

HAPPY VALENTINE’S DAY . . . NOW PLEASE SIGN ON THE DOTTED LINE

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With Valentine’s Day around the corner, what better way to discuss love than in contractual terms? Workplace romances are increasingly common and employers are aware of this. In a 2008 survey by Vault.com, 58% admitted to having an office romance and another 12% would be willing to engage in one if given the opportunity.ⁱ Not surprising in light of the reality that most of us have so little time left over after work and sleep that our place of employment is our main chance for finding a mate.

In the last few years, companies have responded to this reality by instituting what has been popularly dubbed as “love contracts.” These contracts may contain several different provisions, but most commonly it seeks to establish that the two employees are in a consensual dating relationship and that they will not allow the relationship to interfere with their work productivity. One sample love contract provided that by signing the love contract, the employees “notify the company that [they] wish to enter into a voluntary and mutual consensual social relationship” which they “are both free to end . . . at any time. Should the relationship end, [they] agree that [they] will not allow the breakup to negatively impact the performance of [their] duties.”ⁱⁱ

The contract can also refer to the company’s sexual harassment policy and “that entering into the social relationship has not been made a condition or term of employment.”ⁱⁱⁱ Most important to employers, the contract may limit the grievance process to arbitration only, potentially limiting an employee’s right to file a lawsuit in court.^{iv}

Although employers may point to productivity reasons and avoiding distraction in the workplace as a reason for instituting such contracts (which doesn't really make much sense when you think about it), the more obvious reason is to limit an organization's liability in the event that the romantic relationship sours. Even though such a scenario is rare, some employers erroneously believe that such a contract would protect them from any potential liability.^v (It might actually do the opposite if the policy is not enforced and a spouse blames the company for not preventing the employee-spouse from fooling around with the secretary).

One survey of 617 enterprises revealed that 4% of people who were involved in an office romance that later failed actually filed a formal complaint.^{vi} To some, this seems so small that love contracts are overkill^{vii} and impractical^{viii}. But 4 % of all employees are a lot of employees and a lot of formal complaints. In addition, complying with such a contract would require the couple reporting their relationship to HR when it begins and when it ends, which could potentially pose privacy issues.^{ix}

Furthermore, this invasion could have a negative effect on morale and cause employees to feel stifled^x. The terms of the love contract usually includes a provision that the consequence of violation is termination. One might ask whether such a term is legally enforceable. However, the fact is most employment is "at will" so the employer usually does not need a reason to terminate the employee. Nevertheless, what the employer gets out of such a contract might be a defense to the employee's claims of discrimination or other legal violations. Employees might try to assert that the contract is void because it is the product of economic duress—they feared losing their job or being subjected to retaliatory actions.^{xi} One court, the Supreme Court of Montana, hinted that

duress was a factor in rejecting the employer's attempt to use a love contract as an affirmative defense against a sexual harassment claim.^{xii} It was held that the love contract was "a contract of adhesion, given the disparate bargaining powers of supervisor and subordinate."^{xiii}

This is not to say that relationships between supervisors/managers and subordinates should be allowed or unmonitored. Such relationships can more readily lead to claims of "sexual favoritism" in terms of promotions, job assignments and evaluations and of course sexual harassment claims.^{xiv} In any event, employers should not view all voluntary workplace romances as a potential liability. First, nothing will stop them, and besides, office romances can improve the workplace—so long as they are voluntary. Employees whose relationships result in marriage are generally happier, thus more productive in the long run.^{xv}

Instead of employers injecting themselves into what could be an extremely thorny and gray area, they should focus on instituting and enforcing their anti-harassment, retaliation, and discrimination policies. Increasing awareness through sexual harassment training or providing the opportunity of transfer for managers or supervisors who are dating subordinates are ways of dealing with office romances without the need of a contract. Employers should leave the love meddling to cupid and get back to business.

ⁱ *Vault's 2009 Office Romance Survey*, VAULT.COM, <http://www.vault.com/surveys/officeromance/index.jsp?question=1> (last visited February 10, 2009)

ⁱⁱ *Caught in the Pact; Couples involved in Office Dalliances Required to Sign 'Love Contract'*, SFGate.com, December 2, 2001, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2001/12/02/AW129618.DTL> (last visited February 10, 2009).

ⁱⁱⁱ *Id.*

^{iv} *The Scoop on Love Contracts*, ABOUT.COM, June 1, 2008, available at <http://humanresources.about.com/b/2008/06/01/the-scoop-on-love-contract-policies.htm> (last visited February 10, 2009) [hereinafter *Scoop on Love Contracts*].

^v *Managing Workplace Romances Requires More Than a Love Contract*, PALABORAND EMPLOYMENTBLOG.COM, May 19, 2008, available at <http://www.palaborandemploymentblog.com/2008/05/articles/discrimination-harassment/managing-workplace-romance-requires-more-than-a-love-contract/> (last visited February 10, 2009) (“Love Contracts have limited utility absent a broader policy and training approach”).

^{vi} *Love and Romance in the Workplace*, BUSINESS KNOW-HOW.COM, 2005, available at <http://www.businessknowhow.com/manage/romance.htm> (last visited February 9, 2009).

^{vii} *Love, Contractually*, CBS NEWS, May 17, 2005, available at <http://www.cbsnews.com/stories/2005/05/17/eveningnews/main696022.shtml> (last visited February 8, 2009) [hereinafter *Love, Contractually*] (“If you’re looking for a love poem, don’t come to an attorney. But even some attorneys see the ‘love contract’ as overkill.”).

^{viii} *Doing the Love Contract*, HR.COM, June 2, 2003, available at http://www.hr.com/hr/communities/legal/workplace_regulations/doing_the_love_contract_eng.html (last visited April 9, 2008) (“Many lawyers and professional HR people are coming to the opinion that company policies that just prohibit any kind of romantic attachment between employees aren’t practical to enforce and often cause disruption and inefficiency in the workforce.”).

^{ix} *Scoop on Love Contracts, supra*, (“any love contract policy requires disclosure of a romantic relationship to Human Resources”); Andrea Kay, *Would you sign a ‘love contract’?*, HONOLULU ADVERTISER, April 23, 2007 (on file with author) (“the biggest consequence for the worker is that a workplace romance gives an employer an excuse to probe the intimate details of your personal life”).

^x *Love, Contractually, supra*, (“But some say a love contract is something only a lawyer could come up with. ‘I think it makes a relationship kind of cold . . . I’d almost want to have it more romantic and secret.”).

^{xi} *Scoop on Love Contracts, supra*, (“employees can always charge that they were pressured into signing the love contract at a sensitive time during their employment.”)

^{xii} *Williams v. Joe Lowther Ins. Agency, Inc.*, 177 P.3d 1018, 1020, 341 Mont. 394 (2008).

^{xiii} *Williams v. Joe Lowther Insurance Agency, Inc.*, HRC Case No. 0041010741, at *17 (Mont. Dep’t of Lab. & Indus. Mar. 7, 2005), available at <http://erd.dli.mt.gov/humanright/decisions/finalorders/2005pdf/williamsfad.pdf> (last visited February 10, 2009).

^{xiv} *From Love to Lawsuits, Expert Advises Against Workplace Romance*, FOGCITYJOURNAL.COM, April 28, 2008, available at <http://www.fogcityjournal.com/wordpress/2008/04/24/from-love-to-lawsuits-expert-advises-against-workplace-romance/> (last visited February 11, 2009).

^{xv} *See, e.g.*, Cathy F. Bowen, Rama Radhakrishna & Robin Keysor, *Job Satisfaction and Commitment of 4-H Agents*, 32:1 J. EXTENSION (1994), available at <http://www.joe.org/joe/1994june/rb2.html> (last visited Apr. 20, 2008) (“Job satisfaction

of agents was significantly related to . . . marital status.”); Charles N. Weaver, *Sex Differences in the Determinants of Job Satisfaction*, 21 ACAD. MGMT. J. 265 (1978) (implying that serious workplace romance benefits the romantic coworkers); C. Carnall & Ray Wild, *Job Attitudes and Overall Job Satisfaction: The Effect of Biographical and Employment Variables: Research Note*, 11 J. MGMT. STUD. 62, 66 (1974) (“Marital status appears to have a relatively substantial effect on the relationship of self-actualization and job satisfaction and on the overall satisfaction and attitudes to supervision, personnel/industrial relations, training, social peer relations and the amount of work and effort required.”). *See also* Andrea Kay, *Would you sign a ‘love contract’?*, HONOLULU ADVERTISER, April 23, 2007 (on file with author) (“[C]o-workers who spend more time at work, have higher motivation, fewer sick days and less turnover”).