

Love and Basketball ... and Romantic Workplace Relationships? Key Takeaways for Employers from the Boston Celtics' Recent Suspension of its Head Coach

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The Boston Celtics recently suspended its head coach Ime Udoka for the entire 2022-2023 season and although the team did not disclose whether the suspension will be paid or unpaid, it noted that he will be subject to a “significant financial penalty” as a result of multiple unspecified violations of the organization’s policies stemming from Udoka’s conduct towards a female member of the organization.

Originally believed to have been a consensual relationship, it was subsequently reported that the female staff member accused Udoka of making unwanted advances, including inappropriate comments towards the staff member. In response, the Celtics organization acted quickly and launched an internal investigation, which found “a volume of violations” of various policies. Please note, it is unknown as to whether the Celtics had a consensual relationship policy in place for employees.

The Celtics scandal comes at a time when workplace harassment claims (as reported by the EEOC) are on the rise, yet consensual office romantic relationships remain fairly common. While most employees do not want their employers placing limits on whom they may seek as a romantic partner, from an employer’s viewpoint, the risks of such romances are clear, as they can easily cause real issues in the workplace: interoffice gossip, lack of productivity, reduced moral, allegations of favoritism, or worse, claims of sexual harassment.

Fortunately, employers have several options available to minimize risk. Employers can rely on various types of anti-fraternization policies (also known as workplace romance or consensual relationship policies) and/or love contracts. Separate, but related, employers should also implement robust anti-harassment policies and training for all employees (including management).

Relationship Policies

Some employers choose to implement a policy banning all romantic relationships between employees regardless of position or authority. These policies discourage personal and romantic workplace relationships and threaten discipline against employees who violate the policy. Other

employers opt for a more flexible policy, which only prohibits romantic relationships where one individual has the ability to affect the terms and conditions of the other's employment, including but not limited to, compensation, assignments, and promotions. This latter policy is more common as it is often less intrusive and aimed at preventing favoritism or claims of sexual harassment or retaliation.

Regardless of the policy used, most employers also include a disclosure requirement, which then allows the employer to determine the best course of action forward (e.g. eliminating the reporting relationship)..

Further still, some employers, in addition to their relationship policy, have used "love contracts" that couples sign to confirm their consensual relationship status, affirm their awareness of the company's sexual-harassment and workplace conduct policies and other expectations related to conducting themselves in the workplace, indicate that they understand the consequences if they fall short of the company's expectations.

Employer Actions After A Relationship Disclosure

Such policies and related documents allow employees to come forward as early as possible so employers can proactively address a situation. For example, it allows employers to remove any supervisory oversight or doubt that such a relationship is consensual, while also setting expectations with both employees about their conduct in the workplace during the relationship, and if and after the relationship ends. As part of this expectation setting discussion, even in the absence of a reporting relationship, employers should make sure to provide a copy of its anti-harassment policy to the dating employees and have them reaffirm they will comply with its terms and conditions. Employers should also confirm with each employee that they will immediately disclose when the relationship ends or is otherwise no longer consensual.

Anti-Harassment Policies & Training

Ultimately, and regardless of what policy an employer adopts, all employers should have a clear anti-harassment policy that, among other things, defines and clearly prohibits sexual harassment and requires all employees to report sexual harassment, including any unwanted advances or comments.

Such policies should include a complaint procedure that is readily accessible to employees and provides multiple avenues for raising complaints. It should confirm that the company will promptly and thoroughly investigate all complaints and will not retaliate against any individual who reports or participates in an investigation of harassment (including sexual harassment).

It is crucial that employers think about responding in a fashion similar to the Celtics' in promptly investigating and addressing alleged misconduct. For example, the Celtics quickly engaged independent outside counsel to conduct a thorough investigation, which positioned the Celtics well to determine its appropriate next steps. Critically, the Celtics did not appear to allow the employee's status within the organization to interfere or impact its decision to enforce its policies and impose serious penalties. By following the Celtics' lead, employers can, among other things, create an environment where employees feel safe to complain and further eliminate the possibility of misconduct in the workplace, while also enhancing any legal defense in the event a lawsuit follows.

Having written policies is key, but it is equally important that employees, particularly supervisors or managers, are thoroughly trained on how to recognize potentially problematic situations, including when employees are dating, and how to respond to and further report potential policy violations.

Some jurisdictions even make training a statutory requirement.

Key Takeaways for Employers

The reality is that romantic relationships in the workplace occur and those employers that are proactive in anticipating such relationships and responding to them when they occur will be best positioned to limit potential liability. Employers should consider taking the following actions:

- Adopting a consensual relationship policy that is best suited for the company;
- Ensure the use of a robust anti-harassment policy;
- Periodically conduct anti-harassment training; and
- Be prepared to monitor and respond upon learning of a relationship between your employees.

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