

Ask a Legal Expert: Is a Workplace Romance Cause for Discipline?

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 decide to implement one, what are the ground rules?

Answer:

Can the manager be disciplined?

The short answer is yes. The longer answer requires a discussion.

A written policy dealing with workplace romance is not as common as one might think. The prevailing view is that an employer has no business in the bedrooms of its employees. That 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 this scenario, 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. The factors to consider include the following:

- **Has the student attained age of consent?** In Canada, the age of consent is 16. If the student has not reached age of consent, not only is discipline justifiable, but so too is reporting to the authorities.

- **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 and/or harassed. That can be difficult to discern; however, questions should be asked to determine whether promises were made, or actions suggest the student was or would be "rewarded" for participation in the relationship. If there is evidence the relationship is not consensual, discipline is 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, etc., discipline is appropriate, up to and including dismissal.
- **Has sexual activity taken place in the workplace?** If so, discipline is appropriate, up to and including dismissal.
- **Does this relationship violate any contractual terms between the employee and co-op program?** If the manager's conduct causes the employer to be in breach of any term of an agreement with the co-op program, this would support the need for discipline. For example, the actions of the manager might lead the sponsoring institution to question whether the employer has met its obligation to provide an appropriate working environment with adequate supervision.

How to Implement a Workplace Romance Policy

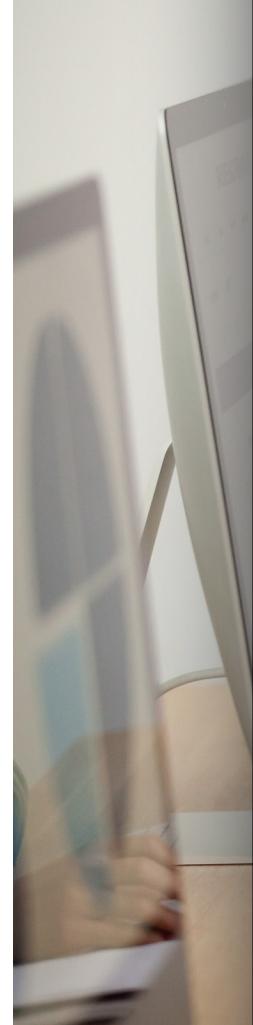
Workplace expectations can be created through a written policy, past practice or verbal communication. However, a

written policy is almost always best. It provides a clear indication to employees that certain conduct is prohibited.

Dictating an outright prohibition on romantic relationships between employees is not likely to be successful. 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 a concern for the employer. As well, 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 a policy target the potential adverse results of the relationship as opposed to the relationship itself.

In terms of best practices, a policy should address the following:

- That any behaviour that could be considered to be sexual harassment or discrimination is strictly prohibited. This addresses the key objective of the policy, which is to preclude harassing or discriminatory behaviour.
- That workplace romance does not vitiate an employee's professional obligation to maintain confidentiality and avoid conflicts of interest.





- That a relationship between employees in a reporting relationship is strictly prohibited. This seeks to eliminate the existence or appearance of favouritism, etc.
- What may occur should two employees in a reporting relationship wish to commence a romantic relationship (e.g., reassignment of employee or removal of reporting relationship).
- That any intimate relationship between employees be disclosed to HR and/or management. This ensures management is informed and able to take appropriate steps, where necessary.
- That the breakdown of a workplace romance be disclosed to HR and/or management, so management can prepare for any issue that may arise.

- That employees are expected and required to maintain a business-like approach to their work at all times and conduct themselves discretely and professionally.

An important note about constructive dismissal: If there was a previously condoned existing, open relationship between employees, that 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, if the employees are in a reporting relationship, consider whether reassigning one could give rise to an allegation of a constructive dismissal. □

To learn more and/or for assistance, contact Sherrard Kuzz LLP.



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