

## The Debate Over the Prohibition of Romance in the Workplace

C. Boyd

**ABSTRACT.** This article examines why an organization might wish to manage workplace romance, and describes a number of alternative approaches to managing dating. At first sight the ethics of dating bans balances the need to protect female employees from harassment against employee rights to privacy and freedom of association – a rights versus rights issue. However, dating bans seem not to be directed at protecting female employees from harm, but rather protect employers from sexual harassment liability claims – an employer self-interest versus employee rights issue. This article advocates a consequentialist approach to the problem, via the factoring in of other harms caused by prohibiting workplace romance. Given that most workplace romances end up in marriage or long-term partnerships, a ban on workplace romance is argued to be antisocial. The incidence of sexual harassment is very low in comparison to the number of long-term relationships initiated in the workplace. This article concludes by citing examples of firms that encourage romance, showing that is feasible to manage any resulting problems within these firms' existing conflict of interest and sexual harassment rules.

**KEY WORDS:** dating ban, divorce, marriage, office romance, sexual harassment, workplace romance

Every couple of months or so the press reveals how yet another senior executive has lost his or her job because of a romantic entanglement.

In 2007 the American Red Cross fired its President because of a personal relationship with a subordinate, and the President of the World Bank resigned because of a conflict of interest arising from his relationship with an employee. In 2005 the President and CEO of Boeing was fired because of an “improper relationship” with a female Boeing executive.

Female executives have also fallen from grace. Julie Roehm, Wal-Mart's SVP of Marketing Communication was fired in 2006, accused of having an

affair with a junior executive. Suzy Wetlaufer was promoted briefly to be Editor-in-Chief of the *Harvard Business Review* before she was forced to resign in 2002 for having an affair with Jack Welch (CEO of General Electric) while preparing an interview with him for the magazine. Ironically, Wetlaufer had previously written an *HBR* case study about the ethical problems caused by a philandering CEO (Wetlaufer, 1999).

Not every senior office fling leads to a resignation, however. Like Bill Clinton before him, the British Deputy Prime Minister John Prescott was not forced to step down from his senior political position after his secretary disclosed in 2006 that they had carried on a 2-year extra-marital affair.

One recent workplace romance may have been the cause of the loss of two lives. On March 22, 2006 the 8800-ton British Columbia Ferry *Queen of the North* ran aground and sank while navigating the narrow and hazardous Inside Passage south of Prince Rupert. Alone together on the bridge were the male Fourth Officer and the female Quartermaster, who were known to have had a prior recurrent relationship. No course corrections or speed changes were made for a period of 30 min before the ship hit the northeast side of Gil Island (Transportation Safety Board of Canada, 2008). The crewmembers on the bridge were fired after refusing to cooperate with subsequent investigations (Heiman, 2007).

Such sexual scandals are not exclusively heterosexual either. In 2007, Lord John Browne, CEO of British Petroleum resigned because of revelations concerning his former male partner. Commenting on press investigations, he said: “For the past 41 years of my career at BP I have kept my private life separate from my business life. I have always regarded my sexuality as a personal matter, to be kept private” (Mufson, 2007).

This article deals with this general ethical issue – the degree to which an employee’s sexual activities are a private matter, and the degree to which an employer may legitimately constrain an employee’s liberty in matters of romance. This article will explore the various ethical arguments for and against the prohibition of workplace romance.

### **What is the phenomenon?**

Some organizations have employment rules that either prohibit or restrict the freedom of their employees regarding dating other employees. These types of rules are a relatively modern phenomenon, although there are some variant examples that have a longer history. For instance, the Toronto School Board (like many others) had a marriage ban from 1925 to 1947, which required all women to resign their teaching positions upon marriage. The military has long had a ban on fraternization between officers and enlisted personnel (Mahoney, 1988). From the nineteenth century into the 1950s, most US States enforced anti-miscegenation laws, prohibiting interracial marriage.

In the modern era the creation of rules regarding workplace romance is clearly a by-product of the growth in the numbers of women in the workforce, a relationship that is noted by all of the writers on the topic. Responding to the fact that women appear to have stimulated this phenomenon Riach and Wilson (2007, p. 81) comment that “There is a danger in some of the discussion that women are seen to be to blame for increasing the problems that managers face”.

The literature on workplace romance falls into several distinct categories. Most obviously there is a stream of writing on the topic in the management literature, pioneered by scholars such as Quinn (1977), Gutek (1985), and Mainiero (1986). Largely overlooked in the management literature is the wealth of analysis of the topic in law journals – indeed workplace romance seems to have been far more extensively debated by legal scholars than by management scholars.<sup>1</sup> There is also some relevant literature in sociology, psychology, history, and, surprisingly, also in economics.

One distinctive characteristic of the literature is that the vast majority originates from the United

States – out of total of some 400 articles on the topic there is just one article from outside the US for every 10 articles originating from the States. The topic of banning workplace romance appears to be very US-centric, reflecting perhaps an inclination for US managers to seek to keep intimacy and emotion out of the workplace (Zelizer, 2009). Additional possible reasons for this topic to be so US-centric include the history of US Puritanism, the general movement toward political correctness in recent decades, the influence of radical feminists in creating workplace sexual harassment laws, and the litigious nature of US society with regard to sexual harassment.

There are several different reasons why an organization might wish to manage workplace romance, and a number of alternative approaches, each of which is explained below.

#### *Outright prohibition based on moral or religious grounds*

In this case the organization feels that it has a moral duty to generally protect its employees from sexuality in the workplace, and specifically to prevent the possibility of adultery by married employees. The prime example of this was the case of Wal-Mart, which in 1993 fired a married employee and another employee who were dating because this romance was inconsistent with its “strongly held belief in and support of the ‘family unit’” (Dworkin, 1997; Schaner, 1994). The married employee was separated and living apart from her husband, but was not yet divorced.

This case is particularly significant, because it led to the first court case prosecuted under New York Labor Law Section 201-d, which prohibits an employer from discriminating against an individual based on a variety of his or her activities outside the workplace, including “legal recreational activities” (Borden, 1996; Rogers, 1997). The case involved an intense debate over whether dating can be considered to be a “legal recreational activity”. Wal-Mart lost the case in the lower court, but succeeded in having the verdict overturned in the Appellate Division.<sup>2</sup>

Wal-Mart eventually apparently changed its employee handbook so as to exclude any reference to married employees in its revised rule on dating,

which now prohibited romance between a superior and a subordinate, no matter what their marital status.

The degree to which this represented a true change of heart on the part of Wal-Mart management is open to question, for in 2005 Wal-Mart was successfully taken to court in Germany for attempting to ban romance between its employees in that country. One European analyst stated his opinion that “The judgment is, above all, a clash of business cultures. The verdict signaled a backlash against American prudishness and political correctness” (Darsow, 2005).<sup>3</sup>

There are few other concrete examples of morality-based bans on employee dating. A number of large firms are rumored to have had morality-based bans at one time or another, but evidence of such bans is hard to come by. Some religion-based school boards may still operate bans on employee cohabitation. It is conceivable that some business organizations with explicit religious origins might have morals-based codes for employee behavior. Morals-based bans on homosexual dating among employees are probably more likely and may be commonly unwritten, although these have not received much publicity outside of the continuing debate over homosexual bans in the US military services.

One author who advocates a ban on employee dating appears to do so from a morality-based perspective which does not have its origins in religion. Loftus (1995) cites the anthropologist Margaret Mead who asked flatly in 1978 for “incest taboos” against dating in the workplace. “A taboo enjoins...,” Mead wrote, “We need one that says clearly and unequivocally, ‘You don’t make passes at or sleep with the people you work with’” (Mead, 1980, p. 55). Anderson and Fisher (1991, p. 177) remarked that “Mead’s ‘organizational incest’ proposition does not appear feasible or desirable given the social milieu of today’s [1991] workplace.”

#### *Outright prohibition based on inherent conflict of interest*

There are specific employment sectors where restrictions on employee romance are grounded in an inherent conflict of interest, for example restrictions on police or prison officers dating known

felons or the children of known felons. Some smaller US police forces tend to have rules forbidding dating between employees, and on employing married couples, justified on the grounds that the partners would inevitably have to be scheduled to work together because the force was small. Hallinan (1992) cites several wrongful dismissal cases involving US police force and other public sector bans on fraternization, while Clarke (2006) cites a similar case regarding a police force in England.

Some employers have rules forbidding dating the employees of competitors or clients. Hallinan (1992) cites a 1984 wrongful dismissal case involving a female IBM employee who was fired because her partner worked for a competitor. She had originally met him when he too was employed by IBM, and continued the relationship when he left the firm. She won her case.

#### *Outright prohibition based on productivity grounds*

The twin themes here are that one or both of the dating couple are assumed to be distracted and inattentive, and consequently spend too much time not working; and that observation of the dating couple will cause coworkers to gossip and be distracted. The overall effect on productivity is considered to be harmful to the firm, and hence employee dating should be banned.

Schultz (2003, p. 2066) describes one origin of this negative view of the effect of workplace romance: “Classical organizational theory holds that sexuality and other ‘personal’ forces are at odds with productivity and out of place in organizational life.” Similarly, Brady and Hart (2006, p. 123) consider that “Self-expression as found in office romances, the decoration of personal space, clothing, styles of language, and so on is often seen as a threat to institutional ideals and objectives.”

A review by Pierce et al. (1996) of the literature on the effect of workplace romance on productivity concluded that “a substantial proportion of the literature indicates that job productivity can be negatively affected by workplace liaisons” (p. 19).

In a later article though, Pierce (1998) reports an empirical study that leads him to conclude that “participating in a workplace romance may not be entirely detrimental to an individual’s performance

at work (p. 1726).” He notes that that previous workplace romance research may have used unreliable measures of work performance, and that there is some literature to support the view that romance can have a positive effect on productivity.

There is no benchmark evidence in the literature of any attempt to compare productivity gains or losses resulting from an employee dating someone inside the firm compared to dating someone from outside the firm, nor compared to other external personal circumstances that might be suspected of affecting an employee’s productivity.

One notable recent example of a gross invasion of employee privacy on the grounds of productivity was the revelation by *Stem* magazine that the German supermarket chain Lidl had employed private detectives and hidden cameras to investigate and report on employee conduct, including their romantic affairs (Boyes, 2008).

#### *Outright prohibition based on fear of sexual harassment lawsuits*

At first sight, this form of prohibition might be thought to be directed at eliminating any sexual harassment that could be perceived to arise from one employee trying to initiate a date with another employee. However, the literature is clear in distinguishing that the employer who bans dating is primarily afraid of sexual harassment claims arising from an *established* dating relationship rather than from any relationship that has not started yet.<sup>4</sup> Any elimination of harassment arising from an employee trying to initiate a date appears to be a secondary effect, and should presumably be covered anyway by the firm’s general sexual harassment policy, outside of any specific ban on dating.

There are two possible outcomes of an established dating relationship that employers fear.

First, there is the possibility that if this workplace romance breaks down, then one partner’s attempts at reconciliation may come to be perceived by the other former partner as harassment. The employer may be held responsible for not protecting that employee from such harassment. Second, if the relationship is between a superior and a subordinate, there is the possibility that one of the subordinate’s coworkers might sue for sexual harassment because of real or

perceived favoritism arising from the relationship (Depalo, 1996; Pierce and Aguinis, 1997).

Although there is little in the way of empirical evidence regarding the relative importance of each of these various reasons for bans on workplace dating, the literature does suggest that fear of sexual harassment lawsuits is the predominant factor, with the increasing costs of sexual harassment litigation probably stimulating this type of prohibition. For example, in The Society for Human Resource Management’s 2002 survey of workplace romance, 95% of HR professionals cited “potential for claims of sexual harassment” as a reason to ban or discourage workplace romance, whereas the second most cited reason, “concerns about lowered productivity by those involved in the romance,” was cited by just 46% (SHRM, 2002).

#### *The specific case of the prohibition on dating between superior and subordinate*

The literature reports that bans on dating between employees at different levels of an organizational hierarchy are more common than bans on dating applied to all employees. The prime reason for such a ban is the fear of the abuse of the power differential between superior and subordinate, and, as noted above, the subsequent potential for sexual harassment claims.

There is an additional productivity element that is part of the rationale for a ban on hierarchical workplace romances: there is fear of a conflict of interest arising from such romances such that coworkers lose productivity because of resentment of any preferential treatment given to the subordinate partner in the romance (Kramer, 2000).

Hymowitz and Pollock (1998) cite firms such as IBM, Staples, AT&T, Corning, and Xerox as examples of firms that have had historical bans on hierarchical romance, but which have since dropped such bans.

#### *Legal arrangements based on fear of sexual harassment lawsuits: “The love contract”*

Recognizing that a complete ban on romance may be impossible to effect, a number of firms have

resorted to a legal approach to protect themselves from any adverse outcomes of workplace romance. They have introduced a consensual dating agreement which has come to be colloquially known as a “love contract”, or alternatively as a “cupid contract” (Economist, 2005), or as a “dating waiver” (Nejat-Bina, 1999). This requires that a dating couple sign a document affirming that their workplace relationship is consensual, that they will not engage in favoritism, and that neither will take any legal action against the employer or each other if the relationship founders.

Tyler (2008) notes that the fear of the relationship going sour and the firm being hit with a harassment suit is the motivation for the use of such contracts. She quotes an employment law attorney: “Love contracts are a relatively painless way to mitigate risk of unlawful harassment liability. They aren’t bullet-proof, but it is more likely the [judge] will believe [the relationship was] consensual if it is in writing” (p. 42).

The topic of love contracts is one that has been raised in the business law practitioner media with increasing frequency. Kuntz (1998), Schaefer and Tudor (2001) and Wilson et al. (2003) provide examples of specimen contracts. Kramer (2000) and others have questioned love contracts and other variant “date and tell” policies as possible violations of the privacy rights of employees, forcing them to reveal otherwise private information.

### **The ethical issues involved in banning romance**

At first sight the calculus of the overall ethics of banning romance appears to be relatively simple: does an employer’s self interest in banning or restricting workplace romance coupled with the protection of some employees from harm counter-balance the general workforce’s consequent loss of rights of privacy and freedom of association?

One distinguishing aspect of the rights of dating couples in the workplace is the fact that, unlike other employee rights issues such as gay spousal benefits, or racial or gender equality, there is no lobby group that champions the rights of lovers in the workplace.<sup>5</sup> Is this right any less because it has no cohesive lobby group arguing for its position?

Speaking on another issue, one eminent academic sums up the general ethical dilemma of dating bans as follows: “To impose the burden of abstinence raises questions – how great should the restriction on liberties be to accommodate the vulnerable?” (Abraham, 2006).<sup>6</sup>

In the case of an organization instituting a dating ban, which party is being protected by the ban? Who exactly are “the vulnerable”? Whose rights are being defended? There are three possibilities.

#### *Protecting the employer*

For the employer, the benefits of banning romance appear to be primarily financial and administrative: there is a presumed (but contentious) net improvement in productivity plus a reduction in costs from sexual harassment suits arising from romances gone wrong, less the cost of replacing employees who may be fired for violations of a no-romance rule.

Various surveys of US case law regarding employee claims for wrongful dismissal arising from dating bans consistently reveal that the courts have largely sided with the employer:

The privacy rights of employees typically do not prohibit employers from acting as the dating police by implementing or enforcing a policy against romantic relationships in the workplace. In many, if not most instances, the employer’s legitimate business interests in maintaining a peaceful and productive work environment and avoiding liability outweigh an employee’s right to privacy. This has proved to be especially true in the context of an employment relationship in the private sector. (Wilson et al., 2003)

#### *Protecting female employees*

The issue of protecting female employees from male romantic overtures has emerged to be the most contentiously debated topic within the workplace romance literature. It has evolved to be a classic example of the “...two-sided debates ... [that] have indeed dominated contemporary feminist politics ... [and which] have frequently been highly charged and in some instances highly polarizing” (Chancer, 1998, p. 18).

At one extreme some radical feminist scholars have recast the various benefits and harms completely in their ethical calculus of workplace romance. The vulnerable are not considered to be the employer, nor those who might be harassed after a failed romance, but rather are considered to be the female workforce, exposed to possible harm from the initiation of any romantic approach:

As things stand now, we protect the right of a few to have “consensual” sex in the workplace (a right most women, according to the studies, do not even want), at the cost of exposing the overwhelming majority to oppression and indignity at work. Is the benefit to the few so great as to outweigh the costs to so many more? I think not. For my part, I would have no objection to rules that prohibited men and women from sexual relations in the workplace, at least with those who worked directly for them. ... I do not see this as going too far. (Estrich, 1991, p. 860)

Here the harm from harassment via workplace dating is presumed to be at least some high order of magnitude greater than any harm from the denial of privacy rights and of freedom of association produced by a dating ban. For radical feminists such as Susan Estrich, the duty to protect the workforce from harassment trumps all liberty rights in this calculation.

Estrich’s views arise from extending her prior work on the law of rape into the field of sexual harassment: “[t]he very same doctrines, found in rape law but otherwise unique in criminal law, are becoming familiar tools in sexual harassment” (p. 815). She concludes that the “[un]welcomeness” standard measure of the acceptability of a male sexual overture “performs the doctrinal dirty work of the consent standard in rape law, ... [and] shifts the focus from the man to the woman” (p. 830).

Similarly, she considers that any defense against the quid pro quo doctrine (whereby the victim must disprove the validity of any punishment arising from the rejection of rewards such as promotion that may be offered in exchange for sexual favors) “bears an uncanny resemblance to the law’s traditional willingness to protect only the madonna in a rape case, and to brand her more common sister the whore, even though no woman remains a madonna once she has been raped (which is the cruelest irony, or perhaps the point)” (p. 838).

Her viewpoint on banning romance clearly stems from her frustration with the courts’ treatment of women:

The problem with the court decisions, and the attitudes they reflect, is that offensive sexuality is so routinely considered normal, abuse of power acceptable, and the dehumanizing of women in sexual relations unremarkable, that when we (or the courts, at least) see such things at work, it hardly seems a “federal case.” (p. 860)

Other gender-feminists such as Andrea Dworkin and Catharine MacKinnon have expressed their general view that all sexual language and behavior in the workplace constitutes harassment. This places them unexpectedly in the same camp as US neo-conservatives and the religious right who champion the preservation of family values and who idealize the concept of pure and virtuous womanhood (Williams et al., 1999, p. 74). Gayle Rubin has noted this strange emergent alliance: “Feminist rhetoric has a distressing tendency to reappear in reactionary contexts” (1984, p. 298).

Wendy McElroy also notes the unfolding of this new form of puritanism in her remarks about how political correctness has morphed into what she calls sexual correctness:

...somewhere along the line the rebellious joy has drained out of the feminist movement. Instead of celebrating the pleasures of sex, women are now bargained only by its perils: rape, domestic violence, harassment. ... Now women are portrayed as victims of oppression. Gone is the emphasis on independence and spunk. ...A certain go-to-hell spirit has been replaced by a life-is-hell attitude, and with it a strange new puritanism has gripped the feminist movement. (McElroy, 1996, p. 6)

McElroy is one of the “pro-sex feminists” or “anti-censorship feminists” who “argue that women are oppressed by restrictions on sexual expression” (Williams et al., 1999, p. 74). She assesses the impact of US sexual harassment law as follows:

The issue of sexual harassment has prompted a politically correct inquisition, with the goal of rooting out and punishing men who express attitudes deemed to be improper towards women. Its casualties are freedom of speech, the right to privacy, and the mechanism of

the free market. ...The law must not be used to enforce a feminist standard of virtue or to advance a political agenda that views men as the natural enemy of women. (McElroy, 1996, p. 62)

Some pro-sex feminists (such as Betty Dodson<sup>7</sup>) do not engage in such complex political debate, but merely advocate the freedom of women to have sexual relations with whomever they want in whatever social context, thus implicitly opposing dating bans in the workplace.

One particular second-wave feminist, Helen Gurley Brown, went so far as to advocate that female office workers should actively seek sexual relations in the workplace if these were perceived to be in their own best interests. Her books *Sex and the Single Girl* (Brown, 1962) and *Sex and the Office* (Brown, 1964) were multinational best sellers. She went on to edit the highly popular magazine *Cosmopolitan* for 32 years. Strangely, despite the widespread popular consumption and acceptance of her *Cosmo Girl*<sup>8</sup> themes such as “How to Marry Your Boss”, Helen Gurley Brown is ignored in the mainstream workplace romance literature.

Brown’s biographer suggests that Brown has been ignored because of her extreme position within the continuum of feminist viewpoints:

Brown’s particular version of feminism, more likely practiced by single women than by housewives, and by working-class secretaries rather than middle-class students, has largely been left out of established histories of postwar feminism’s emergence and ascendance. ... Brown’s playful approach put off many serious-minded feminists of her generation and later. Ever the optimist, she chose to see pleasure where others saw danger, allies where others saw oppressors, and opportunity where others saw obstacles. (Scanlon, 2009, p. x, xiii)

In her excellent analysis of Helen Gurley Brown’s guidance to female employees on sexual emancipation, Julie Berebitsky (2006) provides an overview of the various prior advice manuals that sought to direct women’s workplace behavior in the first half of the twentieth century:

... this advice reaffirmed existing gender ideology that constructed men as rational, impersonal, and natural-born leaders and women as emotional and personal followers. Many of the writings [that I have] examined

here acknowledged the existence of the office Don Juan or the contemptible “Felix the Feeler.” Yet they painted such men as aberrations and nuisances, characterizations that in no way reflected on men’s natural and normative ability to lead. (p. 104)

Berebitsky notes that it was “in this contradictory world of advice manuals that downplayed sex at work and popular culture that talked it up [especially in the movies] ... that Brown sought to reeducate women on workplace sexuality” (p. 106).

According to Berebitsky, Brown’s ideas were considered to be intellectually indigestible for a number of complex reasons:

In the minds of many critics Brown’s man-pleasing behavior was unnatural because it was not a sign of female abnegation or submission but a calculated strategy of self-interest. Brown presented her strategy at a time when social critics were already wringing their hands about the decline in American manhood (p. 110). ... Her position also potentially undermined faith in corporate capitalism, since it exposed the irrationality of its inner workings (p. 117). ... Brown, in short, called into question the cultural belief that men, because their rationality is superior to women’s innate emotionality, are the “natural” leaders of business. In Brown’s view the fact that men on occasion could not control their sexual desires made them manlier, but this construction of virile manhood rested uncomfortably beside the ideal of corporate masculinity. (p. 117)

Helen Gurley Brown’s view of the working girl as a sexually liberated empowered free agent (later to be popularized in the hit TV show *Sex and the City*) stands in stark contrast to the Dworkin/MacKinnon view that the workplace should be completely desexualized.

We are thus faced with having to determine an appropriate ethical evaluation of workplace dating bans in a context where one group of feminists is vehemently in favor of such bans, whereas another group of feminists is vehemently against such bans.

The polarized positions of gender-feminists versus pro-sex feminists have been well assessed as follows:

Both positions, in their extreme forms, are untenable. Sexual relationships at work are not always liberating and mutually fulfilling, nor are they always sexually harassing and harmful. Individuals can and do make

distinctions between sexual harassment and assault on the one hand, and pleasurable, mutually desired sexual interactions and relationships on the other. (Williams et al., 1999, p. 75)

The implication here is that there is no need to throw the baby out with the bathwater by instituting dating bans as a policy for preventing sexual harassment – if other sexual harassment policies can effectively police and eliminate such behavior, then dating can be allowed. How successful have such other sexual harassment policies been?

#### *Protecting the harassed ex-partner*

At first sight it would seem that a dating ban would be primarily designed to protect employees who might be harassed after a workplace romance has failed. However, the literature makes it clear that the employer is not intent on reducing the *actual harm* caused by sexual harassment, but rather, the employer is intent on reducing the costs of any litigation that may arise from post-romance sexual harassment.

If dating bans (and indeed wider sexual harassment policies) enacted by employers were actually sincere attempts to prevent harm to female employees, then one might expect to see some parallel policies along similar lines. One UK legal scholar has some strong doubts about the sincerity of US firms in this regard: “Employers in the USA have not willingly embraced other policies which would further sex equality at work, such as maternity rights or equal pay” (Clarke, 2006, p. 350).

If corporate sexual harassment policies are not sincere attempts to mitigate harm to female employees, then what are the origins of such policies? Here is one view, which is typical of the modern view expressed in US law journals:

US employers, intent on inoculating themselves against the crippling costs of sexual harassment lawsuits, think they have little choice but to encourage a peculiarly asexual form of office intercourse by insisting on regular mandatory sexual harassment training. ... [They] can be forgiven for making that calculation. The US Supreme Court has given them little choice. In two recent cases, it encouraged the explosion of an industry of sexual harassment trainers by providing a

safe harbor from punitive damages for employers who educate their employees and have anti-harassment policies; and by allowing employers to build part of an “affirmative defence” against sexual harassment suits if they can prove that they took “reasonable care” to prevent and correct bad behavior. (Waldmeir, 2006)

According to this theory, sexual harassment training has evolved to become an ornate administrative display which has the appearance of concern to protect employees from harm, but which at the core is expedient in that it mitigates employer liabilities in any future court cases.

The degree to which sexual harassment training has evolved to become an elaborate charade in the United States supported by a self-serving “sexual harassment training industry” has been discussed by a number of eminent legal scholars, including Bisom-Rapp (2001) and Rhode (2006). Dating bans appear to be open to the same criticism that they could be a self-serving charade for some firms, benefitting the employer rather than protecting the employee.

This raises the interesting philosophical issue of the ethical merit of corporate policies that ostensibly protect employees from harm, but which primarily protect the employer. Are they any less ethical than similar policies enacted by employers who are sincere in their wishes to protect their employees from harm? Was Groucho Marx right when he supposedly said, “The secret of life is honesty and fair dealing. If you can fake that, you’ve got it made!”?

I would argue that there is a difference between a “fake” sexual harassment policy and a sincere policy, in that a sincere employer might want to take some additional elements into consideration when thinking about instituting a dating ban. These elements, I propose, arise from evaluation of a consequentialist approach to this ethical dilemma. A utilitarian analysis provides some additional insights that may tip the balance toward the allowing of workplace dating.

#### **Marriage versus harassment as an outcome of workplace romance**

Pierce and Aguinis (2009) cite data indicating that there are 10 million<sup>9</sup> new workplace romances a year in the US compared to an average of 14,200



sexual harassment claims per year, an incidence of one harassment case per 704 romances. Given that only a proportion of harassment claims arise from failed romances, the incidence of romance-related harassment may be as low as 1 in 3-to-5000 romances. They note that very few of these harassment cases (just 51 in a 24-year period) actually ended up as federal or state court cases.

Harassment is not the only possible outcome of a workplace romance, however. An American Management Association survey revealed that 44% of workplace romances led to marriage, while another 23% led to a long-term relationship that either continues or has since ended (AMA, 2003). Just 33% of respondents reported that office dating led to short-term relationships.

It should really not be surprising that some two-thirds of office romances end up as long-term relationships: one book that promotes office dating states that “Work-based romances develop gradually over months and years, allowing people to get to know one another instead of rushing to judgments based on first impressions.” (Losee and Olen, 2007) These and other authors claim that the workplace is by far and away the best location to meet a future partner.

The main consequence of a universal ban on workplace romance would therefore be to deny the workplace as the main venue where one might meet one’s future life partner. I would argue that this consequence of the denial of this right of freedom of association produces a greater amount of harm (via the elimination of a lot of happiness) than the harm arising from broken workplace romances, and that therefore workplace romance should not be banned. According to the data above, eliminating 1 sexual harassment claim would imply prohibiting 704 romances, of which roughly 470 would otherwise have resulted in marriage or other long-term relationships.

This is not to suggest that those employees who are prevented from meeting a life partner at work might not find a partner elsewhere eventually – but one implication of my argument is that marriages arising from workplace romances may be more robust than marriages arising from other sources of meeting place. This robustness would arise because of the ability to judge the qualities of a prospective partner over a long period of time at the workplace.

If one substitutes the word “optimal” for the word “robust” in the previous sentences, then this analysis becomes akin to an economist’s argument that workplace-related marriages are more optimal than non-workplace marriages.

Economists have, in fact, written about workplace romance (coldly called “the search process”), but in a rather roundabout way. They have pointed out that the greater the rate of female participation in the workforce, the higher becomes the rate of divorce (McKinnish, 2004; building on the work of Becker et al., 1977). Clearly the main underlying cause of this phenomenon has been the economic emancipation of women via access to their own income, but a secondary cause of increased divorce rates has been the mixing of genders in the workplace.

McKinnish reports that “women and men who work with a larger fraction of members of the opposite sex are more likely to get divorced” (p. 324). This finding is confirmed by a recent Swedish study, which analyzed government data on 37,000 employees across 1500 workplaces:

A person is about 70 percent more likely to divorce if all of his or her coworkers are of the opposite sex and of appropriate age, compared to when all coworkers are either of the same sex, or are too old or too young to be interesting as potential partners. There is no significant difference in effect between the sexes; that is, married men and women are about as susceptible to the influence of those of the opposite sex. This result strongly suggests that the opportunity to find a spousal alternative increases the risk of divorce. (Åberg, 2004, p. 24)<sup>10</sup>

If workplace romance is to be praised for being a source of marriage, then how should we react to this news that workplace romances contribute to the breakup of marriages as well? This adds a further ethical twist to the whole question, especially for those who approach this topic from a strong religious perspective.

I would argue that divorce is a product of female emancipation, and is valued positively by society, as indicated by the general legal acceptability of divorce and the fact that many religions allow it. If workplace romances allow employees to escape from an unsatisfactory marriage and embark on a better relationship, then they have a positive value to society.

Åberg's extensive research about divorce patterns in Swedish workplaces produced some other remarkable findings. She found that among coworkers divorce is contagious – the higher the number of divorcees in the workplace, the higher the divorce rate among other employees. She also found that the availability of unmarried friends of one's own sex (not the opposite sex!) increased one's likelihood of getting divorced: "the risk of marital disruption is about 60 percent higher if all coworkers of the same sex are single as opposed to married. This result implies that the marital status of the same sex is far more important than the marital status of the opposite sex" (Åberg, 2004, p. 24).

There is one robust finding in Åberg's research that is especially fascinating: "If the spouse works in the same workplace, the risk of divorce is dramatically reduced... Married couples who work at the same workplace run only about half the risk of a marital breakup as do other couples. ...this result supports the hypothesis that the risk for divorce is reduced if spouses share the same social context" (Åberg, 2004, p. 21).

### **Should organizations actively promote workplace romance?**

Åberg's finding that couples working in the same location have a 50% lower divorce rate has enormous implications for organizations such as Wal-Mart that perceive a need to act as moral guardians of their employees. To preserve their "strongly held belief in and support of the 'family unit'" Wal-Mart should really have been encouraging workplace romance rather than banning it, a 180 degree reversal of their former policy. The more married couples that Wal-Mart employs at any one location, the lower would be the dissolution of family units in society, according to Åberg's findings.

It is not outlandish to suggest that organizations such as Wal-Mart might actively promote romance in the workplace. A number of firms indeed have exactly this policy. Southwest Airlines, for example, is very progressive on this issue – "we encourage nepotism" – with 2000 of its 35,000 employees being married to each other. Not only are Southwest employees allowed to date each other (including

subordinates) they are even allowed to ask passengers out for a date (Feeney, 2004).

AT&T has seen 8000 couples meet and marry at work out of 115,000 employees. Cummings (2001, p. 57) further describes how "AT&T's public relations department touted [one management-level couple's] relationship, showcasing how well it was managed within AT&T." The firm reports having very few cases of sexual harassment arising from its pro-romance stance. Williams et al. (1999) describe the romance policy of another progressive firm:

Ben & Jerry's hosts winter solstice parties for its employees where it subsidizes hotel rooms to discourage drinking and driving. A personnel manager at the company is quoted as saying, "We expect that our employees will date, fall in love, and become partners." They make no effort to limit personal relationships among employees. (p. 84)

By encouraging marriage and long-term partnerships, these firms are knowingly increasing the probability of nepotism. But these firms are enlightened enough to recognize that married coworkers are not in themselves the problem – it is the possible misbehavior of a small proportion of these married coworkers that may be a future problem, misbehavior in the form of conflicts of interest or favoritism. However, there are many other possible sources of these types of misbehaviors besides nepotism that exist in the firm, and all of them can be dealt with by a generic conflict of interest policy. There is no need to have an anti-nepotism policy so as to exclude married couples from the workplace if a firm has established a good overall conflict of interest policy in the first place.

Similarly, it is not workplace romances themselves that cause problems for employers, but rather the behavioral consequences of a small proportion of them. Low productivity, harassment, and conflicts of interest have other sources in the firm besides workplace romances. If the firm has good policies to deal with these general problems, then there is no need to prohibit one small possible source of them. The social costs of banning workplace romance are just too great, given that firms must already have policies that deal with the wider range of employee behavioral problems to which workplace romances contribute a very small amount.

While the study of workplace romance has seen relatively little in the way of direct empirical analysis, the managerial practices of such pro-romance firms should be much more capable of being studied than has so far been the case with anti-romance firms. Future research may wish to examine the patterns of formal managerial policies and procedures of pro-romance firms, and analyze the various formal and informal outcomes thereof. Such research may pave the way for a more enlightened general approach to the management of workplace romance.

## Notes

<sup>1</sup> For example, just one law journal article on workplace romance by Schultz (2003) is 132 pages long, with 495 footnotes and over 1000 citations. Other relevant law articles are by Mahoney (1988), Estrich (1991), Hallinan (1992), Schaner (1994), Massengill and Petersen (1995), Borden (1996), Dean (1996), Depalo (1996), Rogers (1996), Dworkin (1997), Wolkenbreit (1997), Nejat-Bina (1999), Kramer (2000), Gross-Schaefer et al. (2003), Sugarman (2003), Wilson et al. (2003), Yew and Ruoff (2004), Garcia (2006), Lee (2006), Lobel (2006), Medina (2006), Paul (2006), Rabin-Margalioth (2006), Schultz (2006), Williams (2006), Yuracko (2006), Cohen and Cohen (2007), and Sheridan (2007).

<sup>2</sup> This case may be of particular interest to ethicists because of the irony that New York Labor Law Section 201-d was a law that was apparently originally promoted by the tobacco industry in order to protect smokers from being discriminated against by employers seeking to avoid the higher health insurance cost of employing smokers. See Borden (1996). It was not originally conceived to be a protection of the right to date a fellow employee.

Borden also notes that at the trial Wal-Mart's anti-dating policy was additionally defended as a worker safety measure. Wal-Mart's attorneys argued that adulterous dating would invite violence into the workplace by the hands of jealous spouses. Disturbingly, homicide is the leading cause of death among women in the workplace (Phillips, 1996), and elsewhere attention has been drawn to a possible link between workplace romance and violence (Schaner, 1994; Scott, 2008). The most notorious recent incident of workplace-romance-inspired violence was the 2007 pepper spray attack by NASA astronaut Lisa Nowak on her romantic rival (CNN, 2007). It is highly unlikely that workplace romance itself, as compared to the multitude of social

attachments that each employee has outside of work, is the cause of more than a miniscule proportion of cases of workplace violence. Phillips (1996) notes that the workplace is the unfortunate location for much violence against women because the victim is known to be at a specific physical location during a particular time period each day.

<sup>3</sup> Talaulicar (2009, p. 353) reports the court's decision as follows: "The Land Labor Court Düsseldorf explained that individuals spend a lot of their time at work, that many of their social contacts are shaped by work experiences and that their self esteem will also depend on how they are seen by colleagues and other members of the firm. Meeting colleagues and other members of the firm after work is for the time being a personal matter of the involved individuals. The right to privacy is at the core of human dignity. The ...Court therefore concluded that the [Wal-Mart] code obligations to ban fraternization contradicted the fundamental norms of the German Basic Law (*Grundgesetz*, GG)."

<sup>4</sup> For example, Dean (1996) states that "A predominant motivating factor for employer regulation of employee personal relationships is the fear of sexual harassment liability, arising in particular from coworker relationships that have 'turned sour' (p. 1053)."

<sup>5</sup> The one domain in which there appears to be some form of lobbying regarding open dating rights is in the academic world. In the face of attempts by various US universities to prohibit professors dating students there is at least one web site denouncing the "attempted repression of student-professor consensual sexual relationships". See <http://dankprofessor.wordpress.com/>.

<sup>6</sup> This quote comes from Arthur Schafer, director of the University of Manitoba's Centre for Professional and Applied Ethics, speaking about the peril for some few peanut-sensitive passengers posed by the airlines' prior widespread use of peanuts as an in-flight snack. In the peanut case, of course, this vulnerability means an innocent passenger's possible exposure to death from a peanut allergy, a far more serious circumstance than most negative outcomes from workplace romances.

<sup>7</sup> Details of Betty Dodson's history as a pro-sex feminist can be found at her web site: <http://dodsonandross.com/> and at Wikipedia.

<sup>8</sup> See Ouellette (1999) for a critical review of Helen Gurley Brown's "credo on topics ranging from sex and the workplace to the Cosmo Girl, the fictionalized woman she invented to characterize the magazine's imagined 18- to 34-year old reader" (p. 359).

<sup>9</sup> I personally consider this figure to be almost an order of magnitude too high, and suspect that the annual number of US workplace romances may more

likely be in the range of from 2 to 3 million. My estimate comes from consideration of the following data: (1) comparing the proportion of all marriages that derive from workplace romances with the total number of annual marriages in the US; (2) using Berebitsky's (2006) citation of Alfred Kinsey's 1948 survey of men's sexual behavior which estimated that about half of all married men had at some time committed adultery; and, (3) comparing the annual number of marriages to the size of the US workforce. Even with this lower estimate for the number of annual workplace romances the incidence of post-romance sexual harassment still appears to be low. Using the revised estimate combined with AMA (2003) data, for every 1,000 workplace romances, there are 440 marriages, 230 other long-term relationships, and 330 short-term relationships, of which one or maybe two could result in post-romance harassment.

<sup>10</sup> In a private communication Yvonne Åberg states that the material in this working paper originally appeared in Åberg (2003). Åberg's research is also cited in Shellenbarger (2003).

## Acknowledgment

I wish to thank Isobel Findlay (Edwards School of Business, University of Saskatchewan), William C. Frederick (Katz Graduate School of Business, University of Pittsburgh), my wife Bernice Friesen (artist and writer), and Kim Morrison (Women's and Gender Studies, University of Saskatchewan) for their valuable contributions towards the preparation of this paper.

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Edwards school of Business,  
University of Saskatchewan,  
Saskatoon, SK, Canada  
E-mail: [Boyd@edwards.usask.ca](mailto:Boyd@edwards.usask.ca)

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