

Workplace romance and sexual favoritism in the #MeToo workplace: legal and practical considerations for management

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667

Frank Joseph Cavico^{ID} and Bahaudin Ghulam Mujtaba^{ID}
Nova Southeastern University, Fort Lauderdale, Florida, USA

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Abstract

Purpose – The advent of the #MeToo movement has brought forth increased national and global attention to sexual assault, abuse, misconduct, discrimination and harassment in the workplace, especially by prominent executives against subordinate female employees. Accordingly, in this article, we are thoroughly analyzing one aspect of office romance and sexual conduct in the workplace, mainly sexual favoritism in the era of the #MeToo movement.

Design/methodology/approach – This is a legal and case-based human resource policies paper. It reviews actual workplace romance cases, policies and court-based decisions to create practical recommendations that can be used by managers, entrepreneurs and corporations for their organizations. One delimitation of this paper is the fact that it focuses on the US context. Another is that, while organizational behavior researchers have empirically studied various workplace romance policies and practices, the paper is a case-by-case analysis of sexual favoritism. “Specifically, the legal research for this article was conducted on the law database, Nexis Uni Legal, in the Cases (both federal and state) and Law Reviews and Journals sub-databases, using the direct key words in quotations “workplace romance,” “office romance,” “sexual favoritism,” and/or “paramour preference,” as well as the indirect key words “appearance discrimination,” “preferring the pretty,” and/or “lookism.” As the authors’ intent was to examine the legal and practical consequences emanating from the #MeToo Movement, the authors concentrated their search on cases and law reviews from 2012 to February 2021.

Findings – Research shows that about 35–42% of women have experienced some form of sexual harassment or sex discrimination at work. Many of the high-profile sexual cases that generated the #MeToo movement involved powerful executives asserting that their romantic relationships with subordinates in the workplace were “merely” consensual office romance or sexual favoritism. As a result of the #MeToo movement, employers have been compelled to reconsider how they should respond to sexual discrimination, sexual harassment, office romance and sexual favoritism in the workplace. This article offers best practices for policymakers and human resources professionals.

Research limitations/implications – This article’s recommendations are limited to workplaces in the US and may not be relevant in other countries as the local laws might vary.

Practical implications – There are policy and behavioral implications for companies, managers and employees regarding workplace romance and sexual favoritism. As such, we provide policy recommendations to human resources department and management on how to provide a healthy work environment for all employees and avoid liability for sexual harassment cases pursuant to Title VII of the Civil Rights Act.

Social implications – The awareness of policies and laws regulating office romance can help educate managers and employees in local communities as to their rights regarding relationships with coworkers and those who report to them. When people are able to date whomever they desire outside of the workplace, employers can regulate some aspects of sexual relationships in the workplace.

Originality/value – This is an original paper by the authors.

Keywords Love contracts, Workplace romance, Sexual favoritism, #MeToo movement, Consensual relationships

Paper type Research paper



Introduction

In the United States, discrimination in employment is illegal pursuant to Title VII of the Civil Rights Act of 1964 based on the “protected categories” of race, color, religion, national origin and sex. Moreover, harassment is construed to be a form of employment discrimination and

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thus illegal. Accordingly, civil rights laws on the federal level make it illegal to harass an employee due to the employee's race, color, religion, sex and national origin, pursuant to Title VII of the Civil Rights Act of 1964. It is also illegal in the United States for an employer to harass an employee because he or she has complained about discrimination or harassment, filed a charge of discrimination or participated in an employment discrimination investigation, proceeding or lawsuit. Each of the states in the United States may also have comparable civil rights laws protecting employees from harassment as well as discrimination, of course, in employment. State laws, moreover, can grant an employee more protection than the federal laws do. Other countries, for example, the United Kingdom, also have laws prohibiting and sanctioning discrimination and harassment in the workplace (Gilani *et al.*, 2014). In the United States, according to the Equal Employment Opportunity Commission (EEOC), the federal agency in the US empowered to enforce civil rights laws, illegal harassment is unwelcome conduct that is based on one of the aforementioned protected characteristics. Harassment becomes illegal when: (1) suffering the offensive conduct becomes a condition of continued employment or (2) the conduct is so severe or pervasive that a work environment was created that is to a reasonable person intimidating, hostile or abusive. Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Harassment can also consist of offensive jokes, slurs, epithets, name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, and threats, intimidation and physical assault. However, the EEOC relates that the law does not make illegal simple teasing, off-hand comments or isolated incidents that are not very serious. Similarly, petty slights and annoyances as well as isolated incidents (unless extremely serious) do not rise to the level of illegal actions. Nonetheless, if the harassment is so frequent or severe that it creates a hostile or offensive work environment, or if it causes the aggrieved employee to suffer an adverse employment action, such as a demotion or a discharge, then the harassment is illegal (Gilani *et al.*, 2014).

Title VII, moreover, prohibits discrimination based on sex in all the terms and conditions of employment. Sexual harassment, moreover, has been construed by the US Supreme Court in the seminal *Meritor Savings Bank v. Vinson* (1986) case to be equivalent of illegal sexual discrimination pursuant to Title VII. Furthermore, illegal sexual harassment can consist of two types of conduct: first, *quid pro quo*, which is decision-making in the workplace based on the submission to or rejection of unwelcome sexual conduct and second, unwelcome sexual conduct that unreasonably interferes with a person's job performance or which creates an abusive, intimidating, offensive and/or hostile work environment (EEOC, *Policy Guidance*, 1990). Moreover, the Supreme Court has considerably broadened the exposure of employers for sexual harassment committed by their employees. If there is sexual harassment inflicted by a manager or supervisor to a subordinate employee in the management hierarchy, and the employee suffers a tangible job loss, such as being discharged or even just losing time from work due to stress, then the employer is absolutely liable for the sexual harassment (Mujtaba and Cavico, 2020). There is no defense. The only "solution" in such a scenario is sexual harassment insurance (Cavico and Mujtaba, 2017).

Employers today, should be especially sensitive to workplace romance due to the potential of workplace sexual discrimination and sexual harassment claims, particularly since the US Supreme Court has ruled that an employer may be absolutely liable for the sexual harassment of an executive, manager or supervisor who sexually harasses a subordinate employee in the managerial hierarchical chain (Cavico and Mujtaba, 2017). Sexual harassment is premised on a workplace environment that is hostile, offensive or abusive sexually. The legal standard for what constitutes a hostile sexual environment is a very subjective one too. Employees can sue an employer for allowing a hostile sexual environment to occur and also for not stopping the offensive sexual behavior. The problem for the employer is exacerbated when the relationship was originally consensual but now one party wants to break it off, but the

other party still persists in making now unwelcome romantic advances (Cavico *et al.*, 2012a). Furthermore, even though the federal civil rights act does not protect against discrimination based on marital status, about two dozen states and many municipalities have laws that ban discrimination on the basis of marriage. A legal problem in such a state or city might arise if a married employee who has an affair is terminated, but an unmarried employee who has an affair is not discharged. The married employee could well claim illegal discrimination based on his or her marital status. Another legal problem for employers is that employees are entitled to privacy rights – pursuant to constitutional law for government employees, but also pursuant to tort law for all employees. An employer who too intrusively investigates its employees' romantic relationships or discharges employees for such relationships may be sued for intentionally violating the employees' privacy rights (Cavico *et al.*, 2012a).

Regardless of lawsuits, empirical studies on sexual behavior have confirmed that such actions are usually offensive and harmful. According to Berdahl and Aquino (2009), about 58% of employees reported being exposed to sexual behavior in the past two years; and 40% were exposed to sexual behavior in the past year. Empirical research has demonstrated that exposure to sexual behavior at work does predict negative employee work and psychological well-being (Berdahl and Aquino, 2009). Many researchers regarding workplace sexual policies have reported their findings from organizational behavior perspectives (Aquino *et al.*, 2014; Berdahl and Aquino, 2009; Chan-Serafin *et al.*, 2017; Foley and Powell, 1999; Gomes *et al.*, 2006; Watkins *et al.*, 2015; Pierce *et al.*, 2012; Watkins *et al.*, 2006). Since the focus of our paper is on legal cases regarding sexual favoritism, we will limit our literature and discussion to actual cases that have gone through the US Courts. Overall, the purposes of this article are to study the legal and practical consequences of workplace romance, including sexual favoritism in the workplace, in the era of the #MeToo Workplace and to make appropriate recommendations for management.

Legal analysis

The principal purpose of this legal section is to explain to management the extent to which the employer can be held liable for discriminating against otherwise qualified job applicants and employees by denying them employment, advancement, opportunity or benefit in the workplace because the person who received the position, opportunity or benefit received it because he or she submitted to unwelcome *or* welcome sexual advances or requests. Although the focus is on federal law, specifically Title VII of the Civil Rights Act and EEOC policy statements, guidelines and examples, reference to pertinent state civil rights laws will also be made. The general rule regarding sexual favoritism in the workplace and the two exceptions – *quid pro quo* harassment and hostile environment harassment will be explained and illustrated in the context of sexual favoritism.

Isolated instances of sexual favoritism

The general legal rule is that sexual favoritism does not violate Title VII if the conduct consists of isolated instances of preferential treatment based on consensual workplace romance relationships. The rationale is that granting a preference to a paramour based on the consensual romantic relationship does not amount to discrimination against women or men since both are equally disadvantaged for reasons other than their gender (see, for example, *Doyle v. Advanced Fraud Sols., LLC*, 2020; *Romero v. McCormick and Schmick Rest. Corp.*, 2020; *Kieffer v. Tractor Supply Co.*, 2019; *Miller v. Aluminum Co. of America*, 1988; *DeCinto v. Westchester County Medical Center*, 1986; *Blount v. Northrop Grumman Info. Tech Overseas, Inc.*, 2014, applying Virginia law; EEOC, *Policy Guidance*, 1990). The EEOC further explains the rationale: "A female charging party who is denied an employment benefit because of such

sexual favoritism would not have been treated more favorably had she been a man, nor, conversely, was she treated less favorably because she was a woman” (EEOC, *Policy Guidance*, 1990, p. 3. That is, Title VII is not triggered because the preferential treatment is based on the sexual conduct of the parties rather than the gender of the employees (see, for example, the following cases which are in conformity with the EEOC rule and rationales: *Doyle v. Advanced Fraud Sols., LLC*, 2020; *Kieffer v. Tractor Supply Co.*, 2019).

However, from a legalistic perspective it should be noted that technically the EEOC’s precepts are not conventional administrative rules and regulations, but “merely” “guidelines” for employers (Cavico *et al.*, 2013). However, the authors would emphasize that the EEOC is more than willing to sue an employer for contravening its “guidelines,” thus forcing the employer to litigate in the courts, where a federal court may agree or disagree with the agency’s guidelines. Moreover, Byun (2014) underscores that the guidelines have been “influential” in the decision-making of the courts (p. 269). Kreis (2020) also notes that the general rule of no liability “. . . principle is derived from decades of precedent holding that paramour discrimination and sexual favoritism are generally not actionable under Title VII” (p. 191). Kreis (2020) further explains that these “. . . paramour cases are not actionable because they are not structural or systemic sex-based roadblocks to equal workforce opportunity” (p. 192). Moreover, even though Title VII prohibits retaliatory discrimination, since workplace romance as well as discrimination based on consensual sexual relationships are neither protected nor prohibited by Title VII, opposition to such relationships is also not protected as illegal retaliation (Poff *v. Oklahoma*, 2017).

Consequently, there are many recent cases where the courts have ruled that the sexual favoritism or paramour preference is “merely” isolated, and thus there is no legal liability. The authors will now illustrate a few recent cases. First, in the federal district court case of *Doyle v. Advanced Fraud Sols., LLC* (2020), the company’s president, a male, began a consensual affair with a female subordinate employee, had her transferred to his location, and allegedly provided her with favorable treatment compared to other employees, for example, allowing her to work from home while other employees were not, as well as providing her with “inappropriate” benefits, such as meals and hotel rooms, at the company’s expense, which latter benefits the plaintiff, a female and the company’s marketing coordinator, claimed was a “misuse” of company funds. There was, however, no evidence presented that the president and his paramour engaged in any “sexual banter” at work or that he made any inappropriate sexual remarks. Accordingly, the court dismissed the Title VII claim, saying that this situation was just a case of legally permissible sexual preference and that there was no illegal discrimination because both males and females in the workplace were denied the benefits the president granted to his paramour (*Doyle v. Advanced Fraud Sols., LLC*, 2020).

In the federal district court case of *McKissic v. City of Reno* (2019), the city manager, a male, was allegedly having a romantic affair with an assistant city manager, a female, to whom he granted a favorable assignment; and he also allegedly failed to hold her accountable for work-related mistakes. Another assistant city manager sued, claiming the sexual favoritism violated Title VII. The court however, disagreed, explaining that the “alleged favoritism. . . , even accepted as true, does not meet the requisite barometer of ubiquity to support a Title VII claim. . . .” (*McKissic v. City of Reno*, 2019, p. 22). The court did note that there was hostility directed to the plaintiff by the city manager but that the hostility was not sexual in nature but as a result of perceived incompetent work performance by the plaintiff and “team problems” with her work team (*McKissic v. City of Reno*, 2019). Similarly, in the federal district court case of *Stewart v. SBE Entm’t Grp., LLC* (2017), the plaintiffs, cocktail waitresses, contended they were treated illegally by the company due to sexual favoritism because certain supervisors who were dating other cocktail waitresses exempted their paramours from the company’s policy of no-alcohol consumption at work, while strictly enforcing the policy, including the use of breathalyzer tests, on the plaintiff cocktail waitresses. Yet there was no evidence of any

unwanted sexual advances – physical or otherwise – by management. The court thus deemed this “favoritism” conduct to be consensual, preferential, but isolated and not “ubiquitous,” and thus the court ruled that the conduct “without more cannot support a sex-discrimination claim under Title VII” (*Stewart v. SBE Entm’t Grp., LLC*, 2017, p. 1,244).

Of course, there are many other cases that can be explored. Another example is the federal district court case of *Binion V. PNC Bank, Nat’l Ass’n* (2017), where the plaintiff, a female bank customer representative, contended she was discriminated against when the branch manager, a male, hired another female as a customer service representative with whom he was allegedly having a romantic affair (*Binion V. PNC Bank, Nat’l Ass’n*, 2017). A final example of isolated sexual favoritism is the federal district court case of *Crisanto v. Cnty. Tulare* (2015), where the plaintiff, a female and a lead psychologist for a government agency, contended that her immediate supervisor discriminated against her by favoring another female employee, his wife. Specifically, the plaintiff complained that her supervisor allowed his wife to routinely escape job discipline for her work indiscretions that would cause discipline for other employees who were not engaged in a marital, romantic or sexual relationship. The preceding cases well illustrated the legal general rule; however, as noted, there are two important exceptions.

Sexual favoritism and coerced sexual conduct

An important exception to the general rule of no liability for sexual favoritism arises when a female employee is coerced into submitting to unwelcome sexual advances in return for a position, promotion or other job benefit; the submission aspect of the relationship renders the conduct unlawful and thus a cause of action exists not only for the victimized employee but for other employees who were qualified but were denied the employment opportunity or benefit (*Doyle v. Advanced Fraud Sols., LLC*, 2020; *Stewart v. SBE Entm’t Grp., LLC*, 2017). In such a case, other employees who were qualified but were denied the job benefit may be able to demonstrate that sex was generally made as a condition for receiving the job benefit (Pearce and Lipin, 2015). That is, according to the EEOC, a woman would need to establish that in order to obtain the job benefit, it would have been necessary to grant sexual favors, which is a condition that would not have been imposed on men (EEOC, *Policy Guidance*, 1990). The EEOC views the aforementioned situation as constituting a traditional case of *quid pro quo* (sex-for-job) sexual harassment (EEOC, *Policy Guidance*, 1990). The EEOC further explains that even if a manager or supervisor was interested in just one female, and thus coerced only her, other women, as well as men, who were denied the benefit would be able to claim legally impermissible discrimination because they were harmed as a result of the sexual harassment inflicted on the woman who was coerced (EEOC, *Policy Guidance*, 1990). The EEOC provides an example of a “coercion” case, to wit: A female employee contends she lost a promotion for which she was qualified because another woman, a coworker, who obtained the promotion was engaged in a sexual relationship with their supervisor. However, the sexual relationship was not consensual; rather, the supervisor regularly harassed the co-worker, demanded sex as a condition for the promotion, and then he audibly boasted about his “conquest.” In such a situation, the EEOC maintains that the female employee who lost the promotion may be able to establish a Title VII violation by demonstrating that in order to obtain the promotion, it would have been necessary for her to grant sexual favors. Moreover, the EEOC submits that in addition she and other qualified male and female coworkers would have standing to challenge the favoritism on the basis that they were harmed because of the discrimination against the female coworker who did not get the promotion (EEOC, *Policy Statement*, 1990).

Consent vs coercion are the key elements to this exception. Yet, legally as well as morally, one of the key questions that has been raised as a result of the #MeToo movement, according to Green (2019), is: “(W)hat does consent to a romantic relationship mean today with evolving

notions inspired by the overwhelming avalanche of misdeeds being identified through the #MeToo movement” (p. 117)? Accordingly, an intriguing situation arises in a case of supposed consensual sex between a manager or supervisor and a subordinate employee, especially if the former is male and the latter is a female. Are such hierarchical workplace romances truly voluntary and consensual? [Byun \(2014\)](#) asserts that due to the “power dynamic” involved in a superior-subordinate relationship in the workplace, these “. . . hierarchical workplace romances can be more troublesome and threatening than lateral romances” (p. 274). As such, [Byun \(2014\)](#) explains that “(e)mmployees will experience subtle pressure to participate or at least acquiesce to such behavior, whether they like it or not, when the pressure is coming from the boss. This is more troublesome for women who work in a male-dominated environment” (pp. 274–75). [Leong \(2019\)](#) calls the preceding hierarchical relationship one of “institutional power disparity” where the supervisor can control the subordinates “fates and circumstances as a result of their respective institutional roles” (p. 946). Therefore, [Srinivasan \(2020\)](#) contends that such a “power imbalance” vitiates legal consent; that is, consent is lacking “. . . where a subordinate feels compelled to relent to a supervisor’s advances because she fears the consequences of not doing so, even if there is no explicit threat made” (p. 1,118). Even if such “consent” means the sex was voluntary in the sense that the female employee did not engage in sex against her will, thereby preventing a *quid pro quo* lawsuit, the implicit coercion and the concomitant implied *quid pro quo* threat perpetuates gender inequality ([Srinivasan, 2020](#), pp. 1,111, 1,114). Furthermore, in situations of “serious power imbalance,” such as between supervisor and employee or professor and student, [Srinivasan \(2020\)](#) asserts that the consent might be “subtly coerced,” even without the party’s knowing (p. 1,138). Consequently, [Green \(2019\)](#) admonishes that if the potential relationship is between an executive at a high-level in the corporate hierarchy, the “power differentials are too insurmountable” (p. 159).

Therefore, “(i)n light of the power differentials and the public exposure via #MeToo, it is always prudent for employers to establish policies that encourage an executive to refuse to even take the risk of making an overture to see if there can be a consensual relationship with a subordinate” ([Green, 2019](#), p. 159). Appropriate policies will be discussed by the authors in latter sections to this article. [Houseman \(2019\)](#), in addition, reports on studies that show that if there is a gender imbalance at work, that is, for example, the executives are mainly male and the administrative assistants mainly female, then sexual harassment may occur at a higher rate (p. 287). Actual or perceived retaliation is another means to vitiate consent. [Green \(2019\)](#) explains: “In considering the harm from potential retaliatory blackballing, subordinates who choose to respond to executives’ overtures in ways that limit the potential for retaliation are not really consenting. Those limited subordinate responses, however, could lead executives to believe that the subordinate has consented” (p. 128). [Green \(2019\)](#) adds that “(w)hile it may be that a response of ‘no means no’ in terms of the romantic or sexual encounter, the subordinate can never be certain that a no does not also mean tremendously adverse career consequences” (p. 163). While the *quid pro quo* exception deals primarily with the relationship of the respective parties, another exception arises if the sexual relationships and concomitant sexual favoritism at work are widespread.

Sexual favoritism and a hostile sexual environment

Another important legal exception occurs when workplace romance and sexual favoritism in the workplace create a hostile work environment, which as noted is a form of sexual harassment. Consequently, if favoritism based on the granting of sexual favors is viewed as widespread or pervasive in the workplace, female employees, as well as male employees, who do not welcome such conduct can sue on a hostile environment sexual harassment theory, regardless of whether any of the objectionable sexual conduct is directed at them and regardless of whether the sexual favors granted were voluntary and consensual

(EEOC, *Policy Statement*, 1990; *Zucchella v. Olympusat*, 2020; *Wasche v. Orchard Hosp*, 2020; *Stewart v. SBE Entm't Grp., LLC*, 2017; *Cofer v. Parker-Hannifin Corp.*, 2016, applying California law; *Miller v. Dep't of Corr.*, 2005, applying California law; *Broderick v. Ruder*, 1988; *Leong*, 2019; *Cavico et al.*, 2015). In such a situation, according to the EEOC, "...a message is conveyed that the managers view women as 'sexual playthings,' thereby creating an atmosphere that is demeaning to women" (EEOC, *Policy Statement*, 1990, p. 4). Moreover, both men and women can sue pursuant to the hostile environment as well as under the *quid pro quo* doctrine if they find such sexual conduct offensive and it is sufficiently severe and pervasive so as to create an abusive working environment (EEOC, *Policy Statement*, 1990). Pearce and Lipin (2015) further explain the hostile work environment rationale:

An employer's sexual favoritism or preferential treatment may create a hostile work environment when romantic conduct occurs in an indiscreet manner, causing plaintiffs to believe that favorable treatment may be obtained from the employer in exchange for a sexual or romantic relationship. Co-workers of an employee engaged in such a relationship with a superior may perceive that the person in power favors that employee, thus raising the inference of the existence of the hostile work environment. Under third-party sexual harassment doctrine, this occurs when a supervisor in such a relationship awards benefits to the employee with whom he or she is having a sexual relationship, thereby denying the benefits to similarly situated third-party employees (pp. 322–33).

In determining whether a work environment is "hostile", the EEOC uses a "totality of the circumstances" test, whereby the agency on a case-by-case basis applies an objective standard of the hypothetical "reasonable person" in the context in which the alleged conduct occurred. Certain factors that the EEOC says should be considered are as follows: the number of incidents of favoritism, the egregiousness of the conduct and whether other employees in the workplace were aware of the conduct (EEOC, *Policy Statement*, 1990). Similarly, one federal district court advised to consider the "totality of the circumstances" and not to consider the allegations "piecemeal" (*Garvin v. Southwestern Corr., LLC*, 2019, p. 650). However, another federal district court also warned that "Title VII is not a 'general civility code,'" and thus "to establish a violation the environment must be both objectively and subjectively abusive" (*Stewart v. SBE Entm't Grp., LLC*, 2017, p. 1,245). Accordingly, the court explained that plaintiffs need to "...offer evidence to show that they were subjected to unwelcome verbal or physical sexual advances by management and that they knew about it" (*Stewart v. SBE Entm't Grp., LLC*, 2017, p. 1,245).

The following federal cases will illustrate the preceding hostile environment rules. First, in the federal district court case of *Broderick v. Ruder* (1988), the court ruled that widespread sexual favoritism can rise to the level of a Title VII sexual harassment violation. In the case a staff attorney at a federal government agency alleged that two of her supervisors had engaged in sexual relationships with two secretaries who then received promotions, cash rewards and other job benefits. Moreover, another of her supervisors, a male, allegedly promoted another staff attorney, a female, who he socialized with extensively and to whom the supervisor was noticeably attracted to. Furthermore, there were isolated incidents of sexual harassment directed at the plaintiff herself, including one incident where her supervisor became intoxicated at an office party, untied the plaintiff's sweater and kissed her (*Broderick v. Ruder*, 1988). The court found that this conduct created a hostile work environment which was offensive not only to the plaintiff but to other employees at the workplace. In addition, the court found that the supervisor's granting of preferential treatment to those who submitted to his sexual advances undermined the plaintiff's motivation to work and thus impaired her job performance, thereby depriving her and other female employees of promotions and other job opportunities (*Broderick v. Ruder*, 1988). Finally, it is important to note that the EEOC in relating this preceding case in its policy statement stated that "...it is the Commission's position that these facts could also support an

implicit ‘quid pro quo’ harassment claim since the managers, by their conduct, communicated a message to all female employees in the office that job benefits would be awarded to those who participated in sexual conduct” (EEOC, *Policy Guidance*, 1990, p. 5).

Similarly, in the federal district court case of *Nichol v. City of Springfield* (2017), the plaintiff, a police communications officer for the city, who was terminated, introduced evidence that she reported three different individuals for sexual favoritism. She reported that the former police chief had engaged in a workplace affair, granted favors to his paramour, gave special treatment to other officers in order to keep the affair secret and attempted to engage other women in sexual relationships. Moreover, she reported that the former acting police chief had inappropriate relationships with both coworkers and police informants, that he made sexist comments to her about “baking cookies,” and that he had a former employee fired on “trumped up charges” after reporting sexual harassment. The plaintiff also reported that a captain had engaged in workplace affairs. Consequently, the court, citing EEOC guidance as to favoritism constituting a hostile sexual environment, ruled that there was sufficient evidence to put the case before a jury to determine if sexual harassment occurred (*Nichol v. City of Springfield*, 2017, p. 54).

To compare, in the federal district court case of *Garvin v. Southwestern Corr., LLC* (2019), the federal district court first held that widespread sexual favoritism could form the basis for a sexual harassment Title VII lawsuit, but after looking at the “totality of the circumstances” there were insufficient facts demonstrated to indicate that the sexual favoritism was so pervasive in the workplace so as to create an abusive and hostile working environment. In the case, the plaintiff, a female prison transport officer, alleged that the warden of the prison, a male and her supervisor, treated preferentially a coworker with whom there was a “common belief” among the employees that he was having a sexual relationship with. The plaintiff alleged that the warden’s paramour was given a preferential job title and a higher hourly rate for transporting prisoners, even though his paramour was purportedly significantly less qualified than the plaintiff. Moreover, the plaintiff alleged that the paramour was neither demoted nor received a reduction in pay when she refused to carry a weapon, which was a job requirement. Furthermore, the plaintiff alleged that the warden teased her about her appearance, focusing in on “characteristically male traits,” and he did this teasing in front of other employees as well as inmates. Also, the plaintiff contended that the paramour allegedly made comments about her (i.e. the paramour’s) breasts and her relationship with the warden in front of the plaintiff (*Garvin v. Southwestern Corr., LLC*, 2019). The court noted that the aforementioned conduct and comments were “humiliating and boorish” as well as “inappropriate for the workplace,” but, “even if true,” these allegations were inadequate to establish the requisite severe and pervasive harassment for a hostile environment case. The court further explained that the plaintiff named only one person, the coworker, who was treated favorably because of her alleged sexual relationship with the warden, her supervisor and “. . .this does not support the inference of widespread sexual favoritism. Instead this appears to be an isolated instance of favoritism, which. . . courts have held to be insufficient to show a hostile work environment” (*Garvin v. Southwestern Corr., LLC*, 2019, p. 16) and see *Kelly v. Howard I. Shapiro and Assocs. Consulting Eng’rs, P.C.*, 2012, pp. 19–20.

Therefore, to concisely conclude, one legal, though not necessarily moral, line is clearly between sexual conduct that is coerced as opposed to consensual. Another line is the one between isolated as opposed to widespread sexual favoritism. The cases indicate that for there to be a finding of a hostile sexual environment the romantic relationships and preferential conduct must be severe or egregious and pervasive or generalized, particularly conduct between a manager or supervisor and a subordinate employee. *Pearce and Lipin* (2015) thus conclude that “(b)ecause of the difficulties inherent in providing these types of evidence, plaintiffs usually fail to prove the existence of a hostile work environment” (p. 334). Accordingly, an employer is allowed on an “isolated” basis to show favoritism and to bestow

special benefits or grant preferential treatment to an employee based on a consensual love interest or an workplace romance relationship. Nevertheless, sexual favoritism, specifically, as well as sexual harassment and discrimination generally, are naturally caused by and complicated – legally, morally and practically – by romance in the workplace. Accordingly, the next legal section to this article will discuss some of the legal aspects of workplace romance with ethical analysis and practical suggestions provided in later sections.

Workplace romance and sexual favoritism

For an employer, legal as well as practical problems certainly are exacerbated by workplace romance and any resulting sexual favoritism. Yet, realistically, for an employer to try to “stamp out workplace romance is like standing in front of a speeding train,” particularly because the workplace consistently comes up in surveys as the “number one” place to meet a mate (Shellenbarger, 2010, p. D1). The reasons are simple, that is, people at work spend a great deal of time together, they have similar interests and they get to know each other very well; and the more familiar they are with each other the greater the likelihood of the coworkers being attracted to one another and thus to become romantically involved (Gallo, 2019). To illustrate, a 2017 Gallup poll revealed that 70% of the workers surveyed said they had a “meaningful relationship” at work (Kreis, 2020, p. 183). Similarly, Byun (2014) reports on a survey that indicates that one-third of romantic relationships may begin in the workplace (p. 259, note 1). These workplace relationships may be “deeply meaningful connections, such as in the case of having a “work spouse,” which describes a close relationship which is “equality-reinforcing and of mutual benefit” (Kreis, 2020, p. 183). Positive benefits certainly can ensue from such a relationship, such as reducing stress and turnover, improving engagement and performance, and promoting productivity (Kreis, 2020). However, these close friendship bonds can quickly turn into workplace sexual and romantic relationships, and for employees of varying sexual orientations too, and these relationships can engender sexual favoritism in the workplace, which can result in sexual harassment and sexual discrimination. Consequently, as Kreis (2020) emphasizes: “The positive gains notwithstanding, mixing pleasure with business can be a dangerous situation. Close friendships in professional settings can also cause conflict. . .” as well as engender “hurt feelings, anger, and envy,” thereby resulting in adverse employment conduct, including illegal conduct (p. 184).

Workplace romance can certainly pose other major problems for employers, particularly if workplace romance causes sexual favoritism in the workplace. Workplace romances can have a negative “spillover effect” on coworkers. An example provided by Shellenbarger, 2010, p. D1) is the experience of two coworkers who commenced dating. Initially they were considered to be equals on the job, with each other and their coworkers; but when the two started to go out to lunch regularly, their coworkers felt “excluded,” which created “a lot of negativity.” Workplace romance can also engender conflicts-of-interest as other employees may claim sexual favoritism if they feel they were not treated fairly because of a manager’s preference to his or her romantic partner. Another problem with workplace romance is the potential for “messy breakups,” perhaps resulting in allegations of sexual harassment and discrimination and thus consequently lawsuits. A study conducted in 2006 by the Society for Human Resource Professionals, indicated that 67% of the employees surveyed cited as a significant problem the possibility of retaliation by “spurned or disappointed lovers,” which percentage was up from 12% in 2001 (Shellenbarger, 2010, pp. D1, D2).

Another way to avoid legal problems is for the employer to require that anyone who decides to embark on a dating relationship with another employee must disclose that relationship to human resources and then also require that the dating coworkers sign a contract that their romantic relationship is a consensual one. These contracts are at times called “love contracts,” which subject matter will be more fully discussed in a forthcoming “Recommendations” section of this article. Suffice-it-to-say for now, if the romantic

relationship ends poorly, that is, “crashes and burns,” the contract should serve as a device to protect the employer from sexual harassment and discrimination lawsuits (Cavico *et al.*, 2012a). Yet, the employer also must be aware that such a policy may cause other legal problems for the employer because if the information regarding the dating relationship, which certainly can be construed as private and personal, is improperly accessed and/or disclosed publicly, the employer could face a lawsuit for the intentional tort of invasion of privacy, particularly if the disclosure adversely affects the employees’ ability to obtain another job (Cavico and Mujtaba, 2021).

Human nature being what it is, the employer must be cognizant of the fact that realistically it would be impossible to totally prevent employees from engaging in workplace romances. Clearly, what is necessary is for the employer to be proactive and thus to promulgate clear, concise, understandable and fair workplace romance policies that set forth appropriate romantic relationship standards and proper conduct.

Sexual favoritism link to discrimination and harassment. We can summarize that, legally, the general rule is that sexual favoritism is not actionable as illegal sexual discrimination and/or harassment. However, as emphasized by the authors, there are two important exceptions, to wit: sexual favoritism may rise to the level of a Title VII violation when the practice adversely affects employment opportunities for third parties and the sexual favoritism is deemed to be coercive “*quid pro quo*” sexual harassment and/or hostile work environment harassment. Significantly, in a hostile environment case the pervasive sexual conduct that creates the hostile work environment can do so for those employees who find it offensive or abusive even if the perpetrator only targets employees who welcome the sexual conduct and even if there is no sexual conduct directed against the employee bringing the claim. However, absent a hostile environment, and if a manager or supervisor does not force an applicant or employee to submit to sexual advances in order to obtain a job or gain a promotion, then the situation is “merely” one of sexual favoritism or “paramour preference” and thus not, according to the courts and EEOC, legally impermissible sexual harassment. Allowing workplace romance, however, means more interpersonal relations between coworkers in the workplace, and thus likely more romantic relationships and as a result perhaps more sexual favoritism, which can cause legal as well as practical problems for the employer. Yet, even if dating in the workplace among employees is permitted and any resulting sexual favoritism occurs, it is generally legal. Nonetheless key questions remain as to best practices or recommendations for workplace romance in the modern workplace.

Recommendations

Initially, before discussing recommendations, it is important to note that one federal district court clearly advised employers as well as employees that the employment laws have neither vested the federal courts to sit as “super-personnel departments” nor to determine the “wisdom and fairness” of employer business decisions (Morris *v. Acadian Ambulance Servs.*, 2015). Accordingly, it is the principal function of a company’s top management and Legal and Human Resources departments to ensure that business decisions, especially those affecting the employees, are wise, fair, moral and, of course, legal (Cavico and Mujtaba, 2017). Employers, therefore, must be keenly aware of the legal and practical implications of workplace romance and sexual favoritism and be ready and able to promulgate appropriate policies. Accordingly, we now submit the following practical, efficacious and helpful recommendations.

Avoid sexual harassment

First, appropriate policies, programs, procedures and training are necessary to combat sexual discrimination and harassment and thus to ensure a fair, just and functional workplace.

“Prevention is the best tool for the elimination of sexual harassment. . .” in the workplace, say [Pearce and Lipin \(2015, p. 347\)](#). In determining the adequacy of an employer’s prevention methods, reference first should be made to the federal district court case of [Alatorre v. Mabus \(2015, p. 24\)](#), where the court emphasized that merely having an antidiscrimination and antiharassment policy is insufficient; rather, the court set forth in general terms the basic components of an “effective” policy, to wit: a requirement that all employees, particularly, managers and supervisors, report instances of discrimination and harassment; allowing the employees to file informal as well as formal complaints; a reporting mechanism that permits an aggrieved employee to bypass a supervisor or manager; and training regarding the policy. Based on the preceding counsel from the court, the authors’ own experiences and observations, as well as the suggestions from legal and management commentators (see, for example, [Farkas et al., 2019](#); [Flores, 2019](#); [Houseman, 2019](#); [Pearce and Lipin, 2015](#); [Cavico et al., 2012a](#)), we submit the following recommendations:

The Code of Ethics or Conduct for the workplace should include a clear and strong policy statement against sexual harassment and discrimination ([Mujtaba and Cavico, 2020](#)). Most importantly, the policy statement must include “. . . a bold and direct statement of the intolerance and prohibition of any form of sexual harassment” ([Pearce and Lipin, 2015, p. 347](#)) as well as discrimination. The code also should include a clear statement of as well as explanation of prohibited conduct. The employer should have an effective policy distribution plan, including communication to and acknowledgment by the employees. There should be in the code a clear and effective complaint or reporting procedure that contains different avenues to complain. Employers, in addition, should take steps to promote the availability and use of these internal reporting systems. Moreover, there must be assurances that any complaint will be promptly and thoroughly investigated, and that the employer will protect the confidentiality of complaining employees to the extent possible. Finally, there must be very strong assurances that complaining employees will be protected from harassment or retaliation as well as that any such retribution will be severely punished.

In conjunction with the code and reporting mechanisms, systemic investigative procedures that are objective and fair are required. The employer must ensure that the investigative process affords all the parties involved a prompt, thorough and fair investigation as well as a timely resolution of the complaint. If violations have occurred corrective actions that are prompt and effective are essential. There should be a tiered or graduated system of violations with specified sanctions and penalties for violations. Assurances in the code must be given that the employer will take immediate and appropriate action in the form of proportionate discipline if there is a determination that harassment or discrimination has occurred. Finally, continual auditing and monitoring of personnel to ensure compliance as well as record-keeping of all complaints of harassment and discrimination is strongly recommended.

Specifically, regarding training it first should be noted that many states [Farkas et al. \(2019\)](#) “encourage” employers to provide such training, as does the EEOC, but three states – California, Connecticut and Maine – require businesses to implement comprehensive training programs that are designed to raise awareness of sexual harassment in the workplace and to prevent such misconduct. Regardless of any mandatory or “encouraged” training, the ethically egoistic employer should promulgate antidiscrimination and antiharassment policies, conduct appropriate training and establish secure reporting mechanisms. Such an effort will show that the employer is acting as a reasonably prudent employer legally as well as a moral employer ethically. Accordingly, education and training should be mandatory for all employees, especially officers, managers and supervisors, as well as investigators. They all should be educated and trained as to the existence and provision of the company’s Code of Ethics or Conduct, and how it applies to discrimination and harassment in the workplace. Education and training should also encompass the fundamentals of antidiscrimination and

antiharassment law. Investigators particularly should be educated as to the law of defamation and invasion of privacy law, and especially the legal risks pursuant to those laws during an investigation. Education and training can be conducted online, personally, in workshops and/or group sessions. Regarding managers and supervisors, [Farkas et al. \(2019\)](#) add that they should be required to formally acknowledge that they received the written antidiscrimination and antiharassment policy as well as completed the requisite training, “and doing so, if they then receive a complaint about harassment and fail to act, they cannot plead ignorance and may be held liable if illegal conduct is found” (p. 445). The objectives of the training, says [Houseman \(2019\)](#), are to increase the awareness of the employees of sexual harassment and discrimination in the workplace so that they can readily identify such conduct if they observe it, to teach employees that they should step in and assist if they observe misconduct taking place, and that they are adequately informed of the process for making complaints. [Houseman \(2019\)](#) also emphasizes that for training to be effective it must “actually make a difference in the office” by “molding employee perspectives” about proper vs improper workplace conduct, and thus “harassment training should not be used merely as a tool to avoid litigation” (p. 293). Accordingly, [Houseman \(2019\)](#) recommends the importance of “civility training” which teaches employees not only to recognize and report misconduct but “to treat each other with respect and humility” (p. 293). Similarly, the objectives of such a training program, asserts [Flores \(2019\)](#), are to design and build it around the concept of “human dignity in the workplace” as well as to focus on “the right to be safe, secure, and respected in the workplace” (pp. 117–118).

Specifically, regarding reporting procedures, colloquially known as “whistleblowing,” it is incumbent on the employer to have a clear and definite whistleblowing policy and mechanism. Whistleblowing in the business context herein is the disclosure of wrongdoing by an employee of misconduct by his or her coworkers or by the company or organization itself. The #MeToo movement apparently has produced an effect on company whistleblowing. [Brake \(2019\)](#) asserts that “#MeToo has sparked a cultural reckoning with sexual harassment that promises to spur more outspoken opposition to sexual harassment in the workplace” (p. 5). However, [Brake \(2019\)](#) adds that “...as the #MeToo movement expands to push the boundaries of conventional understandings of sexual harms, retaliatory responses may become even more likely” (p. 2). [Houseman \(2019\)](#) reports on a 2015 study that found that one-third of the females surveyed indicated that they had been sexually harassed at work during their lifetimes, but that 71% never reported the harassment (p. 282). [Houseman \(2019\)](#), p. 293 further reports on a 2016 EEOC Select Task Force study that found that approximately three out of four employees who experienced harassment never even talked to a manager, supervisor or union representative regarding the harassing conduct. Moreover, employees who experienced harassment failed to report the harassing behavior or to file a complaint because they feared disbelief of their claim, inaction on their claim, blame or social or professional retaliation. Similarly, [Green \(2019\)](#), p. 127 reports on a study that indicated that only one out of four women who faced sexual harassment felt comfortable about coming forward with a complaint. [Green \(2019\)](#) explains that “...pursuing a complaint of harassment constitutes a risky proposition. Approximately, 75% of those employees who do file formal complaints face some form of retaliation by their employers” (p. 128). [Brake \(2019\)](#), moreover, warns that there may even be a “backlash” against the #MeToo movement and consequently that “blowing the whistle” on harassment at work may cause even more retaliation responses against female employees (p. 5).

Consequently, regarding whistleblowing, we recommend a written and communicated reporting procedure that includes the following elements, to wit: a recitation of the specific steps necessary to start a harassment or discrimination complaint; a requirement that all employees must report all suspected occurrences of discrimination and harassment, including a statement that sanctions may be imposed for not reporting; a strong and clear

prohibition of retaliation against the employee bringing the complaint or revealing the discrimination or harassment as well as a statement that any retaliation will be severely punished; and a statement that the process will remain confidential to the extent possible. [Pearce and Lipin \(2015, pp. 350–51\)](#) also maintain the complaint should initially be made to the employee's immediate supervisor; however, they do relate an EEOC "suggestion" that the "...employer designate at least one official outside the employee's chain of command to hear the complaint. ..." if the employee does not feel comfortable in bringing the complaint to the immediate supervisor or feels it may be futile to do so. Regarding situations of sexual harassment, the authors further recommend that an employee who feels aggrieved by a manager, supervisor or other employee preferring a paramour should be able to bring the situation to the attention of his or her manager, or, likewise, if the manager is a party romantically involved, to bring the matter to a manager above that manager or outside the aggrieved employee's hierarchal chain-of-command.

To conclude, reference again must be made to the federal district court in the aforementioned *Alatorre v. Mabus* case, where the court provided the following advice regarding anti-harassment policies and procedures: "The legal standard for evaluating an employer's efforts to prevent and correct harassment. . .is not whether any additional steps or measures would have been reasonable, if employed, but whether the employer's actions, taken as a whole, established a reasonable mechanism for prevention and correction" (*Alatorre v. Mabus*, 2015, p. 25). The basic policies and procedures recommended herein have been generally presented, but nonetheless they should go a long way in meeting the court's "reasonableness" standard, as well as combatting sexual harassment and discrimination in the workplace, and protecting both employers and employees. We now offer some specific recommendations regarding workplace romance policies, and especially on how to avoid any resulting sexual favoritism in the workplace.

Workplace romance policies

Legally, as underscored, the general rule is that "...workplace romance does not create a Title VII claim for those employees negatively affected by the relationship" (*Delong v. Oklahoma*, 2016, p. 5). As one court explained, the fact that a workplace romance "touched on matters of sexuality" does not mean the conduct constituted a form of sex discrimination or created a hostile work environment (*Romero v. McCormick and Schmick Rest. Corp.*, 2020, p. 15). Similarly, rumors or gossip of workplace romance as well as the failure to quell or suppress rumors are insufficient to support a hostile work environment lawsuit (*Schneider v. GP Strategies Corp*, 2017). Nevertheless, promulgating policies on workplace romance and workplace dating is highly advisable. However, perhaps surprisingly, [Morgan \(2010, p. 75\)](#) reported on a survey conducted by the Society for Human Resource Management (SHRM) which indicated that only 13% of 600 companies surveyed had a written policy addressing workplace romance; and 14% stated they had an "unwritten" one. Similarly, [Leong \(2019, p. 997\)](#) reported on a 2013 SHRM survey that revealed that only 36% of companies had a written policy on workplace romance and 6% had a verbal policy.

All employers, therefore, should be proactive and accordingly have policies on relationships and dating among coworkers. Employers should also ensure that all the employees are aware of such policies. The policies must underscore to employees that there are appropriate legal as well as ethical standards of conduct at the workplace. The employees should also be advised that there may be career repercussions when they commence a relationship. For example, an employer can have a policy that when two employees in the same department start dating, one might need to be transferred to another department. The employees should be told in the workplace romance policy that before they embark on dating colleagues they should consider the potential problems and conflicts-of-interest that could arise, especially if they are working together on an important project and they then break up,

since there could be adverse consequences for the project, team and/or employer ([Workable.com., 2020](#); [Cavico et al., 2012a](#)). To avoid such a problem the policy could state that employees on the same project or work-team cannot date and form romantic relationships. In a more extreme policy, if the employees do decide to date one dating employee may have to resign or be discharged from the company. If one partner in a romantic relationship becomes a supervisor or manager a similar sexual favoritism situation could arise. Accordingly, the subordinate employee should be transferred to another department or team. Until that time the manager must be told not to favor his or her partner in any way and that all members of the team must be treated in a fair and ethical manner. Also, if there is a breakup, perhaps caused by the subordinate employee, the manager or supervisor must be admonished not to discriminate or retaliate against his or her partner in any way ([Cavico et al., 2012a](#)). Professionalism and decorum in the workplace must be maintained; consequently, the former paramours must be warned that any “badmouthing,” revelations of intimate details, or work sabotage will violate the company’s Code of Ethics or Conduct and thus will subject the offender to disciplinary action ([Workable.com., 2020](#)).

At the very least, as emphasized, employers should very seriously consider policies that prohibit managers and supervisors from dating subordinate employees. [Workable.com \(2020\)](#) takes a strict view on dating and thus recommends that a company prohibit managers and supervisors from dating team members or those who report to their team members, whether directly or indirectly. Moreover, [Workable.com \(2020\)](#) recommends that are at a high level in the business hierarchy, for example, senior directors, should be forbidden from dating anyone who is below their level, regardless of whether they are in another department. However, managers who are below that high level, for example, a department head, should be allowed to have a dating relationship so long as their romantic partner is from another department or team and is at the same level or lower in the company hierarchy ([Workable.com., 2020](#)).

Another policy is to have managers and supervisors report dating type relationships; but not to require such reporting by lower-level employees. Of course, one must define “relationship.” Such a policy typically would not require the reporting of a “mere” date ([Cavico et al., 2012a](#)). As such, [Workable.com \(2020\)](#) emphasizes that a basic human resource policy should be that the company will not be involved in the private lives of its employees; and thus the going out on a couple of dates or even a short term, for example, two month, relationship need not be reported to human resources; but if the relationship lasts longer human resources must be informed so as to better manage any perceptions of sexual favoritism, conflicts-of-interest and office gossip. However, [Byun \(2014\)](#) warns that there is a “downside” to any reporting requirement, and that is “. . .some employees will violate this ‘you must tell us’ policy. Then, more serious problems can arise” (p. 285).

If the employer does establish a policy on workplace romance or dating in the workplace, the employer must ensure that all employees are aware of the policy and that the policy is consistently and fairly enforced ([Davidson and Forsythe, 2011](#)). At times these policies preclude employees dating clients, customers, suppliers and distributors. There should be mandatory ground and/or online training to educate the employees as to the policy and to help ensure compliance. Workplace romance can be fit into pre-existing training that many companies have pertaining to diversity, sensitivity and of course, sexual discrimination, harassment and a hostile work environment. Nevertheless, [Davidson and Forsythe \(2011\)](#) note that restrictive dating policies may not be efficacious for a small business. A restrictive dating policy “. . .is generally not practical in small business, especially one that employs family members. If the entrepreneur is employing her spouse, it is difficult for her to say that other employees cannot start dating” ([Davidson and Forsythe, 2011](#), p. 186).

One proactive measure, as mentioned, that employers can take to avoid liability for sexual harassment and discrimination as well as to avoid charges of sexual favoritism is called

formally a “consensual relationship agreement,” or more informally a “love contract” (Byun, 2014; Cavico *et al.*, 2012b; Selvin, 2007). Some of the key features of the “love contract” (Byun, 2014; Cavico *et al.*, 2012a; Morgan, 2010; Adams, 2009; Selvin, 2007) are presented in Table 1.

A “love contract” can help protect the employer from discrimination, harassment and retaliation claims, particularly favoritism-based ones, as well as help educate the employees as to workplace rules and standards of conduct, and to ensure that the employees’ romantic relationship does not interfere with their job performance or the performance of their coworkers (Cavico *et al.*, 2012a). Morgan (2010) calls these contracts “the office version of a pre-nup,” but seems to rue the fact that “such documentation effectively takes the fun out of any workplace romance”; but he concludes by declaring “that’s the point” (p. 75). However, the “love contract” should bring the romantic relationship “to the surface,” where it can be dealt with in the workplace in a rational and mutually satisfactory manner, as opposed to an outright ban on workplace romance, which might force the romantically involved workers to “go underground” with their romance, thereby inhibiting their work performance. Unrequited love is always problematic; yet whether a “love contract” is *the* solution is still a matter of debate.

Moreover, even though the employer may have the right to establish and enforce such a no-dating policy, and concomitantly to discharge employees for violating the policy, any inconsistent and/or selective enforcement of the policy may engender discrimination lawsuits by adversely affected “protected” employees pursuant to Civil Rights statutes. Similarly, if an employer gets too intrusive in enforcing such a policy, for example, by monitoring and

- (1) The romantically involved coworkers will state that their mutual love and affection is consensual and that their romance will neither interfere with their work responsibilities nor the workplace
- (2) The contract is a written acknowledgment that the workplace romantic relationship between the employees is a consensual one. The contracts are voluntarily signed
- (3) The intimate couple can disclose their relationship; also, most importantly for the employer, expressly state that their relationship is voluntary and consensual and that they will not engage in any inappropriate sexual or flirtatious conduct in the workplace
- (4) “Love contracts” generally require the employees to obey all employment rules regarding workplace romance, including the company’s policy on sexual discrimination and harassment
- (5) The contracts can also be customized for specific situations. The love contract, for example, can require that the employees refrain from displays of affection at work and work-related functions and events, thereby mitigating any adverse effects based on sexual favoritism or perceived sexual favoritism
- (6) The “love contract” can specifically and explicitly state that either romantically involved employee can terminate the relationship without fear of retribution and retaliation
- (7) The “love contract” can state that the employees waive their rights to sue for sex discrimination and sexual harassment for any actions or activities that occurred prior to or during the duration of the romantic engagement
- (8) The contract also can state that each participant will seek arbitration rather than file sexual harassment lawsuits if the relationship ends
- (9) The contract, moreover, can state that each party to the workplace romance can end the relationship without fear of work-related retaliation
- (10) The “love contract” can be used not only for senior executives but also managers and supervisors as well as all romantically involved employees
- (11) The contract typically will state that the romantically involved coworkers have read the company’s sexual harassment policy, particularly those provisions dealing with the reporting of complaints and the firm admonition against retaliation; and also that they are free to end their romantic relationship without any adverse impact to their jobs
- (12) The parties are to be given an opportunity to review the contract with an attorney first
- (13) In the contract the parties must affirm that they were not coerced into signing the agreement, and that if any disputes arise under the agreement the matter will be subject to arbitration. The signed original “love contract” is usually filed with the company’s Human Resources department

Table 1.
Key features of a “love contract”

surveillance, the employer may risk, as previously underscored, a lawsuit for the intentional tort of invasion of privacy, thereby subjecting the employer to liability (Cavico and Mujtaba, 2021; Cavico and Mujtaba, 2017; Cavico *et al.*, 2012a). Moreover, as Kreis (2020) emphasizes, in any situation a “cardinal caveat” of workplace romance policy and practice is that “. . . former relationships do not provide jilted lovers *carte blanche* to engage in sex discrimination against former partners” (p. 190) and, the authors add, to engage in sexual harassment or any form of bullying or demeaning or abusive conduct.

There are a wide variety of workplace romance policies. Some companies, such as IBM and Xerox, have formal policies that allow relationships between employees who are not on the same management hierarchical chain (Cavico *et al.*, 2012a). Other employers, like Google and Facebook, have policies that limit employees to a single romantic overture to a coworker, and if the coworker turns the employee’s request down, or even if he or she responds ambiguously, for example, by saying “I’m busy,” no further requests can be made (Green, 2019; Leong, 2019). As such, Leong (2019) notes that “. . . many companies have begun to develop more assertive policies in the wake of the revelations from #MeToo” (p. 999). If an employee continues to ask for dates, engages in unwanted flirting and becomes annoying or even threatening, the aggrieved employee should first ask him or her to stop the conduct, but if it continues the aggrieved employee should inform his or her manager and human resources (Workable.com, 2020).

An example of a more prohibitive workplace romance policy involves the firm Blackrock, which is the world’s largest money manager. In the past, the company instructed its employees that they had to notify human resources anytime they had a romantic relationship with another employee. However, recently, the company updated its workplace romance policy and now the company employees must also disclose relationships with employees of the company’s service providers, vendors, clients and other third parties if the non-Blackrock employee is within a group or team that interacts with Blackrock (Gasparino, 2020). Such a policy has been deemed “overboard” by one commentator who worries about the burden it will put on the company’s human resources department to make judgments when one of the company’s (many) employees goes on a date, as well as the burden it will put on an individual employee, who now must ascertain if the individual he or she wants to date has any connection with Blackrock (Gasparino, 2020, p. 49). The company, nonetheless, defends its expanded policy with its inclusion of interteam relationships by asserting that the policy prevents conflicts-of-interest and favoritism and actually makes life easier for the employees as an assessment of whether dating is permissible is now in the hands of the human resources department and not the employees (Gasparino, 2020). However, even if companies such as Blackrock, are instituting more restrictive workplace romance policies, perhaps in response to the #MeToo movement, Zillman (2018) nonetheless correctly points out that workplace romance will never die.

Yet regardless of the legal and practical challenges attendant to workplace romance, some employers today, especially those with many young workers, have taken a more neutral position on workplace romance and thus have workplace romance policies that allow dating among coworkers. An example is Cisco Systems, whose dating policy states that the company “does not encourage or discourage consensual relationships in the workplace.” However, the policy also says that relationships between supervisors and subordinate employees are “frowned upon,” and may result in a transfer or reassignment (Shellenbarger, 2010, pp. D1). Another example is Southwest Airlines, which at one point employed over 1,000 married couples, and which explicitly allows consensual workplace romance relationships. However, the airline has a policy and a process that affords an employee who objects to a particular workplace romance to complain to the human resources department or to a manager, who, in turn, is responsible for finding a remedy if the workplace romance negatively affects the company’s “culture” (Cavico *et al.*, 2012a).

The primary objective of these restrictive policies and measures is to shield employers from liability pursuant to sexual harassment and sexual discrimination laws if the workplace romance later degenerates into a workplace dispute. Presumably, the romance was commenced by the employees based on their own free will without any claim of coercion or intimidation for sex, which of course is the genesis of many sexual harassment lawsuits. Employers also want to minimize morale problems at work, especially charges of sexual favoritism and the concomitant disruption, as well as negative publicity – externally as well as internally, which can all affect the bottom-line of the business. Furthermore, an executive's failed workplace romance may impair the executive's ability to lead the company (Cavico *et al.*, 2012a). To complicate matters further from a practical vantage point, the employee having the romantic relationship with a senior level executive may perceive that due to the relationship with the executive he or she may think he or she has, or be perceived as having, more power and influence beyond his or her official job status and authority. Employers thus want to take steps to not only avoid legal liability but also to ensure that workplace romances do not hinder job performance. The productivity and teamwork adversely affected may not only involve the romantically involved employees but also their coworkers. Accusations of conflict-of-interest, whether real or perceived, have the potential to disrupt and negatively impact the workplace. Damage to the value of merit as a core principle for promotion can be another very negative consequence. Workplace romances can be a major distraction at work, even without charges of favoritism and conflict-of-interest (Cavico *et al.*, 2012a).

Nevertheless, it is difficult to have an effective total ban on dating since human nature and sexual attraction likely will overcome any employer policy. People will still get romantically involved at the workplace regardless of any policy. People meet other people most frequently at work. Total prohibitions of relationships may drive them “underground.” “Turning a blind eye,” moreover, means that the employer has lost an opportunity to provide guidelines and to counsel the dating couple (Cavico *et al.*, 2012a). Of course, dating employees may attempt to keep their relationship secret; yet secrecy can be difficult to achieve in certain workplaces, particularly where the corporate culture is one of openness and informality and where the employees work long hours together. Furthermore, the relationship is likely to come into the open anyway, but coworkers may feel they have been lied to and thus the trust among the employees could be eroded (Gallo, 2019).

Consequently, employees who date and form relationships, whether secretly or openly, should be very scrupulous about keeping aspects of their romantic relationship out of the office (Cavico *et al.*, 2012a). They first should familiarize themselves with the company's policy on office dating and romance (Gallo, 2019). Employees who commence dating also should be aware of the risks involved, such as perceptions of preferential treatment or sexual favoritism, conflicts-of-interest, whether real or perceived, and the risk of harm to reputations (Gallo, 2019). Moreover, Shellenbarger (2010, p. D1) noted the efforts that dating coworkers go to in order to prevent “fallout” from their workplace romance. For example, some dating coworkers can ask to be assigned to different departments, teams, or projects. In addition to informing management, some couples inform their coworkers, including new employees, they are dating. They also can tell newly hired employees that if they felt uncomfortable about their dating, they should inform a manager.

As general advice, the romantically involved coworkers must act as professional colleagues at all times; otherwise, their coworkers may feel very uncomfortable (Gallo, 2019). While each situation and work culture tend to vary, it is best that the romantically involved couple avoid calling one's coworker whom one is dating “Honey” or similar words of affection, as well as avoiding public displays of affection (Shellenbarger, 2010). The romantically involved employees should thus avoid the following actions: excessively communicating with each other in-person or by emails, messages and calls; arguing with each other (i.e., “lovers’ quarrels”); kissing, inappropriate touching and discussing or boasting about the

relationship in the workplace; as well as avoiding other public displays of affection ([Workable.com., 2020](#); [Shellenbarger, 2010](#)). However, the following types of conduct should be deemed permissible: passing by one romantic partner's office, stopping by and chatting for a short time; discussing joint plans, e.g. vacation, during meals or breaks; and coming to and leaving from work together ([Workable.com., 2020](#)). Breakups may be painful; and telling one's coworkers about the breakup may be awkward, but coworkers who have been told of the relationship should also be informed of its ending ([Gallo, 2019](#)).

Yet because of the laws against sexual harassment and discrimination as well as the problems attendant to workplace romance, especially sexual favoritism in the workplace, some employers strictly forbid any type of dating; whereas others permit it but only if the employees are in different divisions or departments; others permit it but require employees to declare their relationship and, as noted, sign some type of dating contract stating that the relationship is a consensual one and also allowing the employer to separate the dating coworkers at work ([Cavico et al., 2012a](#)). Clearly, to avoid legal problems as well as charges of sexual favoritism, it is recommended that an workplace romance policy should forbid a manager or supervisor dating a subordinate employee because of the inequality of the relationship, the potential for preferential treatment and the potential for legal liability for sexual harassment on the part of the employer ([Workable.com., 2020](#); [Gallo, 2019](#); [Byun, 2014](#); [Cavico et al., 2012a](#)). [Gallo \(2019\)](#) explains that regarding managers and supervisors dating subordinates: "... (T)his is where conflicts of interests are most stark. It's hard to be objective when giving someone you're dating a performance review, for example. And you don't want people to think that you're being unduly favored; it can erode your own confidence and hurt the team's morale" (p. 3). Therefore, if a manager or supervisor and a subordinate employee do embark on a romantic relationship it is advisable that either one or both should be asked to transfer to a different division or department or perhaps leave his or her job ([Byun, 2014](#); [Cavico et al., 2012a](#)). Moreover, the company policy should forbid a manager or supervisor from hiring his or her spouse, partner or paramour for the department or team; but if so, one of them should transfer to another department or team, or quit ([Workable.com., 2020](#); [Cavico et al., 2012a](#)).

The workplace romance policy also must emphasize that employees who are in romantic relationships need to conduct themselves in a proper and professional manner in the workplace. Consequently, any public displays of love and affection in the workplace, as well as gratitude to a partner, though perhaps at times tempting, must be forbidden, because such conduct will make the other employees, as well as customers and clients, feel awkward and uncomfortable, thereby impeding efficiency, effectiveness and productivity in the workplace, as well as creating an atmosphere sexually offensive and thus illegal. Suffice-it-to-say, at work the employees should be focused on their responsibilities as employees and not on romance ([Cavico et al., 2012a](#)). Workplace romance, regardless of how much one disapproves of the practice, cannot really be stamped out, as adults who are sexually and romantically attracted to one another will "find a way," but the practice can, and should be, regulated and moderated in a legal, ethical, fair and balanced manner. It is the primary responsibility of the business leader to achieve these core values in a practical and functional manner for the firm.

Overall, the societal expectations today are that business will act not "only" legally but also in a socially responsible manner ([Mujtaba et al., 2016](#)). As such, business is expected to have a positive impact on all its stakeholders, including society as a whole. Therefore, the responsibilities of business leaders today are that they must in the leadership of their firms first obey the law and then go "above and beyond" the law and conduct business in a moral manner. The leader also must be prepared for difficult issues and challenges, such as the ones addressed in this article. Accordingly, the business leader must be concerned with not only the practical and economic aspects of the business but with its legal and moral conduct ([Mujtaba and Cavico, 2013](#); [Cavico and Mujtaba, 2018](#)).

Conclusion

Sexual conduct in the workplace has been highlighted in recent years with the onset of the #MeToo movement, which has imparted a greater awareness of improper sexual conduct in the workplace as well as empowered victims as well as other employees to disclose such wrongdoing. Therefore, the authors sought to examine the important topics of sexual favoritism and workplace romance in the workplace from practical and legal perspectives. While we have mainly focused on the legal liability aspect of workplace romance policies, it should be noted that clear workplace romance policies do positively affect the quality of relationships and climate at work. The three main legal areas – the general rule of isolated instances of sexual favoritism, the *quid pro quo* exception and the hostile environment exception – were explained and illustrated. The legal vs the moral dichotomy of the general rule of sexual favoritism was underscored. The article then addressed some of the legal aspects of workplace romance, particularly how workplace romance can engender sexual favoritism and then sexual harassment and discrimination in the workplace. Next, the authors made several practical recommendations for management, first, generally, to avoid lawsuits for sexual harassment and discrimination and to curtail sexual favoritism, and then specifically regarding appropriate workplace romance policies and procedures, with particular attention on the so-called “love contract.”

While this paper focused on the workplace policies regarding romantic relationships and sexual favoritism, we do want to recommend that future researchers go beyond the EEOC’s precepts and “guidelines” to determine what specific legal changes would be relevant to enhance justice and equal treatment of all workers in the workplace. This effort is especially important to make all findings and recommendations more useful for influencing future public policies for the modern workplace. Another area for future research would be to address the privacy aspect of workplace romance policies more explicitly when referring to rules, procedures, reporting systems, etc. as it is very important to ensure protection, avoid retaliation toward victims and investigators, and effectively deal with unjust accusations. As one reviewer for an earlier version of this paper mentioned, and as the authors also readily agree, these topics are all “delicate” aspects of the more comprehensive area of whistleblowing; and as such the legal, ethical and practical aspects of whistleblowing should continue to be explored in academic platforms in order to bring about positive changes in the workplace.

ORCID iDs

Frank Joseph Cavico  <http://orcid.org/0000-0002-6258-2136>

Bahaudin Ghulam Mujtaba  <http://orcid.org/0000-0003-1615-3100>

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About the authors



Frank Joseph Cavico is a Professor of Business Law and Ethics at the H. Wayne Huizenga College of Business and Entrepreneurship of Nova Southeastern University in Ft. Lauderdale, Florida. He is the creator of current law and ethics course “The Legal, Ethical, and Social Values of Business,” which is a required core course; and he presently serves as course leader for that course as well as an undergraduate business law course. He has also taught Constitutional and Administrative Law at the doctoral level in the Huizenga School. He is the author of several books and numerous law review and management journal articles. Professor Cavico holds an LLM degree from the University of San Diego, a J.D. from St. Mary’s University, a Master’s degree in Political Science from Drew University and a BA in Political Science from Gettysburg College.



Bahaudin Ghulam Mujtaba is Professor of International Management and Human Resources at Nova Southeastern University in Ft. Lauderdale, Florida. Bahaudin is the author and coauthor of several professional and academic books dealing with diversity, ethics and management, as well as numerous academic journal articles. During the past 25 years, he has had the pleasure of working with human resource professionals in the United States, Brazil, Bahamas, Afghanistan, Pakistan, St. Lucia, Grenada, Malaysia, Japan, Vietnam, China, India, Thailand and Jamaica. This diverse exposure has provided him many insights in ethics, culture and management from the perspectives of different firms, people groups and countries. Bahaudin Ghulam Mujtaba is the corresponding author and can be contacted at: mujtaba@nova.edu