

DATING IN THE WORKPLACE:

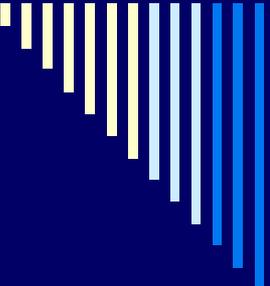
THE GOOD, THE BAD AND THE UGLY

Presented by:

Anne Thomson

Human Resources Office Chief

Department of Mental Health & Addiction Services



Agenda

What is a Workplace Romance

Statistics

How Workplace Romances are Discovered

Differences (gender and age)

Causes of Workplace Relationships

Likely Industries

Famous and Infamous Workplace Romances

Pitfalls

Ohio Cases

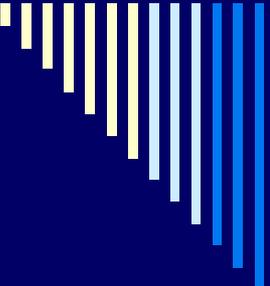
Intangible Costs

Workplace Policies

Practical Tips

What Would you Do?

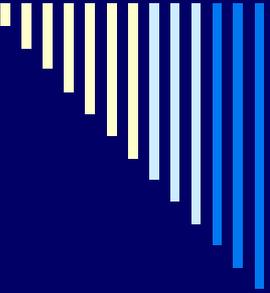
Food for Thought



Definition

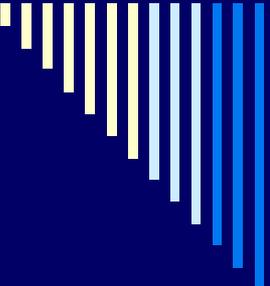
A “**workplace romance**” is a relationship that occurs between two members of an organization where sexual attraction is present, affection is communicated, and both members recognize the relationship to be something more than just professional and platonic.

(Horan & Chory, 2011, p. 565)



Statistics

- **One-third** of romantic relationships begin at work
 - About **30%** of office romances result in marriage
 - According to Vault.com nearly **60%** of survey participants had a romantic relationship with a co-worker, **33%** had a tryst in the office
 - **3%** admitted getting caught
-

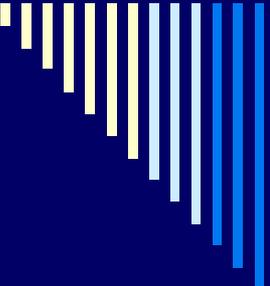


Statistics

More than twice as many employers have written or verbal policies on office romances than in 2005.

In 2005, 20% of employers had such policies; in the most recent survey, 42% had such policies.

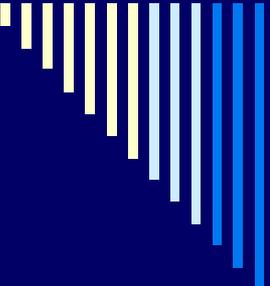
(2013 SHRM survey)



Statistics

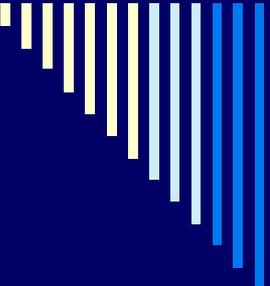
Surveys indicate that more than half of all workers have had a romantic relationship with someone with whom they have worked, while 41% of employed Americans ages 25 to 40 have admitted to having engaged in an office romance.

(Glamour Magazine and Lawyers.com survey)



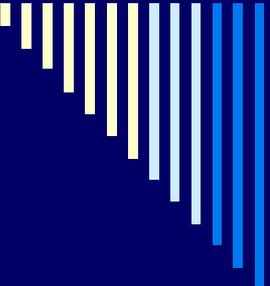
Statistics

- 23% of men and 15.4% of women reported having short-term flings with co-workers
 - Office “husband” or “wife” is someone with whom you do not have a romantic relationship, but with whom you hang out, go to lunch, breaks etc., 28% say they have such a co-worker
-



Statistics

- 40% of those surveyed stated that they have avoided or curtailed a potential romance that they would have otherwise pursued specifically to avoid an office romance
 - 38% felt that a co-worker gained a professional advantage because of an office romance and 31% felt uncomfortable because of co-workers' intra-office relationships
-

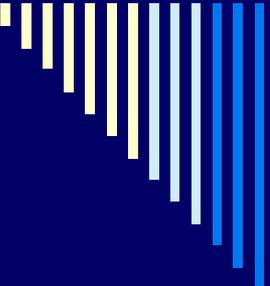


Statistics

70% of men and 62% of the women stated that they would engage in an office romance again.

The office romance is not going away anytime soon.

(Vault 2014)

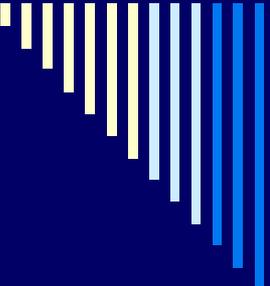


Differences by Gender

Women are much more likely to have dated a supervisor at work, while **men** are much more likely to have dated a subordinate.

Women and **men** equally are likely to engage in a workplace romance.

(Vault.com 2014)

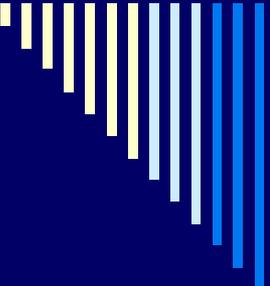


Differences by Age

84% of 18 to 29 year olds (millennials) say that they would date a co-worker

VERSUS

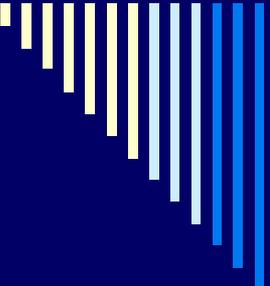
36% of the 30 to 45 year olds (gen x-ers) and 29% of the 45 to 65 year olds (boomers)



Differences by Age

The **millennial** generation is more than three times likely to see no problem with dating their supervisors than all other age groups combined.

40% of millennials would date a boss or supervisor.



Likely Industries for Workplace Romances

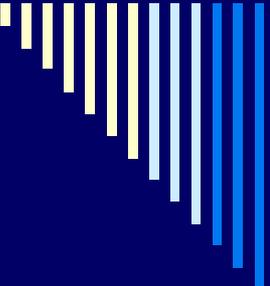
Insurance industry

Education industry

Finance and Banking industry

Government

(Vault, 2014)

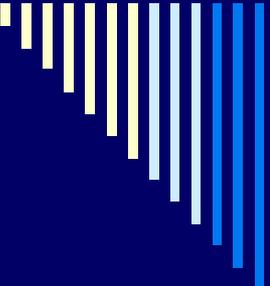


How Workplace Romances are Discovered

Through office **gossip** (67%)

The anonymous **tipster** (25%)

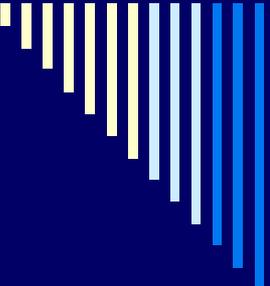
From the couple's business **unit leader**



Causes of Workplace Romances

- **More women in the workforce in 2011** (60% of women worked outside the home, as opposed to 40% in 1964)
- **People spending more time on the job than at home** (one third of their lives) Americans logged on average 1,979 hours at work each year, more than any other country surveyed.

(Business Management Daily)



Causes of Workplace Romances

- **Ease of Opportunity**

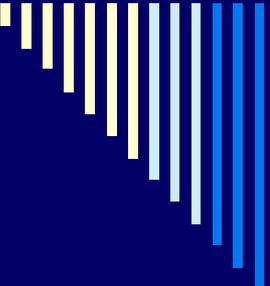
(the workplace promotes the close proximity of coworkers)

- **Similarity**

(uncover similarities while working in close proximity with each other)

- **The “Hook-Up”**

(self explanatory)



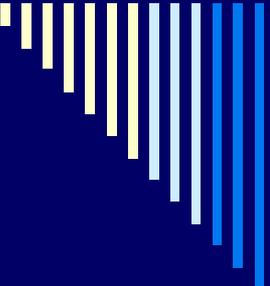
Famous Workplace Romances

□ Bill and Melinda Gates



□ Barack and Michelle Obama





Infamous Workplace Romances

Bill Clinton and _____

A. Gennifer Flowers

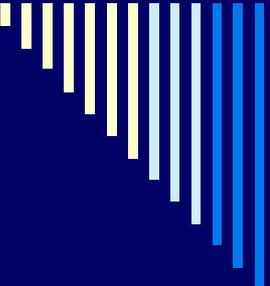
B. Paula Jones

C. Monica Lewinsky

D. None of the Above

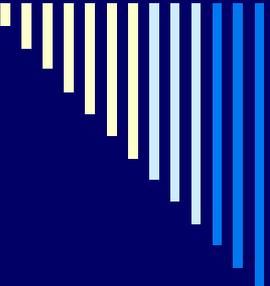
E. All of the Above





The Pitfalls of Workplace Dating - First Party Claims

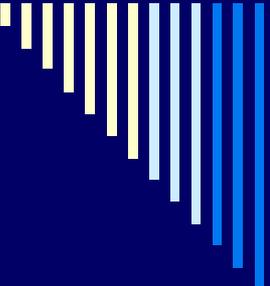
- Increased exposure to sexual harassment claims/liability
 - Overbeck v. Alpha Animal Health, P.C. 124 A.D.3d 852 (2nd Dep't, 2015)
 - Plaintiff Overbeck sued alleging discrimination and retaliation asserting that the hospital veterinarian Dr. Cohen had used his position to coerce her into having a sexual relationship with him and fired her after she would no longer engage in the relationship.



The Pitfalls of Workplace Dating - First Party Claims

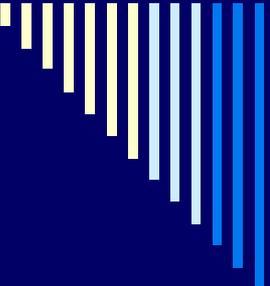
□ Post relationship advances

- Prichard v. Ledford, 767 F.Supp. 1425 (E.D. Tenn. 1990), aff'd, 927 F.2d 605 (6th Cir. 1991)
 - A cause of action for sexual harassment may lie if after a workplace romance ends the party who ended the relationship is subjected to continued sexual advances.
-



The Pitfalls of Workplace Dating

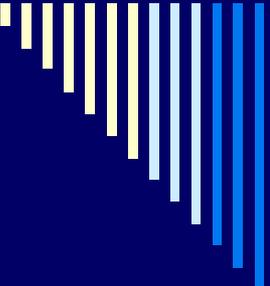
- Increased exposure to workplace violence when relationship sours
 - Ohio Bureau of Employment Services (OBES) Shooting
 - Statistics show that half of all romances do not last. Accordingly, half of all workplace romances will likely sour. Unlike divorces, where one party moves out of the house, people still must continue to work together and usually at the same location. Increased tensions can lead to increased instances of violence.
-



The Pitfalls of Workplace Dating

□ Favoritism

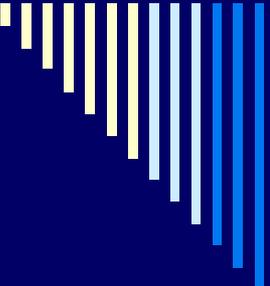
- (EEOC Notice No. 915-048 (Jan. 12, 1990). See also *Sheffield Village v. Ohio Civil Rights Commission*, 2000 Ohio App. LEXIS 2381 (2000))
 - The EEOC has said in its guidance that widespread sexual favoritism can lead to actionable claims.
-



The Pitfalls of Workplace Dating

□ Favoritism

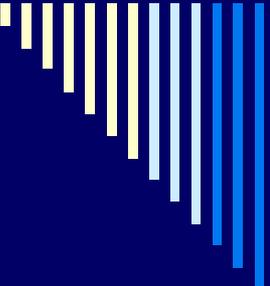
To bring an actionable third party claim based upon favoritism a party must show a pattern of repeated routine, or generalized level of harassing behavior by the defendant.



The Pitfalls of Workplace Dating

□ Favoritism

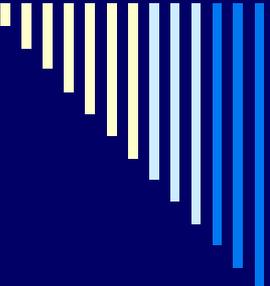
- Miller v. Department of Corrections, 115 P.3d 77 (2005)
 - Plaintiffs were former employees at the Valley State Prison for Women in Chowchilla. They alleged that the former warden showed favoritism toward three other female prison employees with whom he was having simultaneous sexual affairs. Plaintiffs were not involved with the warden. They alleged that after they complained they were subjected to repeated retaliation by both the warden and his paramours. This retaliation included denial of promotions, subversion of authority, reduction in responsibilities, etc. All attempts at redress were either ignored or resulted in further retaliation. The plaintiffs resigned and sued alleging sexual harassment.
-



The Pitfalls of Workplace Dating

The California Supreme Court held that, “Although an isolated instance of favoritism on the part of a supervisor toward a female employee with whom the supervisor is conducting a consensual sexual affair ordinarily would not constitute sexual harassment, when such favoritism in a workplace is sufficiently widespread it may create an actionable hostile work environment in which the demeaning message is conveyed to female employees that they are viewed by management as ‘sexual playthings’ or that the way required for women to get ahead in the workplace is by engaging in sexual conduct with their supervisors or the management.”

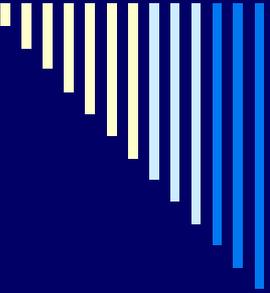
Miller v. Department of Corrections, 115 P.3d 77 (2005)



Legal Causes of Action

□ Emerging Sex-Plus Theory

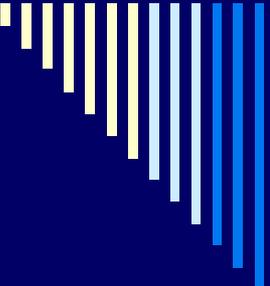
Regarding claims of favoritism the question becomes was gender and a sexual relationship the motivating factor in the employer's decision to promote one employee over the other.



Legal Causes of Action

□ Emerging Sex-Plus Theory

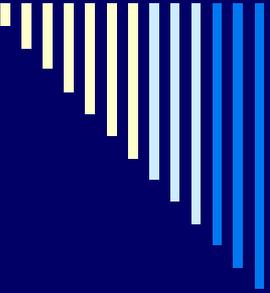
An alternative to having to prove sexual harassment as a prerequisite to sexual favoritism.



Legal Causes of Action

□ Emerging Sex-Plus Theory

Plaintiff must show that he/she was discriminated against because of gender in conjunction with a second characteristic.



Legal Causes of Action

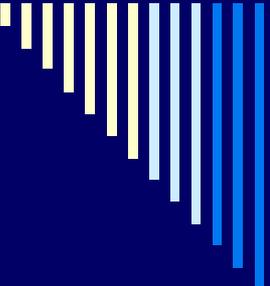
□ Emerging Sex-Plus Theory

Examples include:

Sex plus a personal relationship

Sex plus marital status

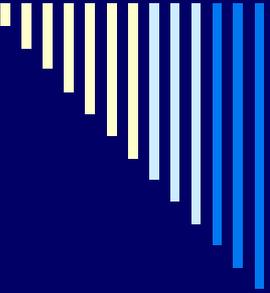
Sex plus gender stereotypes



Legal Causes of Action

□ Emerging Sex-Plus Theory

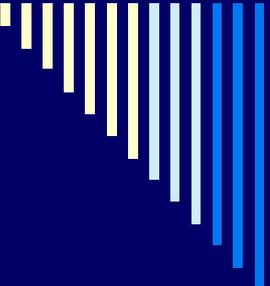
- Nelson v. Knight 834 N.W.2d 64 (Iowa 2013)
 - Fired for being too attractive
 - Nelson and Knight had worked together for a decade without incident. During the last six months of her employment Dr. Knight and Nelson started texting each other
-



Legal Causes of Action

□ Emerging Sex-Plus Theory

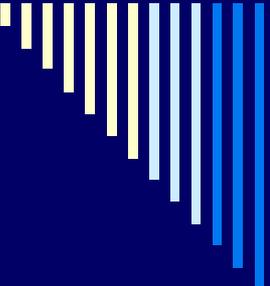
- Nelson v. Knight
 - Dr. Knight complained to Nelson that her clothing was too tight and made other statements regarding her appearance.
-



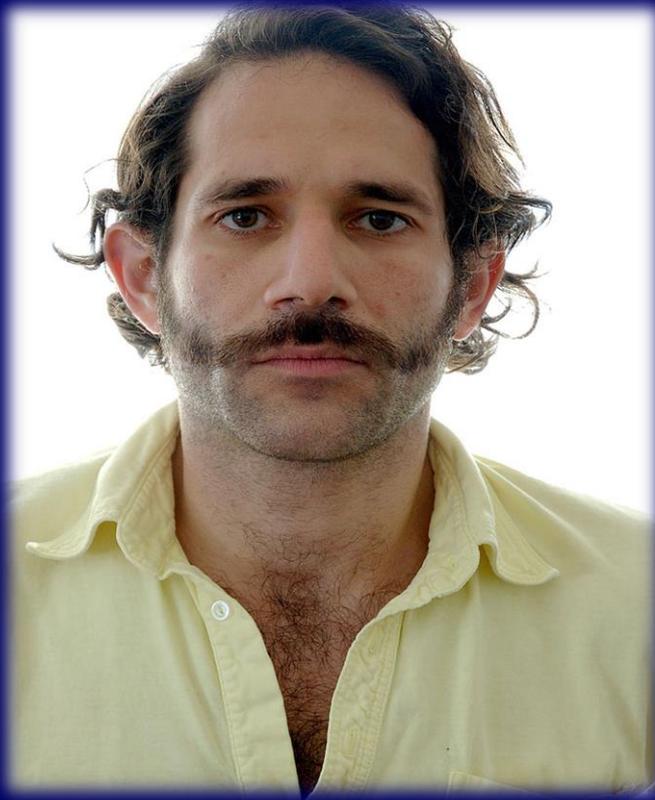
Legal Causes of Action

□ Emerging Sex-Plus Theory

- Nelson v. Knight
 - Dr. Knight eventually terminates Nelson's employment because Nelson was a threat to his marriage
 - Nelson sued for sex discrimination, not sexual harassment
 - Terminated due to personal relationship not based upon her status as a women
-

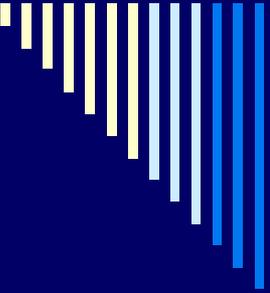


The Ugly



Dov Charney

Founder and CEO of American Apparel, a chain that sells clothing and underwear. Charney runs around the office in his underwear, and permitted a videotape of him doing just that to appear on the company website.



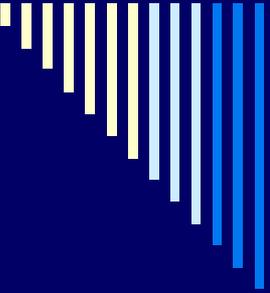
The Ugly

Charney had multiple **sexual harassment lawsuits** filed against him over the years and stated in his deposition, “I frequently drop my pants to show people my new product.” (the company sells underwear).

Charney also dismissed employees he deemed unattractive.



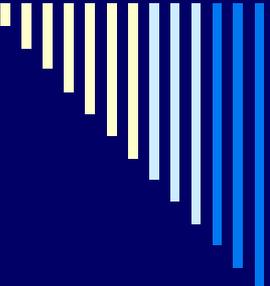
**American
Apparel**



The Ugly

Dov Charney

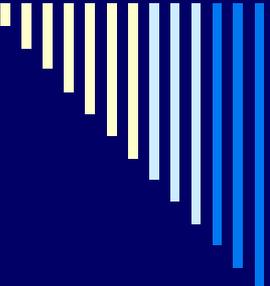
Charney has been pretty open about the fact that he has been involved personally with a number of his employees stating, “I’m not saying that I want to s---- all of the girls at work, but if I fall in love at work it’s going to be beautiful and sexual.”



The Ugly

On June 18, 2015, despite generating a record \$634 million of revenues, Charney was **removed** by the board of directors as the CEO after 25 years.

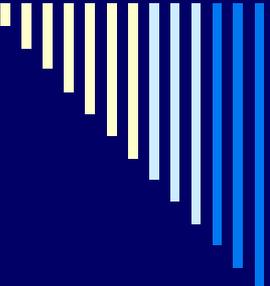
The removal letter stated a number of reasons including providing large severance packages to a number of employees in order to stop them from suing him.



The Ugly

The letter stated in part “you engaged in conduct that repeatedly put yourself in a position to be sued by numerous former employees for claims that include harassment, discrimination and assault.”

He refused to attend sexual-harassment training.

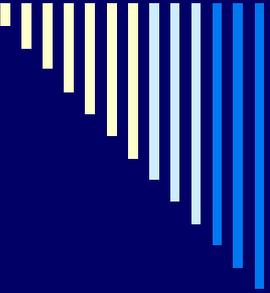


The Ugly

Litigation as a result of Dov Charney's removal contained in the pleadings are an array of **explicit emails and text messages** that Charney sent to employees.

Suffice it to say, the messages are graphic and sexually explicit in nature.

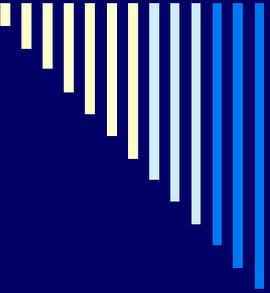
Not suitable for this forum.



Ohio Cases

- **Browning v. Ohio State Highway Patrol, 786 N.E.2d 94 (Ohio Ct. App. 2003)**

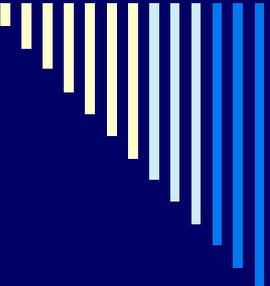
wherein a claim of hostile work environment was denied because the fact finder found that the sex between the plaintiff and her former supervisor was consensual; however, not before long, embarrassing and expensive litigation.



Ohio Cases

- Schwab v. Delphi Packard Electric Systems 2003 Ohio App. Lexis 4387 (Ct. App. Ohio, September 12, 2003)

wherein plaintiff Schwab brought gender discrimination lawsuit as a result of his romance with a co-worker and management's admonition to keep the PDAs in check.

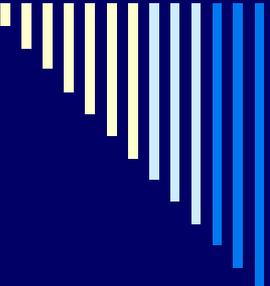


One Size Does Not Fit All

Extremely Fact Specific

Each instance of workplace dating that results in litigation is different, therefore, a thorough fact-gathering and fact finding investigation is vital.

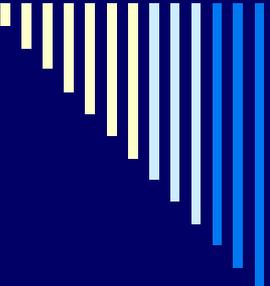
Investigations may be used down the road for future litigation.



The Most Creative Cause of Action

□ Alienation of Affection

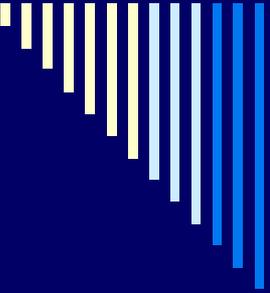
- Jackson v. Righter, 891 P.2d 1387 (Utah 1995)
 - Husband of woman engaged in workplace romance asserted an alienation of affection claim against the employer (negligence). The claim was dismissed. No duty on employers to police private lives of employees for protection of employees' spouses.
-



The Most Creative Cause of Action

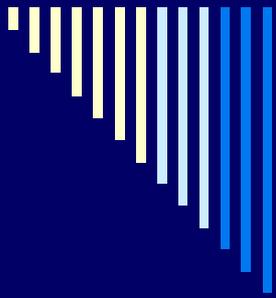
□ Alienation of Affection

- Thornburg v. Federal Express Corporation, et al. 2001 S.W.3d 421 (W.D.Mo. 2001)
- employer cannot be held liable for employee's extra-marital affair with co-worker-supervisor. Plaintiff failed to state cause of action for *Respondent Superior*

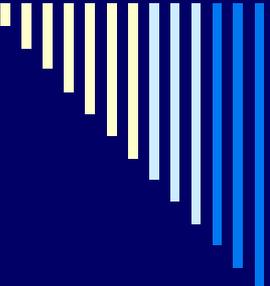


Intangible Costs

- Gossip
 - Decreased productivity
 - Low morale
 - Embarrassment to the organization
 - Loss of reputation - of those involved
 - Disruption of agency/company mission
 - Bad press-especially with political scandals
-



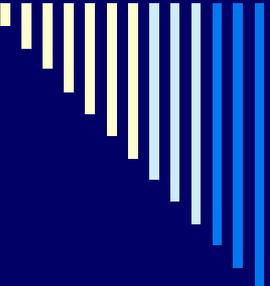
Should you have a Policy on Workplace Dating?



Should you have a Policy on Workplace Dating?

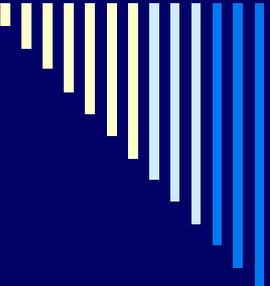
□ A policy IS a good idea...

- Protects against liability
 - In cases of nondisclosure, provides employer with affirmative defense in sexual harassment lawsuit when office romance goes south
 - In case of disclosure of supervisor-subordinate romance, allows employer to take prompt action regarding relocation/transfer of employee(s). Also allows employer to document consensual nature of the relationship.
-



Should you have a Policy on Workplace Dating?

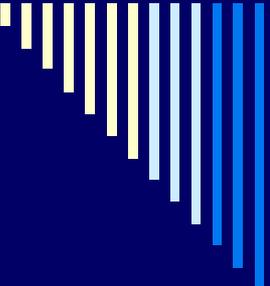
- Factors to take into account when implementing a workplace dating policy...
 - “Love Contracts” or “Date and Tell” policies
 - Agreement whereby employees admit relationship is consensual, aware of the company sexual harassment policy and know how to use it, and agree to waive the right to sue the company for any reason based upon knowing and voluntary assumption of the risks involved
-



Should you have a Policy on Workplace Dating?

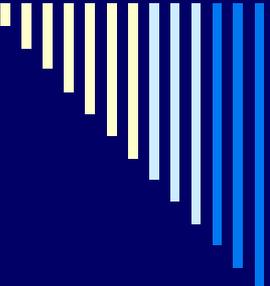
□ Consensual Relationships not Actionable...

- Sullivan v. Federal Deposit Insurance Corporation, 100 FEOR 3178 (EEOC 2000)
 - EEOC case law indicates that a co-worker's willing participation in a relationship usually negates any subsequent claim of sexual harassment. The EEOC found allegations of sexual harassment without merit where male subordinate willingly interacted with his female boss, including going to her house for dinners and massages.
-



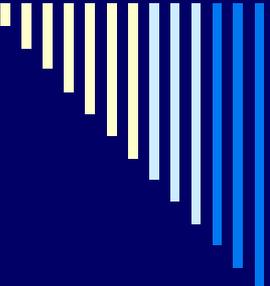
Should you have a Policy on Workplace Dating?

- Factors to take into account when implementing a workplace dating policy...
 - Supervisor - subordinate relationships (modified ban)
 - Relationship wherein one party has direct or indirect authority over the other (i.e. disciplinary matters, performance reviews, making recommendation or determinations concerning compensation, promotion, etc.)
-



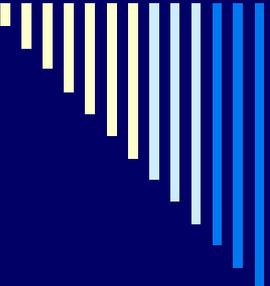
Should you have a Policy on Workplace Dating?

- Factors to take into account when implementing a workplace dating policy...
 - Consider morale and personnel perspective of coworkers
 - Legal causes of action when policies are too restrictive, i.e. invasion of privacy, freedom of association, out of work activity status-no nexus
-



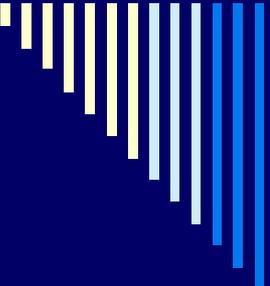
Should you have a Policy on Workplace Dating?

- Factors to take into account when implementing a workplace dating policy...
 - Make sure employees aware of policy and apply evenly and uniformly
 - Watch for disparate impact when considering transfers or terminations
-



Should you have a Policy on Workplace Dating?

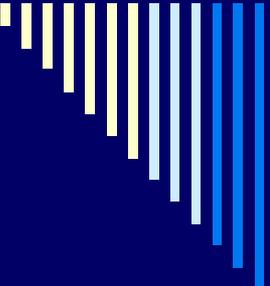
- Factors to take into account when implementing a workplace dating policy...
 - Policies are difficult to enforce
 - Privacy and nexus concerns – if you have a stricter policy you have to show a legitimate employer interest in off duty conduct (i.e. public employees have constitutional rights)
 - Potential disparate impact
-



Should you have a Policy on Workplace Dating?

□ Privacy and Nexis concerns...

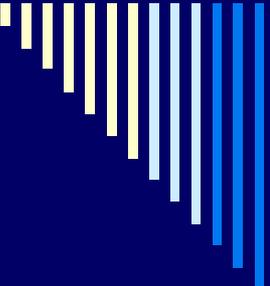
- New York v. Wal-mart, 621 N.Y.S.2d 158 (1995)
- Wal-mart discharged two its employees for violating its no fraternization policy, which prohibited a dating relationship between a married employee and another employee other than his or her own spouse. The state of New York brought an action to require the employer to reinstate the two employees with back pay on the grounds that their discharges violated N.Y. Lab. Law 201-d(2)(c), which prohibited employer discrimination against employees because of their participation in legal recreational activities pursued outside of work hours. The court held that a dating relationship did not fall within N.Y. Lab. Law 201-d (1)(b), which defined recreational activity as leisure-time activity engaged in for recreational purposes, including sports, games, hobbies, exercise, and viewing television. The court found that dating was entirely distinct from recreational activity due to its indispensable element of romance. Although two people who were dating could pursue a recreational activity on a date, the act of dating itself was not recreational activity. Thus, the discharges were upheld.



Should you have a Policy on Workplace Dating?

□ Privacy and Nexis concerns...

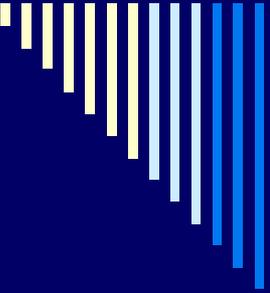
- Mercer v. City of Cedar Rapids, 308 F.3d 804 (8th Cir. 2003)
- Following her termination from her position as probationary police officer, Mercer filed suit claiming that her termination as a result of a workplace romance with a police captain (and in violation of the department's policy) violated Iowa public policy favoring the right to privacy. The court found that there was no well-recognized and clear Iowa public policy protecting an at-will employee's privacy interest in a romantic relationship with a coworker, especially when the employer concludes that the relationship has adversely affected the workplace. The court further stated that it had no doubt that an extra-marital affair can damage the morale, discipline, and reputation of a work force, particularly when the employer is a paramilitary organization.



Should you have a Policy on Workplace Dating?

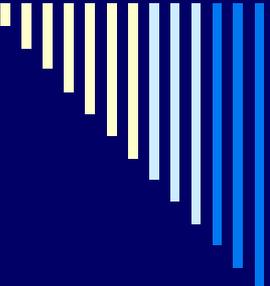
□ Disparate Impact...

- Russell v. United Parcel Service, 673 N.E.2d 659 (Ohio App. 10 Dist., 1996).
- In this case UPS had a no-fraternization policy which forbade any fraternization between supervisors or managers with their employees, and strongly discouraged peer fraternization. Fraternization included any romantic relationship and cohabitation. Plaintiff Andrea Russell became romantically involved with Tani Mann, a part-time hourly employee and the two began cohabitating. Management found out and asked Russell if Mann was planning on moving out Russell said no, but that Mann would resign. Russell was told to have Mann move out or resign herself. Russell refused to resign and also refused to have Mann move out of her house. She was terminated and filed suit. The Court of Appeals reversed the Trial Court's decision granting summary judgment, finding that Russell had demonstrated that her termination based upon the fraternization policy was pretextual since there was ample evidence that other male supervisors were only asked to alter their living arrangements, or were not disciplined at all if one of the parties voluntarily resigned.



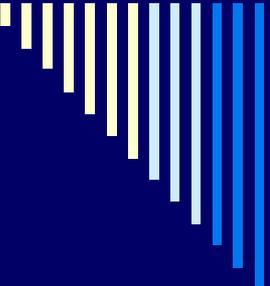
Practical Tips

- **Review** your sexual harassment policy periodically
 - Make sure your employees **are aware of** where to go to complain, internally and externally
-



Practical Tips

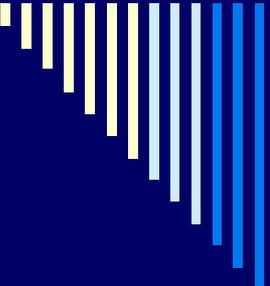
- Conduct training with all employees at least annually
 - Hold separate training sessions with supervisors
 - Apprise supervisors of their responsibilities under the harassment laws and O.R.C. 4112
-



Practical Tips

□ Adopt a reasonable policy

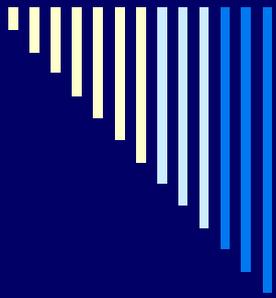
- Required reporting
 - Relationship may require transfer
 - Prohibit involvement between supervisor and subordinate or any other power-differentiated relationship
-



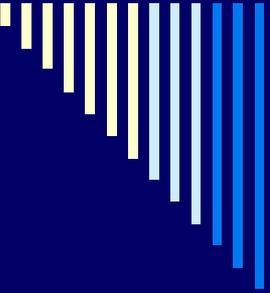
Practical Tips

□ Do not look the other way

- As managers, or EEO officers you have a duty to thoroughly investigate-may have to ask personal or probing questions
 - What might seem harmless or even quaint could turn violent, costly or both
-

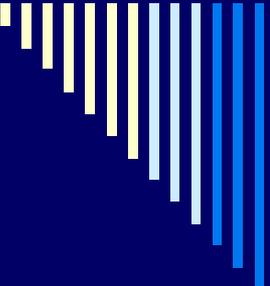


What Would you Do?



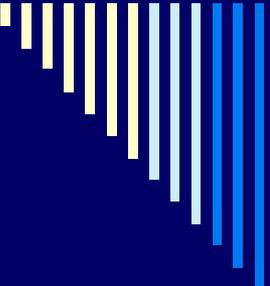
What Would you Do?

You are the agency EEO officer. You hear through the water cooler that a manager is dating an employee who he/she also manages.



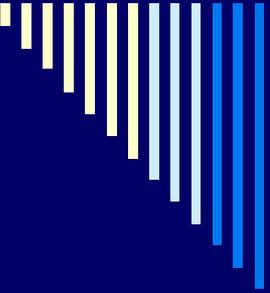
What Would you Do?

You are the agency EEO officer and an employee comes to you and tells you that he/she believes that his/her co-worker is dating the boss and it is making him/her uncomfortable.



What Would you Do?

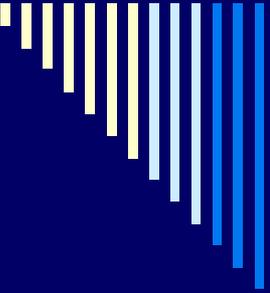
- You are the agency EEO officer and an employee comes to you and states that there is tension in his/her area due to the disintegration of the relationship between the area manager and a peer of his/hers.
 - The employee tells you that he believes that there was a romantic relationship between the two that has soured.
-



Food for Thought

Is a romantic relationship between a manager and a subordinate ever welcome or consensual?

There is an inherent power differentiation within this type of relationship.



Questions

