

Current Workplace Issues

Workplace Relationships

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Workplace affairs have traditionally been difficult for employers and employees. Perceptions of favouritism, real or perceived, exist, not to mention the host of other problems they cause.

Now employers and employees should be aware of other factors that can have a chilling effect on workplace romances. What is emerging from many of the reported cases is that these relationships, while on the surface consensual, are often entered into somewhat unwillingly. When that happens and the romance goes sour, the legal fallout can be significant.

This is not to ignore instances of unwelcome sexual advances. Unwelcome sexual advances have clearly been accepted by the Courts and Human Rights Tribunals as a form of sexual discrimination. Both employers and employees are now legally obligated to desist, not only sexual advances but remarks of a sexual nature if they create a hostile environment or the originator of the communications or advances ought to reasonably know that these remarks or advances would be unwelcome. The most obvious example (and the most odious) would be the request for sexual favours in return for continued employment. It can also take the form of sexually explicit remarks, touching, and/or even telling crude jokes of a sexual nature. The great majority of cases involve men harassing women, however, the reverse can also be the case.

At one time a woman in such a position would quit and quietly move on to another job. Employers, supervisors, and co-workers are now finding that this is no longer the case and they find themselves on the receiving end of various legal proceedings that can have very unpleasant consequences.

What are the consequences? They fall primarily in the Criminal and Human Rights areas. In the criminal area, we used to have the offence of rape. If a woman consented or there was a reasonable doubt as to whether or not she had consented, the offence was not proven beyond a reasonable doubt and the accused was found not guilty.

That offence has been abolished and we now have a number of sexual offences instead. One, the offence of sexual exploitation, involves adolescents aged 14 to 18. The Criminal Code provides that where a person is in a position of trust or authority over a young person, (even if he didn't exercise that authority or abuse it) and sexual relations of any kind occur, an offence will have been committed even if there was consent. Consent is no defence to the charge in these circumstances. The simple message is, when in such a position, do not become sexually involved with those young employees even if consensual. You could find yourself at the receiving end of criminal charges, substantial fines, imprisonment, and the loss of your job.

Another criminal sanction involves abusing a position of trust or authority (i.e. sexual preying, asking for sexual favours with either the threat of detriment or the promise of betterment). This is now also a criminal offence and refers to employees over 18 years of age.

Another major area is in the Human Rights jurisdiction. Unwelcome conduct of a sexual

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nature, sexual harassment, or any form of gender discrimination can attract a Human Rights complaint. These processes are lengthy, expensive to defend, often have large amounts of adverse publicity attached to them, and can be expensive to pay, if proven.

The courts have held that the employer is in the best position to prevent sexual harassment. Ultimately, the employer is liable for the acts of his employees, even if they have been prohibited from engaging in this kind of conduct. Cases are surfacing where employers have successfully fired employees who persisted in engaging in sexual harassment in the face of such prohibitions. This applies to employees (whether supervisory or co-workers) who engage in such conduct, and supervisory personnel who permit or consent to such conduct or take no steps to stop it.

What about the victim? Usually the damage awards take the form of compensating the employee for lost wages if he or she was fired or forced to quit (the latter being justified because of the conduct to which this individual was subjected) as well as general damages for humiliation and emotional upset.

What's the message to be learned from this? Workplace romances and unwanted advances are dangerous.

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