

## When a manager dates an intern (Toughest HR Question)

*Sometimes, employers do have legitimate business interests around employees' love lives*

By Brian Wasyliv

**Question:** One of our managers is dating a co-op student. Can we discipline him for this indiscretion? We don't currently have a policy on dating in the office. If we were to consider implementing one, what are the ground rules?

**Answer:** The short answer is yes, you can discipline the manager. The longer answer requires a discussion of the various bases for that discipline.

Written policies dealing with workplace romance are not as common as you might think. The prevailing thought, and the correct one, is an employer has no business in the bedrooms of its employees. That being said, few would dispute an employer's legitimate interest in preserving a safe, orderly and productive workplace and in taking reasonable steps to protect itself from liability.

In the scenario above, the employer does not have a written policy and discovers that one of its managers is dating a co-op student. Assuming the relationship has not been condoned by the employer, the question is whether the employer has cause to discipline. Factors to consider include the following:

**Assuming the relationship is sexual, has the student attained age of consent?** In Canada, the age of consent was raised from 14 to 16 in 2006. If the student has not reached the age of consent, not only is discipline in order and justifiable but so too is reporting it to the authorities.

**Does this relationship violate any contractual terms between the employee and the co-op program?** If the manager's actions cause the employer to be in breach of any term of an agreement with the co-op program, that would support the need for discipline. For example, the manager's actions might lead the sponsoring institution to question whether the employer has met its obligation to provide an appropriate working environment with adequate supervision.

**Is the relationship consensual?** In a situation where there may be a significant disparity in the relative authority of the manager and student, the employer should take steps to determine whether the student is being taken advantage of or harassed. That can be difficult to discern; however, questions should be asked to determine whether promises were made or actions suggested the student was or would be "rewarded" for participation in the relationship. If there is evidence the relationship is not consensual, discipline may be appropriate, up to and including dismissal.

**Has the relationship placed the manager in a conflict of interest?** If there is evidence the relationship has impacted the manager's decision-making regarding job scheduling, performance reviews and so on, then discipline is appropriate, up to and including dismissal.

**Has sexual behaviour taken place in the workplace?** If so, discipline is appropriate, up to and including dismissal.

### Implementing a romance policy

Workplace expectations can be created through past practice or verbal conversation, however, a written policy is almost always best. It provides a clear indication to employees that certain conduct is prohibited.

An outright prohibition on romantic relationships between employees is not likely to be successful. First of all, a relationship between consenting adults — where there is no favouritism, no conflict of interest and no abuse of power or impact on workplace morale — may not be an issue for the employer. In addition, a strict prohibition is likely to drive office relationships underground or, worse, cause the departure of otherwise good employees.

For those reasons, it is advisable that a policy targets the potential, adverse results of the relationship as opposed to banning the relationship itself.

In terms of "ground rules," consider the following:

- One objective of the policy is to limit the potential for harassing or discriminatory behaviour. A written policy should make it clear any behaviour that could be considered sexual harassment or discrimination is strictly prohibited.

- A workplace romance does not vitiate an employee's professional obligation to maintain confidentiality (as applicable) and avoid conflicts of interest. This should be made clear in the policy.
- To eliminate the existence, or appearance, of favouritism, the policy should prohibit relationships between employees in a reporting relationship.
- So that management is informed and able to take appropriate steps, the policy should require any intimate relationship between employees be disclosed to human resources or management.
- Similarly, the policy should require notice of the breakdown of a workplace romance so management can prepare for any problem that may arise.
- The policy should make clear employees are expected and required to maintain a business-like approach to their work at all times and conduct themselves discretely and professionally.
- If there is an existing relationship between employees that was previously condoned but would now violate a workplace romance policy, the employer should consider whether bringing the relationship into compliance with the policy could constitute a constructive dismissal. For example, perhaps the employees were in a reporting relationship and the employer sought to re-assign the employees or remove the reporting relationship.

The bottom line is this: While an employer has no business in the bedrooms of employees, there are circumstances when an employer does have a legitimate interest. In those circumstances it is acceptable, if not advisable, to take steps necessary to protect the workplace.

*Brian Wasyliv is a lawyer at Sherrard Kuzz, a Toronto-based employment and labour law firm representing employers. He can be reached at (416) 603-0700 or visit [www.sherrardkuzz.com](http://www.sherrardkuzz.com) for more information.*