

Where the boundaries lie in workplace relationships

Written by Paul Harpur, Senior Lecturer, TC Beirne School of Law, The University of Queensland



The fact is that romance will kindle at work, but there are things employers and employees can and should do to manage these situations. www.shutterstock.com

In recent weeks two prominent news stories have highlighted workplace romances blowing up into costly public scandals. The [romantic relationship between](#) CEO of Seven West Media, Tim Wornor, and former executive assistant Amber Harrison, sparked an ugly legal brawl and left in its wake claims of bullying, breaches of contract and confidentiality and a corporate giant using its might to protect its own. More recently, two male AFL executives were publicly shamed and resigned [after affairs](#) with lower-ranked female staff.

The tone of the coverage of both cases suggests that sexual relationships between colleagues are an aberration. But the opposite is true: workplaces are where many relationships begin. [According to Relationships Australia](#), in the 35 to 50 age group, 40% of people met their partner at work.

The gap between this reality and our public attitudes to workplace relationships reflects a high level of anxiety and confusion about the boundary between work and personal matters. The fact is that romance will kindle at work, but there are things employers and employees can and should do to manage these situations.

The laws around workplace relationships

Employers' right to regulate their employees' out of work conduct remains a contested legal question. However, one thing is clear: it depends a lot on where the relationship takes place.

One example is the case [Keenan versus Leighton Boral Amey Joint Venture](#), brought to the Fair Work Commission in 2015. The commission found the employee, who engaged in "aberrant" behaviour, was unfairly dismissed, as some of the more serious incidents in question occurred beyond the temporal and physical boundaries of the workplace.

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If the conduct had occurred in a work setting, the employer would have been vicariously liable for employee behaviour that breached sexual harassment policies. A key factor in this case was that the employer directed employees to follow their policies at the work function. So the employees decided to leave the venue altogether and continue drinking, outside of what was deemed to be the workplace.

Employers can't expect to assert the right to take action against employees who they think have misbehaved, if they don't set out rules on employee conduct in the first place. This is the reason workplaces have clear policies on relationships.

A good example of this can be found in the relevant part of the Australian Public Service Commission [values and code of conduct](#) . This outlines examples of acceptable workplace behaviour as well as defining what is "related to work" and laying out the responsibilities of employers and employees.

If employers don't have these policies, potential conflict of interest can arise. For example, if two workers are in a romantic relationship and one is performance appraising or deciding on the promotion of the other, then there is a clear case of perceived bias. This can result in inaccurate assessments and can result in other workers feeling aggrieved.

A sticking point in work policies on relationships is the consequences for non-compliance. It's not legally set in stone whether an employer can dismiss an employee for failing to disclose a relationship with a colleague – but if the employee is dishonest when challenged about it, it could be grounds for dismissal.

In the Fair Work Commission case [Mihalopoulos versus Westpac Banking Corporation](#) , the employer's policy required employees to disclose romantic relationships between employees. When the employee in question was asked by the employer about the relationship, he lied.

The Fair Work Commission found that the employee's failure to disclose the relationship, especially when combined with his dishonesty in lying to his manager about the affair on two separate occasions, constituted a valid reason for the applicant's dismissal.

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So the best approach for employees considering a relationship with a colleague is to separate the romantic advance from the workplace. Conduct that would be considered lawful outside the workplace can actually be subject a variety of laws if it occurs in a work setting.

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