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SCHOOL SCANDALS: DAYTIME FRIENDS & NIGHTTIME LOVERS

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By Susan G. Morrison

We have probably all been granted the opportunity for (or offer of) a workplace romance at some point in our careers, or perhaps we have been the subject of false rumors. These offers or rumors usually decrease as we get older. The most typical scenario that reaches the media is the teacher /student love affair. These relationships usually end the school employees' careers with a criminal arrest, revocation of their teaching certificates, loss of employment and permanent damage to the adults' reputation in the community. Some recent cases of such allegations will be covered here, but our main focus in this paper is upon the more common 'dating at work' situations and subsequent fallout when affairs break up. Sometimes these affairs are between willing single adults; sometimes not.

Employers have the right to adopt and enforce written policies regarding workplace romances, though few have done so. Statistically, most people meet their potential spouse at -work. In a recent nationwide survey of employers by the Society for Human Resources Management (SHRM), one in four employees reported a past or ongoing workplace romance! (See attached excerpts from the 2013 survey).

Most school districts rely upon the state laws regarding conflicts of interest and nepotism by adopting TASB's legal policies DBD (LEGAL) and DBE (LEGAL). See Gov't Code 573.002, .041; Atty. Gen. Op. JC-184 (2000); Atty. Gen. Op. DM-76 (1992); Education Code 11.1513(f)-(h); Atty. Gen. Op. GA-123 (2003). However, these state law based policies do not mention the relationships of secret lovers, betrothed, or even domestic partners and cohabitating couples.

By adopting local versions of policies, school boards have the ability to tailor policies about dating co-workers and requiring written disclosure of such relationships in accordance with community standards. The attached local policy from Hutto ISD provides a sample that sets a general standard requiring disclosure to the employee's immediate supervisor of:

any relationship that in any way creates a potential conflict with the proper discharge of assigned duties and responsibilities or with the best interests of the District.

HISD DBD (LOCAL).

More specific policies may reserve the right of the employer to apply prohibitions to situations where there is a conflict or the potential for a perceived conflict because of the relationship between employees, even if there is no direct reporting relationship or authority involved between their employment positions. (See attached sample policy starting points.) By written policy, employers are allowed to put employees on notice that one member of the couple will be transferred to effect change in the supervisory relationship, or merely to create physical distance between them.

Employer policies about office romances are stricter today than they were just a few years ago, according to the September 2013 survey of HR professionals by SHRM. The survey, Workplace Romance, found that more than twice as many employers have written or verbal policies on office romances than did in 2005, even though the vast majority of respondents (67%) said the number of romances among employees has stayed the same over the past eight years.

Rather than being an issue of wanting to control employees' private lives, employers simply want to avoid potential lawsuits based upon sexual harassment, retaliation or other causes of action. EEOC reports that those claims are on the rise. In statistics unveiled December 17, 2013, the EEOC showed that the percentage of cases it brings as systemic law enforcement has reached a new high—23% of its active docket. See EEOC's *2013 Performance and Accountability Report*. These lawsuits are filed by the agency against employers involving retaliatory practices and systemic harassment based upon hostile work environments. You may have read last year about the case of EEOC v. Burger King/Carrolls Corp. (which includes Taco Cabana ® and Polio Tropical ® brands) where a \$2.5 million consent decree ended 15 years of litigation involving 89 women who were subjected to sexual harassment by co-workers and managers (obscene comments, propositions, unwanted touching, exposure of genitalia, strip searches, stalking and even rape) and retaliatory terminations for their harassment complaints. In a separate federal lawsuit against a Burger King in Oregon, a teen employee settled for \$150,000 after her older, married supervisor made unwelcomed sexual comments, touched her, demanded that she have sex with him and other male employees, and asked how much she would charge for sex.

Tokens of Love or Whatever

What about gift or card exchanges between married or dating couples in an office?—Usually, gifts between couples are appropriate as long as they are in good taste. A bouquet of flowers delivered to the office is fine; sexy lingerie is not. Something so intimate that you would not wear it or use it in public, should not be shared in front of co-workers. Personal relationships have an impact on the people around them and often court complaints of favoritism. Anything of—a sexual nature, a card or a sexual toy, should be avoided. Cookies, candy and cupcakes, easily shared with all, are a better idea for workplace gifts.

Forty percent of the SHRM survey respondents said employees complained about favoritism between co-workers in a romantic relationship. These perceptions can damage office morale. Employers worry that office romances will lead to:

- public displays of affection;
- inappropriate sharing of confidential information between romantic partners;
- inappropriate gossiping among co-workers;
- less productivity from the couple and their colleagues; and
- damage to the employer's image because the pairing may be seen as unprofessional.

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