

## Workplace Romance Presents Complex Legal Issues

A recent California Supreme Court case highlights another area of potential liability for employers. According to the court, a hostile work environment claim is supported by evidence that a supervisor is giving undeserved favorable treatment to female employees with whom he has been sexually involved. Such a claim may be brought by other female employees even though they themselves have not been subjected to sexual advances. The court did require, however, that the favoritism be so widespread and blatant that it conveys a “demeaning message . . . to female employees that they are viewed by management as ‘sexual playthings’ or that the way required for women to get ahead in the workplace is by engaging in sexual conduct with their supervisors . . .” *Miller v. Department of Corrections*, No. S114097 (Cal.Sup.Ct. Jul. 18, 2005).

Workplace romance has also led to more direct sexual harassment claims when one party attempts to end the relationship but the other insists on continuing it, resulting in unwelcome attention from the latter in (and outside) the workplace. Concerns over problems such as these have prompted some employers to adopt policies restricting co-worker dating. According to one recent survey, 20% of the responding employers indicated that they now have an “anti-fraternization” policy regulating co-worker dating. Most workplace dating policies apply only to relationships between managers or supervisors and subordinates and are intended to prevent a manager/supervisor from using the leverage of his or her position to apply pressure on a subordinate for romantic engagement. Some, however, apply broadly to any co-worker dating. A few employers have adopted the practice of requiring employee paramours to sign a “love pact” acknowledging that the relationship is consensual (*i.e.*, does not constitute harassment) and agreeing that, based on such representation, the employer should not intervene.

On the other side of the issue is the argument that a policy limiting relationships with co-workers is invasive of employee’s privacy rights because it impacts lawful behavior outside the workplace. Clearly, employers are challenged to walk a tightrope in this area, in the sense that either inaction or over-regulation may produce turmoil and even legal claims.