

Corporate affairs

What do Brad and Angelina share in common with Tony and Cherie, and Jordan and Peter? Yes, you've guessed it, these couples all met while at work.

According to recent research, a massive 61 per cent of all relationships now begin at work. This is perhaps unsurprising given increasing hours spent in the office. Passion is rife throughout the workplace. In one survey, a third of women admitted to having had sex in the office and a quarter of attached women confessed to having cheated with a work colleague.

More astonishing were the results of a survey by Lloyds TSB, which revealed that 30 per cent of people questioned had met their partner for life at work, 10 per cent admitted to having had sex with their immediate superior and a colossal 30 per cent admitted that they would have sex with their superior if the relationship would have a positive influence on their career. And this from the supposedly sober banking sector. Indeed, with so much flirting and dating going on, it's a wonder the economy hasn't collapsed.

The question for employers is where does the line need to be drawn? After all, one person's flirting may be another's harassment. Also, not all office romances have happy endings. Just ask the Football Association, whose credibility and reputation suffered a damaging blow when Faria Alam resigned and claimed sexual harassment, unfair dismissal and breach of contract after her relationships with Sven Goran Eriksson and Mark Palios became public.

Indeed, you do not need to be moving in the circles of the sporting elite to face these problems. A solicitor in a small practice dismissed his personal assistant, with whom he had been having a relationship, when he found out that she had been having an affair. The PA took the firm to the employment tribunal, successfully claiming both sex discrimination and unfair dismissal (although the sex discrimination claim was later overturned on appeal).

The costs to an employer are potentially considerable. These include disruption to the business, conflicts of interest and the potential for divulgence of business information through "pillow talk". There may be claims of favouritism, as Paul Wolfowitz found to his cost when forced to resign as President of the World Bank earlier this year in the wake of revelations that he had secured an enhanced pay package for his girlfriend and fellow bank employee, Shaha Riza.

This inevitably has a negative impact on the morale and working environment for the rest of the workforce. On top of this, if an employee raises a grievance or brings tribunal proceedings then the employer could face not only considerable legal costs but could also expend a significant amount of management time in attempting to resolve complaints.

When relationships turn sour, then claims for sexual harassment can arise. These types of claims naturally concern employers because, like all discrimination claims, they attract both unlimited compensation and negative publicity. In most cases, the harassment is by one employee to another rather than by the employer. However, employers can be vicariously liable if the harassment occurs "in the course of the employment" (which includes social work-related functions outside the workplace) even if it occurs without their knowledge or approval. An employer can also now find itself liable in damages under the Protection From Harassment Act 1997 for the conduct of one of its employees, as shown by the recent House of Lords decision in *Majrowski v Guy's & St Thomas's NHS Trust* (2006).

Employers have a possible defence if they can show that they took all reasonable steps to prevent harassment from occurring, for example, by adopting an equal opportunities policy and providing equal opportunities training. In addition, since 1999, some employers have been going one step further and asking their employees to sign "love contracts". A fifth of UK employers are now thought to have a formal or informal policy regarding

relationships at work, with most concerned about the improper dissemination of confidential information between employees.

“Love contracts” (or consensual relationship contracts) can be drawn up as part of the employment contract. They purport to separate the relationship from the workplace. Employees are asked to sign a document indicating that, in the event that the relationship ends, there is no claim against the company and any litigation that ensues is strictly between the individuals.

Some contracts require employees to inform their employer of relationships formed at work and to confirm their consensual nature. Others require employees to inform the employer of any work relationships formed by colleagues. Others go further, banning relationships in the same department, office or company and making non-compliance a dismissable offence.

Thomson was one of the first UK employers to implement a “sex in the workplace” code for their employees. Under the code, employees were requested to inform the company if they entered into a relationship that could lead to a conflict of interest. In March 2005, Boeing allegedly dismissed its chief executive, Harry Stone-Cipher, for having a relationship with a colleague contrary to its strict rules.

The legality of love contracts has not yet been tested in the English courts but they do not have the same standing as in the US (from where they originate). It is unlikely that a love contract would protect an employer in the event that a sexual harassment claim was brought since there are only very limited circumstances under English law when an employee can legitimately contract out of his or her statutory employment rights. In June 2005, a German court found against the German subsidiary of Wal-Mart and struck out sections of the company’s employee code of conduct. The code barred “any kind of communication that could be interpreted as sexual”, making this a dismissable offence.

Employee relationships can prove costly to the employer but is the answer to impose contracts whereby employees can be dismissed for forming relationships with colleagues? There are of course practical issues. What happens if employees refuse to co-operate? How are they monitored or enforced?

Banning relationships at work outright is likely to be a knee-jerk but ineffective response. Neither should employers pressurise employees into signing contracts and it is always best to seek legal advice first. An employer dismissing someone for not signing a love contract may find themselves on the wrong end of an unfair dismissal claim. Further, taking precipitate action against those deemed guilty of misconduct is likely to spark an unfair dismissal claim.

Employers are best advised to put in place codes of conduct, equal opportunities policies and anti-harassment policies, setting out appropriate standards of behaviour at work. However, they should go further than mere window dressing. These policies should be robustly implemented and enforced. Specialist training should be provided, at least to managers, supervisors and those most likely to play a role in dealing with complaints and grievances.

Employers may want to consider carefully whether to regulate relationships between managers and direct subordinates, as there is a greater risk of abuse or conflict of interest arising in such circumstances. However, if a policy is being considered, thought should be given as to how it will be drafted to prevent it falling foul of sex discrimination laws. The answer would therefore appear to be a balancing act between preventing abuses in the workplace from taking place while recognising that romances will inevitably occur and so any effort to ban them completely is unrealistic.

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