subordinate to keep their present positions and not get displaced within the organization. Second, it strips the original supervisor of any power or influence over the subordinate's evaluations and general terms and conditions of employment. Thus, the subordinate is free to refute any of the original supervisor's advances at any time without fear of a resulting adverse employment action against her. Lastly, reassigning the subordinate to a different supervisor also removes the appearance of favoritism towards the subordinate. However, reassigning the employee should be done with care so as to not constitute an adverse employment action.

It is not always obvious when prophylactic measures need to be taken, especially when the parties are diligent at keeping their relationship a secret. There is also difficulty in determining whether the relationship is of a romantic, affectionate and sexual nature (a nurturing relationship) or whether it is primarily sexual and unwelcome, but also includes nonsexual activities, such as dinners or parties. The latter alludes to quid pro quo harassment, but the true essence of a relationship is not necessarily determined by objective means. When the employer does not know and has no reason to believe there is anything but a professional relationship, naturally it will not react. But if the employer should have reason to believe, even though it does not have actual knowledge, it may want to inquire and possibly reassign the employee anyway, ensuring that it will not alter the terms and conditions of either party.

**Favoritism and sexual harassment.** As stated above, there are two kinds of sexual harassment, as stated above: "quid pro quo" and "hostile environment" 20 C.F.R. §1604.11(a)(2) and (3). Additionally, subsection (g) addresses sexual favoritism and provides that "[w]here

employment opportunities or benefits are granted *because* of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination *against other persons who were qualified for but denied that employment opportunity or benefit*" (emphasis added).

The "other persons" are co-workers, who will not compete, or cannot by gender, with the subordinate for the supervisor's sexual favors. At the time of this writing, the United States Supreme Court has yet to hear a case regarding third party effects of sexual favoritism. However, in the summer of 2005, the California Supreme Court heard *Miller, et al. v. Department of Corrections, et al.*, 36 Cal.Rptr. 3d 797, 115 P.3d 77, a case in which co-workers were affected by a supervisor/subordinate(s) relationship.

In *Miller*, the plaintiffs were two employees who were not sexually propositioned, or subjected to any other traditional form of sexual harassment, but were nonetheless affected by the consensual sexual relationship between the warden of the Valley State Prison for Women (one of the largest women's prisons in the world) and three other subordinates with whom the warden was having affairs. The subordinates enjoyed unusual privileges. At first, they were not selected for promotion by the prison's internal promotional committee, but they used their relationship with the warden and induced him to ensure their promotion anyway. The California Supreme Court found that plaintiffs established a prima-facie case of sexual harassment on the basis that widespread sexual favoritism conveys the message that one has to engage in sexual conduct in order to get ahead in the workplace. Thus, those who are disadvantaged by sexual favoritism may bring a harassment claim.

The court's ruling has the result of broadening the scope of sexual harassment resulting from consensual workplace romances, thus expanding a firm's liability. Now, the employer not only worries about one employee suing when the relationship goes sour, but also about potential suits from any other employees at the firm.

The California legislature has taken proactive steps on the issue of training supervisors. A bill was signed into law on September 30, 2004 requiring employers with 50 or more employees to complete the first round of mandatory sexual harassment training for all supervisory employees. It requires two hours of sexual harassment training every two years and must cover specific requirements set by the statute<sup>2</sup> (Johnson, 2005).

While the *Miller* ruling is recent, this same issue was addressed by the Equal Employment Opportunity Commission (“EEOC”) in 1990 via Policy Guidance N-915.048. According to the EEOC, “Title VII does not prohibit isolated instances of preferential treatment based upon consensual romantic relationships. An isolated instance of favoritism toward a ‘paramour’ (or a spouse, or a friend) may be unfair, but it does not discriminate against women or men in violation of Title VII, since both are disadvantaged for reasons other than their genders.” N-915.048 §A. However, §C provides that if favoritism “is widespread in a workplace, both male and female colleagues who do not welcome this conduct can establish a hostile work environment in violation of Title VII regardless of whether any objectionable conduct is directed at them and regardless of whether those who are granted favorable treatment willingly bestowed the sexual favors.” This does not exactly set a bright-line test for determining an employer’s liability. What constitutes “widespread”? If one incident is not enough, how many times beyond the first does it take? The courts will have to look at the cases on an individual basis.

Another problem with the EEOC’s Policy Guidance is that it is just that: guidance. Most

courts use EEOC’s Guidance as persuasive authority, but not necessarily give deference to the EEOC. While courts view it as a source of informed judgment, they will rely on the laws of their specific jurisdiction (Madden, 2002).

Most romances in the workplace are not as dramatic as *Miller*, but the case brought the subject to the attention of employment attorneys and other human resource professionals throughout the country and renewed a nationwide interest in how to best address such sensitive, personal matters that so easily turn into a viable legal interest for the employer.

***Sexual harassment among co-workers.*** While the relationship between two co-workers blossoms, legal issues are generally not a major concern. Should the relationship sour and the employees use poor judgment in their interaction with each other, it may affect the workplace negatively by lowering morale and decreasing productivity. The employer can go through its usual procedures in dealing with conflicting employees and loss of productivity and attempt to resolve the matter without directly addressing the relationship. However, a legal issue arises if one of the employees is adversely affected by the other employee who may have been the instigator.

A legal issue will arise when one of the parties to the relationship does not want to end the relationship and continues to pursue it by making advances to the other employee. These amorous and/or sexual advances, once welcomed, are no longer welcome. The “victim” may believe this is a personal matter she brought upon herself and may try to handle it on her own. She does not want to cause any trouble at work and therefore does not bring the matter to the attention of management unless and until the situation has gone beyond the victim’s control. Had there not been a relationship, the likelihood that the harasser would have been reported earlier is greater. Still, management is now faced with allocating its resources in investigating and handling the claim in-house with great caution. If the victim is not satisfied with in-house procedures and results, she may file a sexual harassment claim.

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<sup>2</sup> Requirements are as follows: (1) Must be at least two hours in length; (2) Be effective and interactive; (3) Provide information and practical guidance to learners; (4) Cover relevant federal and state law; (5) Explain prohibitions against and the prevention and correction of sexual harassment; (6) Include practical examples to instruct supervisors in the prevention of harassment, discrimination and retaliation; and (7) Describe remedies available to victims of sexual harassment.

It is important that the employer protect its interests. The employer has a business interest in maintaining morale and productivity. The employer also has a legal interest in avoiding any and all forms of sexual harassment claims. Both the business and legal interests have the potential of affecting the employer's reputation in the community and its profitability.

## EMPLOYEES' INTERESTS

Employees expect to be left alone in matters that are private and do not concern their work. While at work, they expect fairness and equity. It sounds simple enough. Of course, it is not.

### Privacy

Imagine the employer goes into the employee's home and scrutinizes his drinking habits, makes sure that he is properly spending his leisurely time, makes sure his house is clean and makes sure that his *sex life* is "unblemished!" The employer was the Ford Motor Company in the early twentieth century. Surely, we have come a long way since.

Maybe.

Many employers *today* take adverse actions against employees for legal, off-the-job conduct and activities. Employees have recently been fired, or discriminated against in hiring practices, for activities such as smoking, drinking, motorcycling and living with someone outside of marriage. In the late 1980s tobacco companies fostered a national movement to protect employees' rights to engage in certain off-the-job activities<sup>3</sup> (Dworkin, 1997).

Employers will defend termination actions by using the at-will doctrine, as it is law in most states. At will is the employer's legal right to fire an employee at any time for any reason or no reason at all. There are certain exceptions for this. The employer cannot fire at will when

there is an employment contract for a fixed term. The law also forbids employer action that is based on discrimination against an individual and/or the activity that is protected by certain laws (e.g. Title VII; Pregnancy Discrimination Act, etc) (Rothstein et al., 1999).

The United States Constitution's right to privacy protects individuals from government action, not private employers. In the 1980s and even through today, courts have upheld a private employer's right to enforce anti-fraternization policies (*Patton v. J.C. Penney Co.* 747 P.2d 854 (Or. 1986), employee was discharged for dating a co-worker; *Sarsha v. Sears Roebuck & Co.*, 3 F.3d 1035 (7<sup>th</sup> Cir. 1993), supervisor was fired for dating a subordinate employee; *Rogers v. International Business Machines Co.* 500 F.Supp. 867 (W.D. Pa. (1980), manager was fired for relationship with subordinate which "exceeded normal or reasonable business associations" *Id.* at 868).

However, many states have begun responding by recognizing common law and/or enacting statutory law providing for protection against invasion of privacy by private industry. In California, for example, "employees may invoke a public policy exception to at-will employment termination by asserting a violation of their privacy right under the state constitution." In Colorado, it is "a discriminatory or unfair employ unfair employment practice for an employer to terminate one's employment for engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction: (a) relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities... or (b) Is necessary to avoid a conflict of interest..." Colo. Rev. Stat. Ann. §24-34-402.5 (2001). (Wilson, Filosa, & Fennel, 2003).

Other courts have echoed the rationale of the Colorado statute well before it became law in Colorado. They will protect the employee's associational privacy unless the employer can show legitimate business and employment reasons. "Such reasons include a conflict of interest, an employee in a sensitive or confidential management position, and a personal, private or social relationship that

<sup>3</sup> Of course, this at first only involved legislation protecting employees from discrimination because they smoked outside of work (Employers were discriminating against smokers because they raised health insurance premiums). The tobacco industry obviously had a great financial interest in ensuring that its customers did not lose their jobs because they smoked, or worse, be forced to quit smoking.

endangered, injured or jeopardized the employee's legitimate business interests" (Dworkin, 1997). Courts will look at factors such as the size of the organization; size of the community; nature of the business; a conflict of interest; public or private conduct; effect on on-duty performance; and effect on co-workers. For example, if a married manager of a Christian bookstore in a small town has a very open affair with a married woman, the court may find that it would be detrimental to the business, as patrons may be offended and no longer frequent the store (Dworkin, 1997).

However, a court may require actual proof of negative impact, not the mere threat of impact. In *Rulon-Miller v. IBM*, 208 Cal. Rptr. 524 (Cal. Ct. App. 1984), the plaintiff (female), a 16-year employee of IBM dated an account manager. The manager left IBM to work for a competitor. He was transferred out of state. He and the plaintiff ceased dating. The manager was transferred back a year later (still working for the competitor). He and the plaintiff resumed dating. The relationship was known by plaintiff's supervisor. Approximately *one year after* they resumed dating, IBM told the plaintiff that her relationship presented a conflict of interest and that she could have a few days to decide whether to stop dating the manager or lose her job. IBM, instead made up its mind for her and terminated her employment before she exercised her options.

The court found that IBM itself engendered her right to privacy by circulating a memo that supported off-the-job privacy. Even though it may appear that dating an employee of a competitor is a conflict of interest, the court found no actual conflict because the plaintiff did not have access to sensitive information. Further, there was no interference with her work. The mere threat of negative impact was not enough. The court required proof and IBM provided none.

Decisions of terms and conditions of employment that are based on off-premises actions that do not affect the workplace are increasingly being challenged in courts. The right to privacy is thought primarily as an employee interest, but because the legal climate

is changing, it is also evolving into a business interest.

### **Fairness & Equity**

A relationship between a supervisor and subordinate usually gives the appearance of favoritism. This is likely to lower morale. Not because of the relationship itself, but because of a perception of inequity. Employees anticipate that their salary is based on their productivity and their contributions and that it is fair when compared to others who are similarly situated. When their contributions and rewards equal that of others' contributions and rewards, then there is a perception of fairness. This is a *subjective* evaluation. Because this idea of equity is a psychological state, employees are likely to possess different perceptions of equity (Scholl, 2000).

In a supervisor/subordinate relationship, if it is perceived that the subordinate is not making as much of a contribution as the others, it creates a sense of inequity. If it is perceived that the subordinate is the recipient of more "perks" than the others, it also creates a sense of inequity. If the subordinate receives a promotion when others are similarly qualified, it again creates inequity. It is this sense of inequity that lowers morale. The lowering of morale in turn lowers productivity.

If it is two employees in a relationship, those two employees are likewise interested in equity. If these two employees' contributions to the firm do not change (their productivity has not decreased) since they initiated the relationship and the firm is not affected by the relationship, the employees will have an expectation that they will continue to be treated equitably. Where the employer's interests are not concerned, the employee will be especially unhappy with any adverse employment actions against them for legal conduct (romantic activities) with another employee *outside of work*.

Discreteness is likely one of the best ways to combat the perception of inequity, both to the couple and co-workers. It is something the two involved employees must consider at the beginning of the relationship. Every relationship does not need to be published throughout the

organization. Because employees find romance *at* the workplace does not mean that romantic behavior should be exhibited *at* the workplace. Many a couple has announced their engagement to the complete surprise of their fellow employees and management (1998).

Employees are very protective of their interests. They do not want their privacy violated and may feel that the employer has no place in their personal lives, even if it involves a fellow co-worker. They also have an expectation of fairness and equity. They may feel their rewards and contributions should match that of others similarly situated in the organization.

### **THE WORKPLACE: A BREEDING GROUND FOR ROMANCE?**

#### **Why Do So Many Romances Originate in the Workplace?**

“Pressure, heat and a long time period combine to produce the tightest bonds in nature – the diamond. The conditions for bonding a personal diamond are common in today’s business environment” (Cooper, 1985). With the increased number of women in the workforce and the increased amount of time spend at the workforce, it is not surprising that men and women develop close friendships with each other, and turn to one another for emotional support. This is likely to happen both to married as well as single individuals.

Today’s worker spends more time with business colleagues than with his or her mate. Outside the regular work schedule, deadlines and last minute demands from clients further take precedence over personal activities. This time spent away from home is not necessarily a negative experience. The workplace can be more stimulating and gratifying than the home life. It produces adrenaline and excitement as deadlines quickly approach. It produces a sense of accomplishment and responsibility, both emotional highs. The office is a world of high finance, legal stakes, production, sales and public relations. No one is wearing two-day beards, curlers or sweats. They are often in their best behavior. At work, people’s opinions and

ideas are valued. They receive feedback and recognition and are even awarded raises or bonuses for good performance.

Home, on the other hand, may not always be a place to unload. If the employee is rearing children, it is often a place where there are screaming kids and dirty dishes, not awards and recognition. Recognition at home is usually dictated by the calendar – Valentine’s Day, birthdays, etc. – and may not be based on spontaneous appreciation or recognition. Alternatively, for the single worker, home may be a place to greet the inconsiderate roommate, or simply a place where it’s too quiet.

“It is no wonder there is often a highly sexually charged atmosphere. Working long hours with attractive people in a plush setting to accomplish important goals can be quite seductive” (Cooper, 1985). Eventually people find out they think more of each other than a mere professional friendship. If there is mutual attraction, this friendship may evolve into one of a romantic, sexual nature.

The workplace described above sounds very ideal, doesn’t it? It also sounds as if there was an epidemic of sex and romance at the workplace. After all, not everyone works in “plush” settings, and their co-workers don’t necessarily look like they belong on the cover of *GQ* or the latest *Victoria’s Secret* catalog. However, it seems that they don’t have to. Forty-percent of employees polled in 2005 have been involved in a workplace romance (Parks, 2006). This does not mean that 40% of your employees are romantically involved with each other. As a matter of fact, it may be that there are no existing romantic relationships at your firm at the moment. It is, however, important to know that at least 40% of workers have been or will be, at one time or another during their careers, romantically involved at the workplace. This is not a matter of hormones gone wild or a general regression of emotional intelligence. It is the human condition. Human needs and interpersonal attraction has been widely studied by psychologists and sociologists.

#### **Interpersonal Attraction**

Who we are attracted to, where and when plays an important role in our lives. It is of great

importance to everyone up and down the corporate ladder, because our own existence depended on two other people finding this attraction. “[i]t’s significance is raised to the highest power when the role it plays in the welfare and survival of the species is considered. For a species to survive, its members need to find food, to avoid injury, to reproduce, and for higher animals, to rear the young... As a consequence, humans are among the most social creatures in the animal kingdom, and our evolutionary development has led to a hair-trigger disposition for making discriminative judgments along the attraction dimension” (Lindzey & Arosen, 1985).

In the 1950s researchers believed that opposites attract because they would complement each other’s needs, but there is little support for this proposition. Perceived similarity instead seems to be a “much more important criterion. Recent studies have consistently found that higher *perceptions of similarity* are associated with increased levels of relationship quality” (Hogg & Cooper, 2003) (emphasis added). Physical attractiveness and reciprocity of liking are also factors of interpersonal attraction.

Another factor is the exposure effect. People have a tendency to marry people from their own neighborhoods or workplaces, not because of geographical proximity, but due to “functional distance,” the extent to which they cross each others’ paths. Individuals also place an extremely high value on kindness, loyalty, and emotional stability “because when we entrust our psychological (and often physical) welfare to another human being, it is important that he or she poses no threat to our safety and can be relied upon to act in a caring and consistent fashion” (Hogg et al., 2003). As a matter of fact, “the association between close physical proximity and attraction is one of the best documented within the attraction literature” (Lindzey et al., 1985).

The workplace is an ideal setting because not only is there constant exposure, but *because* there is constant exposure, individuals are able to carefully evaluate each other in a non-threatening atmosphere. They learn who they

perceive to be similar in character, is kind, loyal and emotionally stable. This is especially difficult to learn on traditional dates when everyone is in their best behavior at small and separate intervals of time.

There is also documentation of professions in which office romances are especially common. For example, those who work in hospitals, at newspaper offices, police stations and law offices not only tend to spend long hours together (the exposure factor), but also work under intense circumstances where employees depend on each other in situations that have the potential for catastrophic consequences. This has the effect of speeding up the creation of interpersonal bonds. “You get turned on by competence, by being a team that wins, by being better together than separate. That’s erotic and compelling” (Loftus, 1995).

It is important that employers acknowledge this human dynamic at the workplace. Employers are justified in wanting to ignore human sexuality simply because it has nothing to do with what the employees are getting paid to do: work. Nevertheless, sexuality walks through the front door of the workplace with each and every employee. Most often it is not romantic or visibly sexual in nature, and manifests itself in socially acceptable forms: a glance, a smile. It’s natural to be drawn to the beauty of the opposite sex. However, sexuality in the office can also be more expressive, and if the attraction reciprocal, then romantic.

Employees are human first, professionals second, but emotional intelligence facilitates the balancing and cohabitation of the emotional with the professional. “Emotional intelligence skills refer to individual skills and competencies that allow people to deal with their own emotions and the emotions of others.” There is a trigger (a particular event that has occurred), an emotional response, and a behavioral response, if any (Scholl, 2002). “The term encompasses the following five characteristics and abilities: (1) Self-awareness--knowing your emotions, recognizing feelings as they occur, and discriminating between them; (2) Mood management--handling feelings so they’re relevant to the current situation and you react

appropriately; (3) Self-motivation--"gathering up" your feelings and directing yourself towards a goal, despite self-doubt, inertia, and impulsiveness; (4) Empathy--recognizing feelings in others and tuning into their verbal and nonverbal cues; and (5) Managing relationships--handling interpersonal interaction, conflict resolution, and negotiations" (<http://www.funderstanding.com/eq.cfm>, 2006). The ideal employee will be fully adept at handling these social occurrences as they develop at the workforce.

The tricky part for the employer is to determine the extent it wants to control romantic behavior. Romantic relationships are inherently complex in themselves. Throw in work responsibilities, third party reactions, professional relationships, and sprinkle them with different levels of power and authority and you may have a legal minefield. Or do you? They don't always become a dramatic event or a legal issue. Many workplace romances come and go without issue. Some do not. However, employers want to minimize any risk of liability and protect their interests.

### **CURRENT STATE OF MIND REGARDING WORKPLACE ROMANCE**

In 2005, the Society for Human Resource Management (SHRM) and the Wall Street Journal combined resources and conducted a poll of HR professionals and employees on a number of workplace romance issues. The poll was compared to one conducted in 2001. In both 2001 and 2005, over seventy percent of firms did not have a formal written or verbal policy addressing workplace romance. Of those that did, the majority permitted dating, but discouraged it. Only nine percent prohibited dating (Parks, 2006).

In 2001, ninety-five percent of HR professionals felt that fear of sexual harassment claims was reason to discourage romance, but the percentage dropped to seventy-seven percent in 2005. Instead concerns about conflicts between co-workers whose relationships ended grew from twelve percent to sixty-seven percent. However, instances of decreased productivity, sexual harassment and complaints of retaliation declined as also the number of office romances

that ended with a negative outcome (Parks, 2006).

The majority of employees, fifty-two percent, felt that the consequences for violating a dating policy should be a formal reprimand. Only eleven percent felt that termination was appropriate (Parks, 2006).

The theme of workplace romance has become so popular that mainstream magazines have recounted stories of cubicle romance and provided some practical suggestions for those wanting to get involved in a workplace romance. For example, *Men's Fitness*, wrote an article in which "Lydia Ramsey, a business-etiquette expert and author of *Manners that Sell*, says besides maturity, a willingness to negotiate honestly is a must when dating within the office. Once you decide you really want a workplace relationship, you have to talk to each other about how you'll conduct yourselves at work and how you'll behave if you stop dating. If one of you has difficulty talking about this, you really shouldn't be in this relationship (Kim, 2004).

In 1994, *Fortune* magazine conducted a survey, not of HR professionals and employees who bear the brunt of work details, but of 200 chief executive officers. Seventy-five percent said that romances between workers were not the company's business. Maureen Scully Ph.D. who focuses on organizational work ethics at MIT states "[t]oday's office romances are very different than the 'powerful boss seduces beautiful young secretary' variety of the past... These are professional colleagues working together on intellectually stimulating problems" (Loftus, 1995). Lisa Mainiero, Ph.D., a professor of management at Connecticut's Fairfield University has identified four common stages of office romance:

*Fantasy*: A sudden romantic interest in a colleague develops; it may result in dressing up, daydreaming, and working harder to try to impress the potential lover.

*Honeymoon*: The employees realize the attraction is mutual and act upon it. They go on a date, begin a relationship, and may be distracted at work, with eyes only for each other.

*Renewal*: The relationship enters a stable phase; concentration on work returns. The

couple feels comfortable and secure with one another and gets into a routine.

*Climax:* The couple makes a decision to head toward a long-term commitment, such as marriage, or to break off the relationship. There's often a painful period of self-evaluation" (Loftus, 1995).

### Proceeding with Caution

Workers can and should concern themselves with not disrupting the workplace. Two-thirds of couples try to keep their relationship a secret, but most are known as an "item" before any formal announcements are made. However, Robert Quinn, Ph.D., an associate professor of organizational behavior at the University of Michigan states that "Even at work, everyone loves a lover. Co-workers tend to be most supportive of an office romance when they sense the couple is in love and headed for commitment" (Loftus, 1995). In other words, the workplace is not a local bar, a place to find a "good time." Do not fish off the company pier. However, if love is inevitable and a long term commitment plausible, employees should have a sense of professional and moral obligation to be discreet and practice good judgment.

Few employers have come forward with a positive outlook on office romance. Liz Lonergan, human resource manager of Ben & Jerry, openly states "We expect that our employees will date, fall in love, and become partners. If a problem comes up, we encourage employees to let us know and we'll talk about it" (Loftus, 1995). Don Steele, partner of an 80-associate law firm in Los Angeles states "You're talking about people who don't have anything but their job. Dating is inevitable, but very carefully done. Sexual harassment issues are a concern, and attorneys are well aware of the potential liability issue involved. The relationships that do form, like the one between a senior associate and her coworker husband, tend to be solid, not the spicy stuff on L.A. Law" (Loftus, 1995).

Southwest Airlines fosters a corporate culture that is romance-friendly in the name of morale and productivity. "A happy employee is a productive employee." Southwest has 2,200

employees whose spouses also work for the Company – that's just over seven percent of its workforce married to each other. Its culture attracts many talents. In 2005, out of 260,109 resumes it received, it hired the top 2,766, most talented and compatible employees from the lot. In 2006, the company was also listed in *FORTUNE* as number three among America's Top Ten most admired corporations. It is also listed for the 10<sup>th</sup> year in a row in *FORTUNE*'s annual survey of corporate reputations. Additionally, *FORTUNE*, also ranked Southwest Airlines in the top five of the "Best Companies to Work For" in America (SouthwestAirlines, 2006).

Experts on employee rights and sexual harassment note that stable office relationships can benefit the employer. This may occur in three separate phases: First, the employee is smitten with another and enhances the quality of his work to impress the other employee. In the second phase, the employees' feelings are mutual, yet still unexpressed, and the employees spend more time at work in order to spend more time with each other. Lastly, if it turns into a stable relationship to the point of marriage or cohabitation, the couple may work harder to make the company successful, because both have so many eggs (income, health insurance, retirement benefits) in only one basket: the firm (Bryant, 1998).

Ironically, and somewhat comical, is the thought that the employer's recruiting practices function as a "matchmaking" service. A recruiter may interview three people who are similarly qualified for a position. Yet, the recruiter will choose, not the best dressed, nor the one who said all the "right" things at the right time. The recruiter, instead, will choose the one who *best fits* the organization; the one who exudes a character and temperament the current employees are likely to assimilate. The recruiter will choose the candidate who will mesh in with the existing corporate culture and its people.<sup>4</sup>

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<sup>4</sup> The exception to this would be if the firm is looking for a "change agent." This is a person hired for a higher position of authority whose job will be to

Some firms believe romance may be inevitable and do not discourage it and may even develop a culture that encourages it. Others are adverse to the occurrence of romance in the workplace, discourage it, firmly prohibit it and even discipline its employees for acting on this emotional phenomenon. Are these other firms overreacting?

### CONTROL OF WORKPLACE ROMANCE

Many say that it is just going to happen. You can't outlaw love. Attraction will be spontaneous and inevitable regardless of what rules employers set in place. But, hey, aren't management human beings too? So why are they such avid promoters of rules prohibiting romance? Of course, everyone up the ladder is by no means immune. They work "smart until their heart goes Whap!" And they too get caught up in the "tender trap"<sup>5</sup> (Weiss, 1998). However, until, or even if, a day comes when they fall prey to amorous attraction, management's function within the firm is to protect the business interest. The business has an interest in controlling workplace romance to minimize legal liability.

### What do Employers Need to Control?

It is important to note the difference between regulating professional behavior (the ethical do's and don'ts and acceptable etiquette within one's profession) and regulating behavior that is searching to meet more instinctive human needs. There may be a natural conflict. However, before we try to balance interests.

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internally reorganize the whole firm or sections thereof. Here, the recruiter may be looking for someone is distinctly different from that of the current cast of employees.

<sup>5</sup> From Frank Sinatra's "(Love Is) The Tender Trap." Examples of the nationally recognized couples of uneven power: Microsoft's C.E.O., Bill Gates, married a former product manager, Melinda French. The chairman of G.M., John Smith, married his former secretary, Lydia Smith. An editor of Harper's Bazaar, Liz Tilberis, married her former professor, Andrew Tilberis. The chairman of Morgan Stanley, Richard Fisher married his assistant. Also, the Chairman of Citicorp, John Reed, flew very friendly skies. He married the company's jet flight attendant.

What is the employer trying to control that is different from normal socializing at the workplace?

**Attraction.** As previously mentioned, today's workplace is composed of nearly half males and half females. To have complete (not just paper) control over romantic relationships, employers would have to be able to control the source of romance: attraction. It is impossible to control romantic attraction within the firm when men and women work closely together. The best chances of controlling attraction would be to hire an all male or all female heterosexual workforce. It is both illegal and unrealistic. A firm could also attempt to physically separate its male employees from its female employees. It would likely create an impractical work environment and invite disparate treatment suits.

**Behavior at work.** The employer can try to control the actual behavior that may lead to romantic feelings. But what kind of behavior? One would reasonably expect that the employer would not want explicit sexual behavior at the office, or "innocent" behavior that reduces productivity. But where does one draw the line in controlling "innocent" behavior in the name of romance prevention? Would it prevent small talk between males and females because it may lead to romance? What about small talk between those of the same sex? Can employees of the same sex take a few moments of company time to pursue a friendship, exchange weekend stories, but not members of the opposite sex? Would it take measures to prevent a male and female talking behind closed doors, but not members of the same sex? Should the employer wait until it hears something in the wind and *then* closely monitor any of the above behavior?

**Behavior/relationships out of work.** At will doctrine allows an employer to fire for any or no reason as long as it is not an unlawful reason (discrimination, etc.). Legal out-of-work conduct may, or not, be legally protected in the firm's jurisdiction, but has nonetheless been attacked in plaintiffs' right-to-privacy suits. Imagine a firm so paternalistic as to control another human being's romantic endeavors outside of work. It seems absurd. However, the employer's desire to control romantic behavior amongst employees, even outside of work, is

directly related to the potential negative consequences the romance may bring to the workplace.

**Consequences of “bad” breakups.** Employers need to prevent sexual harassment claims arising from romantic relationships that have gone “sour.” Employers would not otherwise be as concerned, if not obsessed, with office romance. If a supervisor/subordinate relationship “sours,” the subordinate may make a claim for sexual harassment asserting that her participation was not consensual. If it is a relationship between two employees, the employer may fear that it may result in decreased productivity, may lower morale, create conflict, or result in a sexual harassment suit because one of the employees continued to pursue the relationship against the other’s wishes.

### Types of Control

The employer has several means by which to control office romance, such as the following:

**Rules/Policies.** The employer can establish a policy prohibiting it and list possible consequences for violating the policy. Policies can range from strictly prohibiting the conduct, may take a more lenient discouragement approach, or the employer may decide that no policy is the best policy.

**Corporate Culture.** The employer that may not want to bind itself to a written rule, yet minimize its risk for sexual harassment liability, may establish a corporate culture in which the behavior is frowned on, and “prohibited.” In this instance, top management frowns upon such behavior and deems it extremely unprofessional. Those with intentions of climbing the corporate ladder will not become involved in an office romance and will likewise incorporate the culture and voice such ideals throughout the firm so that this cultural value is further disseminated. It is usually in this culture where the most discretion is exercised when a romance is pursued (Wilson et al., 2003).

**Performance outcomes.** If management frowns upon office romance and is aware of the romance, the employer may be encouraged to

“punish” the employee by means of performance reviews. This is the cause and effect rationale. For example, if an employee’s performance is in any way affected, regardless of whether it was due to the romance, the performance review will reflect the change in performance. There may be outside factors affecting performance outcomes. However, because the employer does not approve of the employee’s behavior, it may emphasize any negative outcomes on the record. The employer may also note the employee’s personnel file its belief for the change in outcomes: a romantic relationship with a co-worker.

There are also positive performance outcomes. This generally occurs when one employee is trying to gain the respect and affection of the other employee and in the initial stage of a relationship. Here, both employees spend more working so as to increase their exposure to each other and also want to impress his or her partner and thus increases productivity (Loftus, 1995). If the employer discourages office romance, it may be noticed but not likely acknowledged, especially if the relationship is new and not yet “proven” to the firm members. If the employer does not shun romance, increased performance *may* be acknowledged.

### FRATERNIZATION POLICY – YEAH OR NAEH?

Eighteen percent of HR professionals who responded to an SHRM/WSJ 2005 poll said their firm had a written policy addressing workplace romance. This is up three percent from 2001. This is a significant number until you consider that the HR professionals responding to such a poll are likely to come from more sophisticated firms with HR departments whose firms actually fund HR with resources like a Society for Human Resources Management membership. The percentage of actual firms with fraternization policies addressing workplace romance is likely lower than eighteen. Most firms may just find that romance is too abstract, subjective and difficult to regulate. Let us remember that the employer is not *just* trying to control traditional illegal (e.g. unwelcome groping) and unprofessional behavior (e.g.

welcomed groping). This is a little trickier. For those firms that want to exercise some sort of formal control over workplace romance create written policies in their employee handbooks. The policies can either strictly prohibit workplace romance or merely discourage it by warning its employees of the dangers of office romance, although ultimately allowing it. The other option is to have no policy at all.

### **Advantages of Strict Policies**

The advantage of a strict policy is that it formally communicates to the employee the firm's mandate against workplace romance. These policies will usually warn of the danger of romance at the workplace in attempt to justify its prohibition. Some policies also detail steps the employees should take if they find themselves entering into a relationship and list the appropriate sanctions it will impose on the employee. These sanctions can range from a verbal warning to suspension and termination. The advantage is that the employees are thus fully informed of the prohibition and act at their own risk. A sample policy is attached at Appendix A.

Another advantage is that the policy may also be a weapon with which the employer may defend itself should one of the parties to the romance file a sexual harassment suit, including one based on favoritism. The employer can claim that it prohibited such conduct and that the employee never availed himself to the procedures set in place to remedy any resulting harm.

### **Disadvantages of Strict Policies**

The policy may help the employer fend off sexual harassment suits, but bears the risk of welcoming other kinds of claims. The downside to a strict policy, such as the example in Appendix A, is the potential unreasonable intrusion into the employee's privacy. The employee may make a privacy claim and assert that mandating that the employee report his romantic affections and socialization with another employee to management is an unreasonable invasion of privacy. However, a court *may* strike such a claim based on the idea that the policy acts as notice to the employee

that a romantic relationship will be monitored and thus has no such right to privacy.

Many states have also adopted "lawful off-duty statutes." It generally prohibits discrimination against employees for engaging in legal recreational activities. For example, New York "defines recreational activities as 'any lawful, leisure-time activity, for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies and similar material...'" In a suit against Wal-Mart the New York trial court found that dating was a protected recreational activity, but the Appellate Division reversed finding that although dating may include any and all of the above, it is by itself not a protected activity. Critics claim that it overlooks the purpose of the statute which is to protect employees' off-duty activities as long as it does not bear on one's job performance (Wilson et al., 2003). However, the Wal-Mart case consisted of a relationship between a married employee and a single employee. Would the court have interpreted the statute as narrowly had the employees been a young, responsible couple wanting to start a family?

Employers should be cautious of overly strict anti-fraternization policies because it is currently fertile ground for litigation. The controversy among courts of same and different jurisdictions invites more litigation on the matter because privacy and lawful off-duty activities are not yet settled principles of law in most jurisdictions. Ambitious employees will be looking for ambitious attorneys to break new ground. The opportunity for a plaintiff's lawyer to set new precedence may very well be worth the financial risk of losing a contingency case. Yes, the plaintiff may lose, but so does the employer in expending great resources in its defense. It is helpful to look at jurisdiction-specific case law, however limited it may be, to see where the trend is headed.

### **Advantages of Lenient Policies**

A lenient policy, if carefully drafted can address the interests of both the employer and employees. The employer can acknowledge the

possibility of workplace romances, express discouragement, and yet set up safeguards through its sexual harassment training and procedures. The policy should carefully educate employees on the potential pitfalls of office romance and establish unambiguous language of certain conduct that is prohibited in the workplace (e.g. flirting, inappropriate physical touching or sexually suggestive conversation).

Some policies discourage but allow for worker/co-worker relationships, but not supervisor/subordinate relationships because they present a much greater likelihood for a sexual harassment claim and/or may be more difficult to defend (See Appendices B and C). Others allow supervisor/subordinate relationships, discourage it, but have a safeguard in place where the employee does not report nor is evaluated by the supervisor with whom she has the relationship. This is a theoretically sound safeguard, but the employer should consider the corporate culture and whether it is likely the paramour supervisor will have any indirect influence through the new supervisor she must now report to.

### **Disadvantages of Lenient Policies**

The employer does not have the luxury of claiming in its defense that it strictly prohibited such conduct and that it was absolutely unaware that any such conduct was taking place. It may, however, present evidence in its defense that it provided extensive training in sexual harassment and that harassment training included the dangers office romances present.

**Love contracts.** Other ways employers may protect themselves while allowing office romance is through “love contracts.” (See Appendices D and E) These “contracts” require employees to disclose their relationships and sign agreements governing their conduct in the workplace. It is generally not recommended because it can cause resentment and backlash. The employees may also take offense to being compelled to disclose a personal relationship to either a colleague or management (Peikes & Burns).

However, there seems to be some useful language in both “contracts” regarding the

conduct that should be prohibited at the workplace (e.g. holding hands, kissing, hugging, suggestive speech, etc.). Other clauses such as the right to end the relationship without repercussion or retaliation or use of arbitration to resolve all work-related disputes contain practical procedures and useful language. If the employer does not strictly prohibit office romance, this language should make its way into the fraternization policy so that employees understand the employer’s expectations about unacceptable behavior should a romantic relationship evolve and/or one day dissolve.

### **Advantages of No Policy**

The advantage of not having a written policy is that it allows management flexibility in establishing corporate culture and letting it change as the firm may experience a fluctuation of employees within the firm. If a firm makes a marketing decision to change product or revamp its image, it will have an affect on the types of employees it will attract and thus likely to affect corporate culture.

### **Disadvantages of No Policy**

Some companies handle any problems arising out of the relationships via their existing disciplinary and sexual harassment procedures. There may not be great disadvantages of not having a written policy *as long* as the company provides sexual harassment training and its sexual harassment policy is comprehensive, meaning that it explains what sexual harassment is, that it prohibits such conduct and outlines the procedures employees should take if they feel they have been sexually harassed. Harassment is harassment regardless of whether the parties were engaged in a prior romantic relationship, thought it may complicate the issue of welcome and voluntary.

### **The Cupid Cop: Enforcement issues**

“Many an intimate office relationship is clandestine and confusing; but instead of going to a therapist or a friend or a novel to help sort things out, modern lovers are expected to go to the guy on the 11<sup>th</sup> floor, in human resources...”

Modern lovers have to visit what one human resource manager referred to, with only a little irony, as the Cupid Cops” (Weiss, 1998). Companies that disfavor anti-fraternization policies find that the enforcement difficulties outweigh the benefits (McNair Law Firm, 1996).

Creation of a rule requires the firm to find the resources and means of enforcing it. How much social policing is the firm ready to undertake? What procedures does it have or will it put in place? What resources does it have available or can reallocate for taking violators through the procedural guidelines? When will it enforce it? Will the firm wait until a supervisor bumps into the male and female co-worker in public? Does the couple have to be holding hands? Should the employer follow them for a few minutes looking for expression of amorous affection?

Once the employer determines that it must prohibit either romance between all employees or only between supervisor and subordinates, it must make the notice to the employees unambiguous and *must* enforce the rule consistently and evenhandedly. Disciplining only some couples or only the female or male partner will only invite discrimination suits. There should also not be an exception for CEOs. Additionally, the prohibition should apply without regard to marital status regardless of the enforcer’s moral values and perceptions. The firm cannot punish adulterers while allowing (or “overlooking”) the conduct of unmarried persons. It constitutes discrimination based on marital status.

Inconsistent enforcement may give rise to disparate-treatment claims on the basis of sex, race or other prohibited bases such as marital status. At minimum, it may make the employer look bad in front of the jury (Segal, 2005).

Prohibition also may bring the especially sensitive issue among supervisor/subordinate: was it consensual and welcome? Prohibition may not prevent the relationship, but may instead push it underground, making it difficult to produce evidence that it was consensual. If, however, a relationship is out in the open, it will be easier to persuade a jury: “If the relationship was unwelcome, why did you show your

colleagues pictures from the trip you took together?” (Segal, 2005).

The employer needs to consider the difficulty in ensuring that the written policy is in fact workplace reality. The risks are too great if the policy and practices are not in synch (Segal, 2005).

## CONCLUSION

The employer’s primary interests are to maintain productivity and morale and avoid liability. The employees are interested in fairness and equity and their right to privacy in their personal lives. A very strict company policy may have the effect of conflicting with the employer’s interests. If the employer binds itself into a rigid rule, not only may it have difficulty enforcing it, it may find itself having to fire one or more of its valued employees. Not only are there overturn and training costs associated with terminating employees, morale is also likely to suffer.

The employee may also file a privacy lawsuit. His or her success will be determined on a case by cases basis, such as whether any work time was spent in pursuit of the relationship, whether productivity suffered, whether there was a reasonable connection between the rule and business necessity, and especially whether your particular state has enacted a statute regarding the matter and how your courts have interpreted such a statute.

Employees are interested in fairness and privacy. It is understandable that company time should not be spent on anything but work-related activities, be it pursuing a romantic relationship or goofing off. However, when the employee does not pursue a relationship on company time, does not disrupt the workplace and the relationship presents no conflict to the employer, the employee will anticipate and expect privacy in anything that he does lawfully outside of the workplace.

A well drafted policy should not penalize employees for lawful activities outside the workplace. However, it should warn against potential dangers of workplace romance. It should also educate its employees and put into place a strategy for dealing with any conflicts so

as to minimize or eliminate any potential for sexual harassment and/or discrimination claims.

“The law of sexual harassment is an area of shifting sands. Each time that there is evolution, employers have to go back and check their practices to make sure they’re not going to get themselves in trouble” (Greenhouse, 1998). However, employers should react cautiously and carefully weigh the pros and cons of the legal and internal, cultural consequences. The law does not exist in a vacuum. Any policies should rationally bear some correlation between conduct being prevented, the employee’s performance and weighed against the employer’s and employees’ legitimate interests.

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## APPENDIX A

### Non-Fraternalization

[Employer] desires to avoid misunderstandings, actual or potential conflicts of interest, complaints of favoritism, possible claims of sexual harassment, and the employee morale and dissension problems that can potentially result from romantic relationships involving managerial and supervisory employees in the firm or certain other employees in the firm.

Accordingly, managers and supervisors are prohibited from fraternizing or becoming romantically involved with one another or with any other employee [employer]. Additionally, all employees, both managerial and non-managerial, may be prohibited from fraternizing or becoming romantically involved with other employees when, in the opinion of the firm, their personal relationships may create a conflict of interest, cause disruption, create a negative or unprofessional work environment, or present concerns regarding supervision, safety, security, or morale.

An employee involved with a supervisor or fellow employee should immediately and fully disclose the relevant circumstances to your supervisor or the Vice President so that a determination can be made as to whether the relationship violates this policy. If a violation is found, the [employer] may take whatever action appears appropriate according to the circumstances, up to and including transfer or discharge. Failure to disclose facts may lead to disciplinary action, up to and including termination.

(Anonymous, 2006).

## APPENDIX B

## Consensual Relationships

It is in the interest of the University to provide clear direction and educational opportunities to the University community regarding the professional risks associated with consensual romantic and/or sexual relationships where a definite power differential exists between the parties. These relationships are of concern for two primary reasons:

- **Conflict of Interest.** Conflicts of interest may arise in connection with consensual romantic and/or sexual relationships between faculty or other instructional staff and students, or between supervisors and subordinates. University policy and more general ethical principles preclude individuals from evaluating the work or academic performance of others with whom they have intimate familial relationships, or from making hiring, salary, or similar financial decisions concerning such persons. The same principles apply to consensual romantic and/or sexual relationships, and require at a minimum, that appropriate arrangements be made for objective decision-making with regard to the student, subordinate, or prospective employee.
- **Abuse of Power Differential.** Although conflict of interest issues can be resolved, in a consensual romantic and/or sexual relationship involving power differential, the potential for serious consequences remains. Individuals entering into such relationships must recognize that:
  - Reasons for entering such a relationship may be a function of the power differential;
  - Even in a seemingly consensual relationship where power differentials exists, there are limited after-the-fact defenses against charges of sexual harassment; and,
  - The individual with the power in the relationship will bear the burden of accountability.
  - Such a relationship, whether in a class or work situation, may affect the educational or employment environment for others by creating an appearance of improper, unprofessional, or discriminatory conduct.

(WIU, 2006).

## APPENDIX C

## Consensual Sexual or Romantic Relationships

**a. In General** - There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions, and parties in such a relationship assume those risks. In the University context, such positions include (but are not limited to) teacher and student, supervisor and employee, senior faculty and junior faculty, mentor and trainee, adviser and advisee, teaching assistant and student, coach and athlete, and the individuals who supervise the day-to-day student living environment and student residents. Because of the potential for conflict of interest, exploitation, favoritism, and bias, such relationships may undermine the real or perceived integrity of the supervision and evaluation provided, and the trust inherent particularly in the teacher-student context. They may, moreover, be less consensual than the individual whose position confers power believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect.

Moreover, such relationships may harm or injure others in the academic or work environment. Relationships in which one party is in a position to review the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities, or creates a perception of these problems. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic involvement, this past consent does not remove grounds for a charge based upon subsequent unwelcome conduct.

Where such a relationship exists, the person in the position of greater power will bear the primary burden of accountability, and must ensure that he or she -- and this is particularly important for teachers -- does not exercise any supervisory or evaluative function over the other person in the relationship. Where such recusal is required, the recusing party must also notify his or her supervisor, department chair or dean, so that such chair, dean or supervisor can exercise his or her responsibility to evaluate the adequacy of the alternative supervisory or evaluative arrangements to be put in place. To reiterate, the responsibility for recusal and notification rests with the person in the position of greater power. Failure to comply with these recusal and notification requirements is a violation of this policy, and therefore grounds for discipline.

**b. With Students** - At a university, the role of the teacher is multifaceted, including serving as intellectual guide, counselor, mentor and advisor; the teacher's influence and authority extend far beyond the classroom. Consequently and as a general proposition, the University believes that a sexual or romantic relationship between a teacher and a student, even where consensual and whether or not the student would otherwise be subject to supervision or evaluation by the teacher, is inconsistent with the proper role of the teacher, and should be avoided. The University therefore very strongly discourages such relationships.

(Stanford, 2006).

APPENDIX D

“Love Contract” in the form of a letter:

Dear [Name of Object of Affection]:

As we discussed, I know that this may seem silly or unnecessary to you, but I really want you to give serious consideration to the matter as it is very important to me...

I very much value our relationship and I certainly view it as voluntary, consensual and welcome. And I have always felt that you feel the same. However, I know that sometimes an individual may feel compelled to engage in or continue a relationship against their will out of concern that it may affect the job or working relationships.

It is very important to me that our relationship be on an equal footing and that you be fully comfortable that our relationship is at all times fully voluntary and welcome. I want to assure you that under no circumstances will I allow our relationship or, should it happen, the end of our relationship, to impact on your job or our working relationship. Though I know you have received a copy of our company’s sexual harassment policy, I am enclosing a copy so that you can read and review it again. Once you have done so, I would greatly appreciate your signing this letter below, if you are in agreement with me.

[add personal closing]

Very truly yours,

/s/

[Name]

I have read this letter and the accompanying sexual harassment policy and I understand and agree with what is stated in both this letter and the sexual harassment policy. My relationship with [NAME] has been, and is, voluntary, consensual and welcome. I also understand that I am free to end this relationship at any time and, in doing so, it will not adversely impact on my job.

(Kuntz, 1998).

APPENDIX E

“Love Stipulation” – Acknowledge and Agreement

STIPULATION

The Parties stipulate that:

- A. Male employee is presently employed by [the Company] in the position of [position];
- B. Female employee is presently employed by [the Company] in the position of [position];
- C. Female employee is not presently, and has never been, under the direct supervision of male employee. Although the professional obligations and work responsibilities of male employee and female employee occasionally involve interaction on a professional level, the regular assignments and job tasks of male employee and female employee do not require, necessitate or provide occasion for such interaction;
- D. Male employee and female employee each, independently and collectively, desire to undertake and pursue a mutually consensual social and/or amorous relationship (“Social Relationship”) with the other;
- E. Male employee’s desire to undertake, pursue and participate in said Social Relationship is completely and entirely welcome, voluntary and consensual and is unrelated to the Company, male employee’s professional or work-related responsibilities or duties, or male employee’s and female employee’s respective positions in the Company or business relationship to each other . As of the date of this Acknowledgment and Agreement is executed by male employee, male employee agrees that nothing in any way related to, stemming from, or arising out of his relationship with female employee, be it their business-related interaction or their Social Relationship, constitutes, has resulted in, or has caused a violation of the Company’s Sexual Harassment Policy or any law or regulation;
- F. Female employee’s desire to undertake, pursue and participate in said Social Relationship [repeat paragraph E above, vice versa, to cover female employee];
- G. Male employee has entered into said Social Relationship after having discussed in depth with female employee the ramifications and implications of entering into a Social Relationship with a co-worker of female employee’s professional position and after having the opportunity to discuss such matters with counsel of choice or any other person of his choosing;
- H. [repeat paragraph G above, vice versa, to cover female employee];

[APPENDIX E continued]

## AGREEMENT

1. Male employee and female employee have, after reading this Acknowledgment and Agreement, carefully reviewed the Company's Sexual Harassment Policy, a copy of which is attached hereto. Male employee and female employee understand and agree to abide by and be bound by said Policy.

[The agreement then requires then requires the signers to notify the company representative witnessing the agreement of any violations of the sexual harassment policy or related laws, or if the relationship is "negatively affecting in any way the terms and conditions" of their employment. But there are other options:]

2. If, for any reason, either employee does not believe that reporting said violation, suspected violation or incident to Company representative would result in a full and fair investigation and remedy, either employee may instead report said violation, suspected violation or incident to the Director of Human Resources of the Company. Said report may be written or verbal and should include details of the incident and names of witnesses.
3. The Company shall immediately and impartially investigate said violation, suspected violation or incident and take any and all appropriate remedial action, up to and including termination, pursuant to established Company policy and law. Remedial action will be commensurate with the circumstances. Appropriate steps will also be taken to deter any future violations or incidents.
4. Male employee and female employee understand and agree that conduct or speech in the workplace which is sexual or amorous may be objectionable or offensive to others. Therefore, male employee and female employee agree not to engage in such conduct on Company property or when performing work-related tasks in public areas. Such prohibited conduct includes, but is not limited to, the following: holding hands or touching in an affectionate or sexually suggestive manner; kissing or hugging; romantic or sexually suggestive gestures; romantic or sexually suggestive speech or communications, whether oral or written; and display of sexually suggestive objects or pictures.
5. Male employee and female employee acknowledge and agree that he and she, respectively, has the right and ability to end said Social Relationship at any time without repercussion of any work-related nature, and without retaliation of any form by the other.
6. While the Social Relationship continues male employee and/or female employee will not request, apply for, seek in any way, or accept a direct supervisor or reporting relationship by or between female employee and male employee.

[APPENDIX E continued]

7. Male employee and female employee have executed and agree to be bound by the Company's Agreement to Abide by Arbitration Procedure which shall set forth the exclusive remedy for, and shall constitute the exclusive forum for resolution of, any and all disputes which arise or may arise out of the Social Relationship and any claims of harassment, discrimination or retaliation by or between male employee and female employee;
8. The Parties, having read all the foregoing, including attachments, and having been notified of the right to seek the advice of counsel and having understood and agreed to the terms and conditions of the Acknowledgment and Agreement, do hereby execute said Acknowledgment and Agreement by affixing their signatures hereto.

(Kuntz, 1998).