

Employment Practices *Update*

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Workplace romance and liability risks

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Romance, dating and sexual relationships are no longer subjects limited to daytime soap operas. Emergency Services Organizations (ESOs) must deal with the drama, conflict and potential legal problems associated with co-workers romantically involved with each other.

ESOs benefit from an awareness of the variety of legal risks that accompany co-workers' romantic relationships. This article examines how co-workers' personal relations can increase your ESO's exposure to workplace harassment, discrimination, retaliation and constructive discharge claims. Tips are provided for managing these risks while discretely and professionally speaking to those involved.

Workplace romance could end badly

Wedded bliss – Marriage could be considered the "best" possible result when two ESO members become involved in a romantic relationship. However, numerous problems can follow when co-workers marry.

If the couple remains married, there is the possibility their personal problems could spill over into the work environment, damaging morale and creating an uncomfortable environment for other workers. If one directly supervises the other, falls within the same chain-of-command structure or has influence over persons who directly supervise the spouse, potential problems could arise.

Transferring or moving one spouse is a common risk management tactic. At a minimum there will be the inevitable perception among co-workers that favoritism or nepotism exists when spouses work for the same ESO.

Extra-marital affairs – A personnel nightmare involves co-workers that are romantically involved with each other while being married to other people. First, a serious risk exists of workplace violence should a jealous spouse discover the affair. Second, the other ESO members with knowledge of the affair will question the ethics, credibility and leadership of co-workers that are involved. Third, morale is further negatively impacted if co-workers feel complicit because they are friends with the unknowing or unsuspecting spouses.

Divorce – National statistics show that approximately 50 percent of all marriages end in divorce. Imagine the nightmares at work when the couple is still married, but on the rocky road to divorce. Once a divorce is finalized, is it possible for former spouses to work with each other in any capacity? Does one former spouse have greater influence in the workplace than the other? Claims of a hostile work environment would be difficult to avoid when bitter ex-spouses work under the same organizational roof. In addition, separating the workers could give the appearance of retaliation or favoritism.

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Non-marital break up — Romantic, dating or sexual relationships between co-workers usually don't end well. There is frequently some level of hurt, anger, sadness and vindictiveness. It is the responsibility of that ESO to help ensure the negative fallout from a co-worker break up will not reach the point of unlawful hostile work environment, retaliation or constructive discharge.

Legal risks outweigh privacy rights

It is not uncommon for ESO members to mistakenly believe their Constitutional rights (i.e. freedom of association, expression, privacy and speech) somehow shield them from any ESO involvement with their dating or romantic relationships with co-workers. When colleagues decide to date each other, their personal decisions may become civil or criminal legal concerns for the ESO, including but not limited to:

- **Hostile work environment harassment** – An offensive or intimidating environment created for a person no longer engaged in a romantic relationship with co-worker. It may interfere with the workers' ability to do the job.
- **Quid pro quo harassment** – The classic example involves a supervisor making job-related threats or promises to a subordinate who doesn't wish to engage in sexual or romantic relations.
- **Reverse discrimination** – These claims are made by those not participating in a romantic relationship with a supervisor, manager or officer. Therefore, persons alleging discrimination argue their working conditions were altered and they failed to receive equal job opportunities such as promotions, training, career development and desirable shifts.
- **Retaliation** – This claim may involve work-related retribution taken against one of the ESO members after a break up.
- **Constructive discharge** – This claim may involve an ESO member that allegedly quit because of the hostile environment he or she was subjected to after the romantic relationship ended.
- **Restraining orders, stalking or assault and battery** – Criminal charges may be brought by an ESO member against a co-worker and the organization is left to manage the work environment.

Co-workers' romantic relationship – it is your business

Should the ESO be interested in coworkers dating each other? The simple answer is "yes." The potential liability exposures are too serious to simply ignore the employees' or volunteers' romantic relationships. When co-workers decide to become involved in a dating, romantic or sexual relationship, their personal business has now become the business of the ESO.

How should a supervisor, manager, officer or administrator facilitate a conversation with the co-workers involved in a romantic relationship? ESO leaders should consider the delicate nature of a conversation with the co-workers who are engaged in a romantic relationship. Thoughtfully choose an individual with supervisory authority to facilitate the discussion who can be trusted to keep the matter as confidential as possible. Dating or romantically involved co-workers simply must be educated as to the potential legal exposures associated with their relationship and how the ESO is prepared to address any future problems.

Maintain professional boundaries and stress how the ESO is committed to fostering a work environment free from harassment, discrimination and retaliation. The ESO should communicate in writing and verbally that there are multiple avenues of internal complaint available and an investigation will commence immediately if wrongdoings are alleged. The goal is to open up lines of communication so either party in the romantic relationship will feel comfortable stepping forward to report and resolve real or perceived harassment, intimidation or retaliation.

No Dr. Phil imitations

While it is sound risk management to engage in a professional dialogue with co-workers involved in a romantic relationship, there is no need to take on the role of a

couples' relationship counselor. Dr. Phil McGraw earns millions as a relationship expert and psychiatrist on television, but

ESO leaders should avoid Dr. Phil imitations. An ESO manager, supervisor or officer should avoid asking questions about the intimate details of co-workers' romantic relationships.

Employees or volunteers may choose to divulge personal and sometimes intimate information about their relationships with co-workers. When faced with this situation, ESO supervisors and managers should politely

communicate that they do not wish to know the intimate details of the relationship or act as a relationship counselor, but instead clarify their responsibilities to ensure the working relationship isn't impacted in a negative way.

No dating rule?

Employers may elect to implement a no dating policy, but enforcing such a policy may prove difficult. It is more realistic to institute a policy prohibiting romantic relationships between direct supervisors and subordinates. Otherwise, ESO leaders should simply take risk management measures when necessary to prevent workplace harassment, discrimination and retaliation, regardless of the members' job title or rank.

Conclusion

Directly addressing co-workers who are involved romantically with each other can be a challenging task for those with management responsibilities. However, the legal risks are too severe to simply ignore such a personal situation.

When and if the co-workers' relationship takes a turn for the worse, ESO supervisors are under a duty to help avoid a hostile work environment or retaliation. It is important to maintain communications with the co-workers to prevent and help detect a toxic work environment.

Maintain professional boundaries and stress how the ESO is committed to fostering a work environment free from harassment, discrimination and retaliation