Love Contracts in the Workplace

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Abstract

Romance occurs frequently in the modern American office. When all is well, romance may lead to a number of positive outcomes such as increased job satisfaction and performance and enhanced organizational involvement and commitment. Even when the relationship is going well, however, work can be disrupted, conflicts of interest can arise, confidentiality can be threatened, and allegations of bias may create problematic scenarios. When workplace relationships dissolve then accusations of poor judgment, breaches of ethics, favoritism, lost productivity, poor employee morale and reduced team cohesion, unfair career-advancement strategies, sexual harassment claims, and even workplace violence may be precipitated. Such issues have concerned employee relations professionals and have led increasing numbers of firms to institute romance policies and consensual relationship agreements. This paper discusses these relatively recent legal initiatives to protect employers from future sexual harassment, retaliation, and favoritism lawsuits and to ensure that the contemporary workplace continues to be productive and professional.

Love Contracts in the Workplace

Over the last several decades increases in the number of women in the labor force, required hours on the job, work arrangements fostering social contact outside of work, and mixed-gender work teams have characterized the U.S. workplace. Such phenomena have led to higher incidences of workplace romance (e.g., Gutek, 1985; Mano & Gabriel, 2006; Pierce & Aguinis, 2001; Powell & Foley, 1998). Indeed, work appears to be a logical place for romantic relationships to develop because people who work together tend to have similar backgrounds, talents, and aspirations (Fisher, 1994). Interestingly, hierarchical workplace romances are more common than romances between employees of equal rank (Dillard, Hale, & Segrin, 1994; Dillard & Miller, 1988).

Workplace romances are mutually desired relationships involving physical attraction between two employees of the same organization (Pierce, 1998; Pierce & Aguinis, 2003; Pierce, Byrne, & Aguinis, 1996; Powell & Foley, 1998). Nearly 10 million workplace romances develop annually (Spragins, 2004); moreover, about 40% of employees have had one (Parks, 2006). They represent approximately 33% of all romantic relationships in the US (Bureau of National Affairs, 1988) and results from a survey of 617 human resource professionals suggest that their frequency has remained stable or increased in recent years (Society for Human Resource Management [SHRM], 1998). According to an American Management Association Survey on Workplace Dating (2003), 12% of all managers actually married someone they started dating at work. Of the 30% who have dated at work, 44% report their dating resulted in marriage; i.e., 12% of all respondents. Another 23%, or 7% of the total, entered into long-term relationships. Of the 30% who have dated colleagues, half indicated that those dates led to marriage or a long-term relationship. Thus, contrary to popular belief, many workplace romances are sincere, love-motivated, long-term companionate or passionate relationships as opposed to short-lived flings or job-motivated utilitarian relationships (Dillard et al., 1994; Pierce & Aguinis, 2009).

**Benefits Associated with Workplace Romance**

Researchers have identified a number of benefits of workplace romance including better job performance, increased job satisfaction, and enhanced job involvement and organizational commitment. Pierce (1998), for example, found that workplace romance was positively associated with one’s job performance while Pierce and Aguinis (2003) indicated that participating in a satisfying workplace romance was correlated with one’s overall job satisfaction. Studies have also indicated that love-motivated workplace romances were positively associated with female participants’ levels of job involvement (Dillard, 1987) and that participating in a workplace romance was positively related to organizational commitment (Pierce & Aguinis, 2003). Such findings are consistent with Southwest Airlines’ philosophy which encourages workplace romances and is pleased with its matchmaking role because they feel that the romances can lead to enhanced morale and energy at work (Wylie, 2006). In addition to being allowed to date, employees are even permitted to ask out passengers just as long as they are polite and do not do anything devious like use a company database to mine personal information. “We encourage nepotism,” declared spokesperson Linda Rutherford (cited in Feeney, 2004). Ben & Jerry’s is similarly supportive of workplace romance and makes no effort to limit personal relationships among employees. For instance, it hosts winter solstice parties for its employees where it subsidizes hotel rooms to discourage drinking and driving. A human resources manager at the company indicated, “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, p. 34).

**Costs Associated with Workplace Romance**

There appear to be five key areas of potential liability: claims of sexual harassment, consequences of unethical behavior in the workplace, third party claims of sexual harassment, privacy claims, and issues concerning workplace violence. These are discussed in the following sections.

*Claims of sexual harassment*

Workplace romances are not illegal and not typically the target of litigation (Clark, 2006; Schultz, 2003); nevertheless, large numbers of workplace romances end badly (Pierce & Aguinis, 2009) resulting in problematic outcomes for firms. By far, the greatest concern employers voice is that one of the parties—typically the woman (Gutek, Cohen, & Konrad, 1990; US Merit Systems Protection Board, 1994)—or another employee, will charge the company or one of its employees with sexual harassment (Pierce, Broberg, McClure, & Aguinis, 2004). Consider the following evidence: (a) nearly 50% of workplace romances dissolve (Henry, 1995), (b) 24% of 617 human professionals reported that sexual harassment claims occurred in their organization as a direct result of workplace romances (Society of Human Resource Managers [SHRM], 1998), and (c) 26% of 466 human resource professionals and 31% of 557 other employees reported that sexual harassment claims occurred in their organization as a direct result of workplace romances (SHRM, 2002). In addition, recent federal cases have dealt with dissolved workplace romances that resulted in sexual harassment claims supported by the courts (e.g., *Jones v. Keith*, 2002; *McDonough v. Smith*, 2001).

Consider *Ramirez v. Kelly* (1997) as a typical scenario. In this case, a civilian police department employee became involved for several months in a sexual relationship with a police captain who apparently had told her he was divorcing. Upon her learning that the captain was still married, she became upset and claimed that their sexual encounters were rapes. The court rejected her sexual harassment lawsuit, noting sarcastically “[w]hy plaintiff would care about the marital status of a man who is raping and sodomizing her is a mystery” (*Ramirez v. Kelly*, 1997, p. ).

Employers must also be concerned if the alleged sexual advances are “unwelcome,” and “... not whether ... actual participating in sexual intercourse was voluntary” (*Meritor Savings Bank, FSB v. Vinson,* 1986, p. 68). In other words, the conduct must be unwelcome “in the sense that the employee did not solicit or incite it and in the sense that the employee regarded the conduct as undesirable or offensive” (*Henson v. City of Dundee,* 1983, p. 902)*.* This distinction between welcome and unwelcome conduct is crucial if a claim of sexual harassment arises when a subordinate discontinues the romantic relationship, but the supervisor demands to continue the relationship and attempts to use his or her power in the workplace to coerce the subordinate to reconcile (Howard, 1991). Thus, what was once “welcome conduct” becomes “unwelcome,” and may be deemed sexual harassment. In such a scenario “it is important for the victim to communicate that the conduct is [now] unwelcome” (Equal Employment Opportunity Commission [EEOC], 1990).

In *Shrout v Black Clawson Company* (1988), Shrout, a female employee, was temporarily involved in a voluntary consensual sexual relationship with her supervisor. After Shrout ended the relationship, her supervisor attempted to force her to submit to his sexual advances by withholding performance evaluations and salary reviews that were necessary for obtaining salary

increases. The manager also made sexual comments to Shrout, left sexual materials on her desk, touched her intimately, splashed water on her and “looked down [her] blouse and up [her] skirt” (p. ). The court held that this behavior, combined with the employer’s failure to make a reasonable attempt to remedy it, sustained Shrout’s claims of both *quid pro quo* and hostile work environment.

Additionally, the court held in *Fuller v. City of Oakland (1992)* that a previous relationship did not bar the plaintiff’s claim, since, “once [he] understood that his advances

were no longer welcome, his conduct became actionable” (p. ). Thus, an employee may have a *quid pro quo* harassment claim against his or her employer where “submission” to a supervisor’s sexual advances was “made explicitly or implicitly a term or conditions” of employment or, alternatively, “submission to such conduct . . . is used as the basis for employment decisions affecting” his or her employment.

Finally, it is important to note that sexual harassment claims filed as a result of a dissolved workplace romance are not always upheld in court. The outcome of these types of cases may depend, in part, on whether the harassing behavior was a function of gender discrimination as opposed to merely a personal animosity arising from the dissolved romance (e.g., see *Grandquest v. Mobile Pulley & Machine Works*, 2001; *Pipkins v. City of Temple Terrace, FL*, 2001; *Succar v. Dade County School Board*, 2000*).* Nevertheless, the concern about sexual harassment complaints stemming from dissolved workplace romances remains problematic.

*Unethical behavior in the workplace*

Most firms strive to achieve ethical conduct among their employees (Trevino, Weaver, & Reynolds, 2006). One means of examining ethical behavior involves Jones’ (1991) framework which indicates that an ethical or moral issue exists when an individual’s voluntary actions may harm or benefit another person. Based on this definition, an employee’s participation in romantic behavior (or sexually harassing behavior) at work constitutes a moral act (Bowes-Sperry & Powell, 1999; O’Leary-Kelly & Bowes-Sperry, 2001). According to Jones (1991), then, some types of workplace romances are perceived as unethical relationships—for example, a married supervisor who has an extramarital fling with a subordinate or a subordinate who violates a company policy by having a romantic relationship with his or her supervisor solely to benefit their career (Mainiero, 2005). One study that examined approaches to career success found that some subordinates may try to create unfair advantages for themselves by participating in a hierarchical workplace romance as a covert career-advancement strategy (Harris & Ogbonna, 2006).

There is also some evidence that workplace romances are risky for certain groups leading to charges of disparate impact. From a female participant’s perspective workplace romances are risky because they can affect investigators’ (e.g., HR staff) decisions about ensuing harassment claims. Specifically, a prior history of romance between a male accused of harassment and a female complainant can lead investigators to judge the accused as less responsible and the complainant as more responsible for harassing conduct (Pierce, Aguinis, & Adams, 2000; Summers & Myklebust, 1992) thus affecting their judgments of responsibility and recommended actions (Pierce et al., 2004). With regard to marginalized groups, Giuffre and Williams (1994) found that restaurant food servers eagerly engaged in a great deal of flirtatious, sexual bantering with coworkers of their same race/ethnicity, class, and sexual orientation, but they defined identical behaviors by coworkers of different backgrounds as sexual harassment. The widespread use of double standards in assessing sexual harassment may suggest that it is not only the sexual behavior per se that some workers find objectionable, but also characteristics of the individual who engages in the behavior. This study raises concerns that already marginalized groups (racial/ethnic minority members; gays and lesbians; working class men) may be unfairly singled out and targeted for enforcement of the sexual harassment policies that exist today in many workplaces.

*Third party claims of sexual harassment based on favoritism*

Supervisors have been known to show favoritism toward subordinate lovers by providing lighter workloads, promotions, pay raises, or other special benefits that create dissension in the workgroup (Mainiero, 1986; Pierce et al., 1996). Sometimes, coworkers of the subordinate may bring third party claims based on a supervisor’s real or perceived preference toward his or her lover. While such claims alleging disparate treatment and hostile work environment usually fail, claims regarding favoritism appear to be increasing (Willert & Pedersen, 2006). The EEOC’s position is that Title VII does not prohibit isolated instances of preferential treatment based upon consensual romantic relationships. An isolated instance of favoritism toward a partner in a workplace romance 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. A female charging party who is denied an employment benefit because of such sexual favoritism would not have been treated more favorably had she been a man nor, conversely, was she treated less favorably because she was a woman (*Miller v. Aluminum Co. of America*, 1988; *DeCintio v. Westchester County Medical Center*, 1986). However, the EEOC has indicated that “widespread sexual favoritism,” as opposed to “isolated sexual favoritism,” may give rise to actionable claims:

If favoritism based upon the granting of sexual favors 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 were granted favorable

treatment willingly bestowed the sexual favors. In these circumstances,

a message is implicitly conveyed that the managers view women as

“sexual playthings,” thereby creating an atmosphere that is demeaning

to women. Both men and women who find this offensive can establish

a violation if the conduct is “sufficiently severe or pervasive ‘to alter

the conditions of [their] employment and create an abusive working

environment’” *Vinson*, 477 U.S. at 67... (EEOC, 1990b).

The case of *Broderick v. Ruder* (1988) illustrates how widespread sexual favoritism can be found to violate Title VII. In *Broderick* a staff attorney at the Securities and Exchange Commission alleged that two of her supervisors had engaged in sexual relationships with two secretaries who received promotions, cash awards, and other job benefits. Another of her supervisors allegedly promoted the career of a staff attorney with whom he socialized extensively and to whom he was noticeably attracted. In addition, there were isolated instances of sexual harassment directed at the plaintiff herself, including an incident in which her supervisor became drunk at an office party, untied the plaintiff's sweater, and kissed her. The court found that the conduct of these supervisors “created an atmosphere of hostile work environment” offensive to the plaintiff and several other witnesses. It further stated that the supervisors’ conduct in bestowing preferential treatment upon those who submitted to their sexual advances undermined the plaintiff's motivation and work performance and deprived her and other female employees of promotions and job opportunities (*Broderick v. Ruder*, 1988, p. 1278). While the court in *Broderick* grounded its ruling on the hostile environment theory, it is the EEOC’s position that these facts could also support an implicit *quid pro quo* harassment claim since the managers, by their conduct, communicated a message to all female employees in the office that job benefits would be awarded to those who participated in sexual conduct. Likewise, consider the supervisor’s behavior in *Spencer v. General Electric* (1988) who engaged in virtually daily horseplay of a sexual nature with female subordinates. This behavior included sitting on their laps, touching them in an intimate manner, and making lewd comments. The subordinates joined in and generally found the horseplay funny and inoffensive. With the exception of one incident, none of the horseplay was directed at the plaintiff. The supervisor additionally engaged in consensual relations with at least two of his subordinates. The court found that the supervisor’s conduct would have interfered with the work performance and would have seriously affected the psychological well-being of a reasonable employee, and on that basis it found a violation of Title VII. Thus, *Spencer* supports the proposition that pervasive sexual conduct can create hostile work environments for those who find it offensive even if the targets of the conduct welcome it and even if no sexual conduct is directed at persons bringing the claim.

Finally, in *Miller v. Department of Corrections* (2005) the court held that a wide-spread understanding within a workforce that sexual relations with manages might provide workplace advantages may create a sexually hostile environment. In *Miller*, two plaintiff female prison guards allege that three co-workers were having sexual relations with the warden. The co-workers allegedly advised plaintiffs that their relations with the warden were resulting in favorable scheduling and promotions. Indeed, the warden had intervened to secure a promotion for at least one of these alleged love interests, against the recommendations of a review panel. The warden later favored an alleged love interest over one plaintiff, despite the latter’s apparently superior qualifications. The warden was thrice observed fondling one of the co-workers at work-related events. When one plaintiff complained about the favoritism, she allegedly suffered retaliation.

Plaintiffs sued the Department of Corrections, claiming that this apparent favoritism imposed upon them a sexually hostile work environment and the California Supreme Court ruled that suggestions of favoritism based upon sex may become sufficiently pervasive to create a sexually hostile environment for otherwise unaffected co-workers. The court explained, “whether or not [the warden] was motivated by personal preference or by discriminatory intent, a hostile work environment was shown to have been created by widespread favoritism” (*Miller v. Department of Corrections*, 2005, p. ).

In summary, these cases reveal that employees might suffer sexual harassment by virtue of their co-workers’ consensual relationships, even if the plaintiffs have not themselves been sexually propositioned. These rulings substantially expand potential employer liability and suggest that employers will want to more closely examine the implications of consensual relations between managers and their subordinates.

*Right to privacy claims*

Employee challenges to employer fraternization rules have relied on the common law tort

of invasion of privacy in order to invoke a state and/or federal constitutional right to privacy. For example, in *Rogers v. International Business Machines Co.* (1980) a supervisor was fired for having an alleged relationship with a subordinate that “exceeded normal or reasonable business associations, [and] negatively affected the duties of his employment” (p. ). The employer had no policy or rule prohibiting such relationships, and the manager claimed that his termination was improper because it was predicated on an investigation of a personal matter, which invaded his right of privacy. The court concluded that the employer acted reasonably and cited what it described as the employer’s legitimate interest in “preserving harmony among its employees and ... preserving normal operational procedures from disruption” (quoting *Geary v. U.S. Steel Corp*., 1974, p. 178). The court also rejected the plaintiffs’ tort claim for invasion of privacy. It underscored the fact that the employer had limited its investigation to interviews with employees and to an examination of company records, and it concluded that the employer had not intruded on the plaintiff’s “seclusion or private life” (quoting *Geary v. U.S. Steel Corp*., 1974, p. 178). Consider also the case of *Watkins v. United Parcel Service* (1992) in which the firm fired a manager for violating the company’s anti-fraternization policy by having a romantic relationship with a company truck driver. The manager claimed the company’s conduct was highly offensive because his personal relationship with the driver did not concern the company because it occurred primarily off the job. He also alleged that he and the co-worker had contemplated marriage and that his discharge prevented that marriage from happening. A U. S. District court, however, rejected the claims and found at least partial support for its decision in the manager’s failure to provide, or even allege, an “utterly reckless” invasion by the company, such as snooping in his bedroom or electronically wiring his workspace. Thus, 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, Filosa, & Fennel, 2003).

In summary, the constitutionally guaranteed right to privacy does not appear to protect individuals involved in intimate relationships at work (Hallinan, 1993). In fact, employers can require employees to disclose information about intimate relationships that involve actual or perceived conflicts of interest. Failure to disclose can be legal grounds for discharge (Segal, 1993). Additionally, courts have demonstrated sympathy for the plight of employers facing problems arising from fraternization between employees. They recognize that workplace romances can have a tangible and often negative impact on a company’s ability to achieve legitimate business objectives. At the same time, however, courts maintain a clear respect for the individual privacy rights of employees and will not allow those rights to be invalidated beyond reason (Dworkin, 1997). Nevertheless, employees, particularly in the private sector, have few workplace privacy rights, and in order to prevail on an invasion of privacy claim, employees must have a reasonable expectation of privacy in the particular matter. As such, employers should give employees actual notice of any policy regarding office romantic relationships, whether through written policy or in a training session, to decrease or eliminate liability on such a claim.

*Workplace violence*

Another risk for organizations happens when such relationships culminate in break-ups at work that are disruptive to participants’ and coworkers’ job performance (Pierce & Aguinis, 1997, 2001; Powell, 2001), including workplace violence. Accordingly, some employers cite fear of workplace violence as a justification for regulating employee relationships (Dean, 1996).

Considering the prevalence of intimate partner violence on work premises (O’Leary-Kelly, Lean, Reeves, & Randel, 2008) organizations must be prepared to manage retaliation violence (e.g., stalking, physical abuse that stems from soured romances). McDonald (2000) provides some chilling examples in his aptly named article, “Failed Workplace Romances: If You’re Lucky You’ll Just Get Sued.” He specifically cites the fatal-attraction-like case of *Saret-Cook v. Gilbert, Kelly, Crowley & Jennett*, 74 Cal. App. 4th 1211 (1999) involving a sexual harassment claim by a former paralegal suing after the end of her affair with a firm partner and the accompanying bizarre behavior that virtually destroyed the lives of the two people involved.

Employers may legitimately fear that “an office romance might result in a job-site domestic dispute and the potential for workplace violence” (Schaner, 1994, p. 52). Plainly, a jealous or scorned romantic partner could bring a domestic dispute into the workplace. Such fear may be well founded: of the 700 to 1,100 workplace homicides annually in the United States, an estimated 31 percent involve intimate or personal relationships that have gone bad and resulted in a sense of betrayal (Singleton, 2008). Employees who feel that they have a positive, trusting romantic relationship with their manager have more extreme negative reactions to a violation of trust than do employees who do not have a trusting relationship in the first place (Morrison & Robinson, 1997). Their negative reactions are likely to be much stronger and more likely to include anger and other negative emotions (Eddleston, Kidder, & Litzky, 2002). Thus, trust is a double-edged sword: the presence of trust can enhance the relationship and increase performance but may also lead to more severe deviant behaviors when violated likely leading to the increased occurrences of deviant behaviors in the workplace (Litzky, Eddleston, & Kidder, 2006), including workplace violence.

In summary, despite the benefits of workplace romance indicated earlier employees usually are advised to avoid sexual relationships, in part to protect themselves and their organization against charges of sexual harassment and in part to enhance their productivity and economic success. Some writers have even provided check-lists to aid individuals in deciding whether or not to pursue a sexual relationship on the job, as in the following example provided by Powell (1993, pp. 144-145):

1. Be aware of office norms about romance before acting.
2. Evaluate the potential risks to career advancement.
3. Don’t mess around with a boss—or mentor.
4. Maintain strict boundaries between personal and professional roles.
5. Clarify at the start exactly what you want from the relationship.
6. Identify the possible areas in which partners may become competitive.
7. Anticipate possible conflict-of-interest situations.
8. Be sensitive to the reactions of colleagues and management.
9. Remember that the romance will not remain a secret for long.
10. Discuss “contingency plans” at the start of the romance.

While such exhortations can be helpful, organizations and their workers need more specific directions for addressing issues of workplace romance.

**Addressing Workplace Romance: Policy and Contract**

All too frequently, the public debates sparked by office romance have been polarized between those who argue that sex does not belong in the workplace, and those who argue that virtually “anything goes” as far as consenting adults are concerned (Stan, 1995). 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).

Because office romance can have both positive and negative consequences, managers have a vital role to play: fostering positive outcomes while intervening to minimize any negative repercussions. The management and legal literature generally support companies’ power to regulate these relationships (Williams et al., 1999) and based on these considerations two key approaches are offered here: 1) instituting a clear, written policy, limiting workplace romance (especially between supervisors and subordinates) and uniformly enforcing it; and 2) initiating a consensual relationship contract.

*Workplace Romance Policy*

According to a SHRM survey, more than 70% of U.S. organizations do not have a written policy on workplace romance (Parks, 2006). In fact, some companies choose not to put their workplace romance rules in writing, and instead rely on a form of quiet persuasion. These companies believe that despite having no written rules, their employees understand that as a matter of corporate culture or implied policy that certain relationships (e.g., supervisor-subordinate) are strongly discouraged or will not be permitted (Kramer, 2000-2001). However, an unwritten policy also carries a greater risk of inconsistency if the business is not careful in applying it or does not keep adequate records. It may also be less effective overall in accomplishing the intended goal of addressing workplace romance because employees are less likely to avoid such relationships or notify management if there are no apparent ramifications. Furthermore, absent a clear policy, employees who become involved in such relationships will lack a clear understanding of the company’s position on the matter and will be more likely to attempt to maintain secrecy until the situation has become problematic.

Because of the substantial risk of personnel disruption, litigation, and potential liability, employers should therefore carefully formulate an enlightened approach to properly manage workplace relationships. In the last several years, a growing number of organizations, including large corporations, public employers, and even law firms, have adopted express written policies concerning office relationships, especially between supervisors and those employees whom they supervise. An emerging consensus among business academics, labor and employment law attorneys, human resource management specialists, training consultants, and other personnel professionals encourages and recommends these policies (Kramer, 2000-2001; Schaefer & Tudor, 2001). Employers who shun any kind of policy usually fear lawsuits by affected employees more than the frequent risk of litigation inherent in these relationships. However, since courts have almost universally upheld narrowly tailored and consistently enforced employer policies on this subject, their benefits generally outweigh the perceived risks (Kramer, 2000-2001).

The best approach to drafting an office romance policy requires striking an appropriate balance between the employees’ rights to privacy and employer noninterference in their personal

off-duty behavior and the employers’ legitimate interests in preventing sexual harassment, avoiding or minimizing litigation and liability, and promoting a positive and conflict-free work environment with high morale and maximum productivity. A clear written policy on this subject, promulgated as an integral part of a general sexual harassment policy, should strongly discourage-but not explicitly prohibit-interoffice supervisor-subordinate relationships. Such a policy should mandate timely and confidential disclosure of the existence of these relationships to management. So advised, employers should solicit input from the employees involved to formulate an appropriate response. A well-drafted policy will, at a minimum, attempt to avoid any negative impact on either employee’s career, as well as on the company, while permanently discontinuing the decision-making authority of the supervisory employee over the subordinate employee.

To communicate an organization’s values and ethics code to employees, a written workplace romance policy should at minimum state and justify the following: 1) types of romances that are *permitted* (e.g., romances between peers from different departments, 2) types of romances that are *discouraged* (e.g., extramarital romances), 3) types of romances that are *prohibited* (e.g., direct-reporting supervisor-subordinate romances, and 4) actions management will take it employees violate any of the terms in the policy. A further discussion of the first three recommendations requires some elaboration. Some romances are condoned; i.e., those between peers. This recommendation acknowledges the reality of the current workplace. With

employees working longer hours and having similar interests, work appears to be a logical place for romantic relationships to develop. This can lead to positive organizational and personal benefits.

Yet, there are numerous problems associated with extra-marital workplace romances and workers place great emphasis on whether the romance participants are married to someone else. The potential for lowered morale, reduced team cohesion, and work disruption increases when coworkers perceive a workplace relationship negatively because it is extramarital and thus unethical (Brown & Allgeler, 1996; Jones, 1999). To minimize the risk of having unethical relationships develop while also avoiding marital status discrimination claims it is recommended that organizations discourage rather than prohibit extramarital workplace romance in their written workplace romance policy (Pierce & Aguinis, 2009).

On the other hand, the most problematic scenarios for organizations involve direct-reporting supervisor-subordinate romances in which sex and power are often traded (Pierce & Aguinis, 2009). 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. For this reason, it is recommended that organizations prohibit these liaisons. An example of a workplace romance policy is provided in Appendix A.

In summary, it is recommended that organizations permit romances between power-balanced employees—that is, employees who have equal rank or who have an indirect-reporting hierarchical relationship. It should also be noted that it is not recommended that organizations implement a no fraternization or no dating policy for all employees as some suggest (find a reference for this). There are several reasons why it is believed that such a policy is not appropriate.

when it comes to office romance, some companies choose to have no policy and to rely on their anti-harassment and retaliation policies and training programs already in place. Other companies handle workplace romance by having a written anti-fraternization policy that prohibits dating all together or prohibits dating between supervisors and subordinates. More recently, however, companies are considering consensual relationship agreements or voluntary relationship contracts, also called “love contracts” or “cupid contracts,” or “volitional dating agreements.”

*Consensual Workplace Agreements*

The *Miller* decision suggests that employers will want to more closely examine the implications of consensual relations between managers and their subordinates.

At a minimum, the *Miller* decision mandates that employers:

* adopt policies prohibiting favoritism, or perceived favoritism, based upon off-duty sexual or romantic relations;
* train managers to avoid actual or perceived favoritism among employees; and
* investigate any allegations of favoritism, just as they would any other sexual harassment complaint.

(Eidelhoch & Russell, 1998).

Some employers ask co-workers in a dating relationship to sign a “love contract,” or consensual-relationship agreement, in which both parties acknowledge that they are willing participants. Generally, the agreements are used as a defense in sexual harassment suits more than anything else.

involvement is apt to lead to perceptions of injustice among harassees and co-workers and, moreover, could result in legal problems for the organization (Foley & Powell, 1999).

Based on a number of these considerations organizations have explored a number of options (e.g., workplace romance, dating, and non-fraternization policies) for addressing sexual harassment in the workplace. On the other hand, when it comes to office romance, some companies choose to have no policy and to rely on their anti-harassment and retaliation policies and training programs already in place. Other companies handle workplace romance by having a written anti-fraternization policy that prohibits dating all together or prohibits dating between supervisors and subordinates. More recently, however, companies are considering consensual relationship agreements or voluntary relationship contracts, also called “love contracts” or “cupid contracts,” or “volitional dating agreements.”  
*Consensual relationship agreements*

While contracts between two individuals may be seen as unromantic, employers are increasingly seeing them as a way of protecting both the individuals involved and the company from discrimination claims. While it may not prevent all litigation, a “love contract” will assist the company in defending claims. It is a document signed by the individuals involved and the company that affirms the voluntary and consensual nature of the relationship and reiterates and acknowledges the company’s anti-harassment and retaliation policies. It affirms that neither person has been forced, harassed or threatened into the relationship. Any policy should apply to and be enforced uniformly among employees, regardless of marital status, gender, and sexual orientation as well as other legally protected categories.

It also establishes appropriate and professional office behavior during the relationship and after if it ends. A love contract is not perfect. It requires a policy of reporting to HR the consensual relationship. It also requires reporting to HR when the relationship ends. Employers also need to be careful about favoritism claims by other co-workers.

New Hampshire courts have not ruled on the enforceability of a love contract. The value of the document, however, is the employees’ acknowledgement. The love contract serves as powerful evidence that the relationship was consensual, that the employees were aware of the company’s sexual harassment and retaliation policies and agreed to report any harassment or retaliation if the relationship ends, and that the company took steps to maintain a workplace free from sexual harassment and retaliation.

When presenting such a contract, it is important to meet separately with each individual involved. Both individuals should sign and commit to the love contract. Depending on the circumstances, some of the following provisions may be appropriate according to Parent (2009):

• Both individuals confirm the relationship has been and continues to be consensual and voluntary.

• The company’s sexual harassment, retaliation and other applicable policies are reiterated and acknowledged. This may include a restatement of the company’s zero tolerance policy of harassment and discrimination.

• Both individuals agree to act professionally at work and to not conduct any public

displays of affection or other inappropriate personal contact while at work or at work functions.

• Both individuals will refrain from favoritism and conflicts of interest.

• Both individuals agree not to use company property inappropriately or contrary to the company’s policy, including, but not limited to, its computers, e-mail, voice mail, cell phones or other devices.

• Both individuals acknowledge the company may monitor its property at any time.

• Both individuals agree to report any harassing conduct if the relationship ends.

• Both individuals agree to treat each other with respect if the relationship ends.

• Both individuals agree not to retaliate if the relationship ends at either individual’s

decision.

• Both individuals agree to notify HR if the relationship ends.

• Each individual acknowledges sufficient time to consider fully and understand the love contract and each may want to consult with an attorney before signing.

This contract essentially allows the couple to continue their business and personal relationship, but presumably eliminates the employer’s liability in a future sexual harassment claim (Kraemer, 2000; Schaefer & Tudor, 2001) In the contract, both parties agree that the relationship is consensual and does not violate the company’s sexual harassment policy.98

Given management’s concern that any kind of external sexual manifestation at work is counterproductive (Powell, 1993), employee relations professionals are using the public’s growing interest in sexual harassment to prevent consensual, welcomed sexual relationships as well. The current judicially-created definition of sexual harassment sometimes covers instances in which the plaintiff consented to the relationship, but felt coerced or did not welcome it (*Meritor Savings Bank, FSB*, 477 U.S. at 68-9). Employers become anxious because they view this broad definition of sexual harassment in conjunction with the possibility of being held vicariously liable for sexually harassing behavior committed by supervisors against employees (Rabin-Margalioth, 2006), even though the standards of sexual harassment law are articulated in *Faragher v. City of Boca Raton*,101 *Burlington Ind., Inc. v. Ellerth*,102 and most recently in *Pennsylvania State Police v. Suders*.103 The rationale that employers thus offer when they regulate their employees’ sexual behavior is that they cannot distinguish between welcomed relationships from sexually harassing ones,104 that consensual relationships may culminate in sexual harassment claims,105 and that the Supreme Court encourages employers’ self-regulation and inquiry into the sexual activity of their workers by recommending that employers institute an anti-sexual harassment policy with grievance procedures.106

In addition, feminists like Catherine MacKinnon provide theoretical and moral support for expanding employer self-regulation to cover consensual romantic relationships. MacKinnon argues that virtually all romantic relationships in a workplace setting constitute sexual harassment because they are a product of men’s domination and control over women, and not of mutual sexual interest (CATHERINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN, 25-95 (1979). *See also*

LINDA LEMONCHECK, LOOSE WOMEN, LECHEROUS MEN: A FEMINIST PHILOSOPHY OF SEX (1997). Anthropologist Margaret Mead argues that society should make intimate sexual interaction between people who work in the same organization a social taboo—just like the taboo against incest (Margaret Mead, *A Proposal: We need Taboos on Sex at Work*, *in* SEXUALITY IN ORGANIZATIONS 53-56 (Neugraten & Shafritz ed., 1980). From her standpoint, social networks at work have developed to compensate for the breakdown in the extended family, and the taboo is warranted to restrict this trend (Margaret Mead, *A Proposal: We need Taboos on Sex at Work*, *in* SEXUALITY IN ORGANIZATIONS 53-56 (Neugraten & Shafritz ed., 1980).

Legal liability is conferred upon the employer only in cases in which it was negligent in instituting an anti-harassment policy and providing its employees an avenue through which to complain (524 U.S. 742 (1998)). It is not surprising that many employers have adopted overbroad policies that prohibit relationships between consenting adults, as well as sexually harassing behavior.

A typical love contract will contain the following provisions: “We hereby notify the Company that we wish to enter into a voluntary and mutual consensual social relationship. In entering into this relationship, we both understand and agree that we are both free to end the social relationship at any time. Should the social relationship end, we both agree that we shall not allow the breakup to negatively impact the performance of our duties. Prior to signing this Consensual Relationship Contract, we received and reviewed the Company Sexual Harassment Policy, a copy of which is attached hereto. By signing below, we acknowledge that the social relationship between us does not violate the Company’s Sexual Harassment Policy, and that entering into the social relationship has not been made a condition or term of employment” (Schaefer & Tudor, 2001, p. 7). For another version of a love contract with very similar content Kramer (2000-2001) indicates:   
  
Favoritism concerns  
  
Love contracts are not appropriate in every circumstance, and they should only be used in suitable situations. What are some of these???

Whatever an employer decides on this issue, there is no substitute for training managers and supervisors on the risks of romantic involvement with employees. Companies should have anti-harassment, retaliation and discrimination policies in place and disseminated companywide.

To more effectively manage terminated workplace romances and prevent costly sexual harassment litigations,costly sexual harassment litigations, some organizations require that workplace romance participants sign a consensual relationship agreement (also known as, love contracts or cupid contracts; Eidelhoch & Russell, 1998; Hansen, 1998).

**Consensual Relationship Agreement from BNET Business Dictionary** [**http://dictionary.bnet.com/definition/consensual+relationship+agreement.html**](http://dictionary.bnet.com/definition/consensual+relationship+agreement.html)  
It is an agreement signed by an employer and employees confirming that a romantic or sexual relationship between employees is voluntary and consensual. They have been introduced, primarily in the United States, as an alternative to no-dating policies and to protect the employer against liability in possible claims of sexual harassment should the relationship break down. Such agreements often also stipulate that the relationship will not affect or interfere with the work of those involved.

By signing such an agreement, the two employees involved acknowledge that (a) the romantic relationship is voluntary, consensual, desired, and unrelated to their professional relationship at work; and (b) each partner is free to terminate the romance at any time without coercion (e.g., attempts to rekindle the romance), prejudice (e.g., harm to one’s job or career), or other work-related consequences. Given the connection between dissolved workplace romances and sexually harassing behavior, we recommend that managers or supervisors at least consider discussing the possibility of signing a consensual relationship agreement with employees who are involved in a workplace romance. With the goal of preventing sexually harassing behavior, the agreement should stipulate congenial terms and conditions that each party must abide by after a romantic dissolution. Examples of congenial terms and conditions might include no arguments at work; managing negative emotional states such as anger, resentment, or jealousy; relocating workspaces; and a willingness to be repeatedly informed of the organization’s integrated workplace romance/sexual harassment policy.

Consensual relationship agreements were pioneered by Littler, Mendelson of San Francisco, the nation’s largest firm specializing in employment law in the 1980s. Kuntz (1998) provides specific examples of such love contracts.

Two actual agreements, with names withheld, are presented here. Jeffrey M. Tanenbaum, a partner at Littler, Mendelson, says they can be viewed as templates adaptable to most any situation -- even homosexual pairings or adulterous affairs (in protecting its own interests, he says, a company may not be overly concerned if adultery happens to be technically illegal). Excerpts follow. TOM KUNTZ

This agreement took the form of a letter that the sender asked his paramour to sign to acknowledge her agreement with its terms. The sender is a top executive at a company with roughly 3,000 employees, while the recipient is a subordinate, an assistant vice president:

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 effect 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,

[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.

[Signature of Object of Affection]

This ''Acknowledgment and Agreement'' was drawn up about a year ago to cover two midlevel employees at a midsize company and has been adapted for a couple of other relationships since:

STIPULATIONS

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 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 is . . . entirely welcome, voluntary and consensual [etc., vice versa the entire preceding paragraph to cover the 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 had the opportunity to discuss such matters with counsel of choice or any other person of his choosing.

H. [Vice versa the entire preceding paragraph to cover the female employee]. . . .

AGREEMENT

1. [Male employee] and [female employee] have, after reading this Acknowledgment and Agreement, carefully reviewed the Company' 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 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 is another option:

4. 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[s] and names of witnesses.

5. 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.

6. [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.

7. [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.

8. While the Social Relationship continues [male employee] and/or [female employee] will not request, apply for, seek in any way, or accept a direct supervisory or reporting relationship by or between [female employee] and [male employee].

9. [Male employee] and [female employee] have executed and agree to be bound by the Company’s Agreement to Abide by Arbitration Procedure. . . . Paragraph 5 of this Acknowledgment and Agreement and [Company] Arbitration Procedure 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]. . . .

14. 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.

Dated: By: [Male employee]

Dated: By: [Female employee]

Dated: By: [Company Representative]

**Another Consensual Relationship Agreement**

Employee                                      , employed by the Company as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and Employee                                         , employed by the Company as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby notify the Company that we wish to enter into a voluntary and mutual consensual social relationship. In entering into this relationship, we both understand the company policy on dating and do not find our relationship to be in violation of the policy and agree that we are both free to end the social relationship at any time. Should the social relationship end, we both agree that we shall not allow the breakup to negatively impact the performance of our duties.

Before signing this Consensual Relationship Contract, we received and reviewed the Company's Employee Dating Policy, a copy of which is attached. By signing below, we acknowledge that the social relationship between us does not violate the Company's Employee Dating Policy, and that entering into the social relationship has not been made a condition or term of employment.

 Employee A                                             Date

 Employee B                                             Date

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