

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

## What's Love Got To Do With It: The Perils and Pitfalls of the Workplace Romance

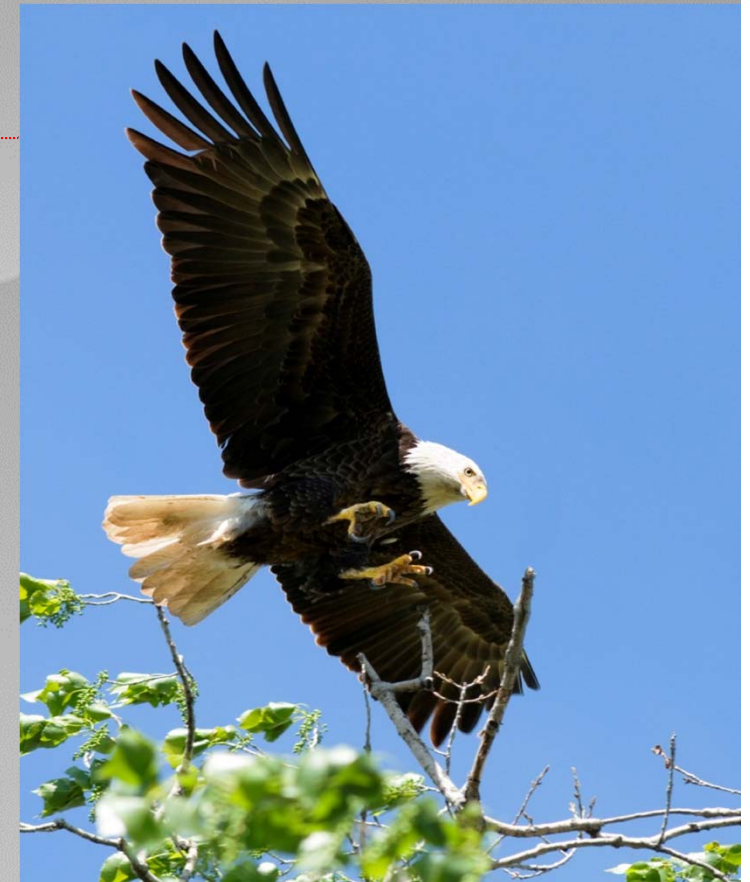
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Presented by:

**Tim McConnell, Esq.**  
**265 Brookview Centre Way**  
**Suite 600**  
**Knoxville, Tennessee**

Phone: 865.971.5166

Email: [tmccconnell@bakerdonelson.com](mailto:tmccconnell@bakerdonelson.com)



# When Cupid strikes....

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1. Love in the workplace (by the numbers)
2. The dynamics of the workplace romance
3. Why Employers Should Care -- the potential legal implications of the workplace romance
4. This stuff really does happen!
5. How to proactively manage these situations



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What's love got to do, got to do with it

What's love but a second hand emotion

What's love got to do, got to do with it

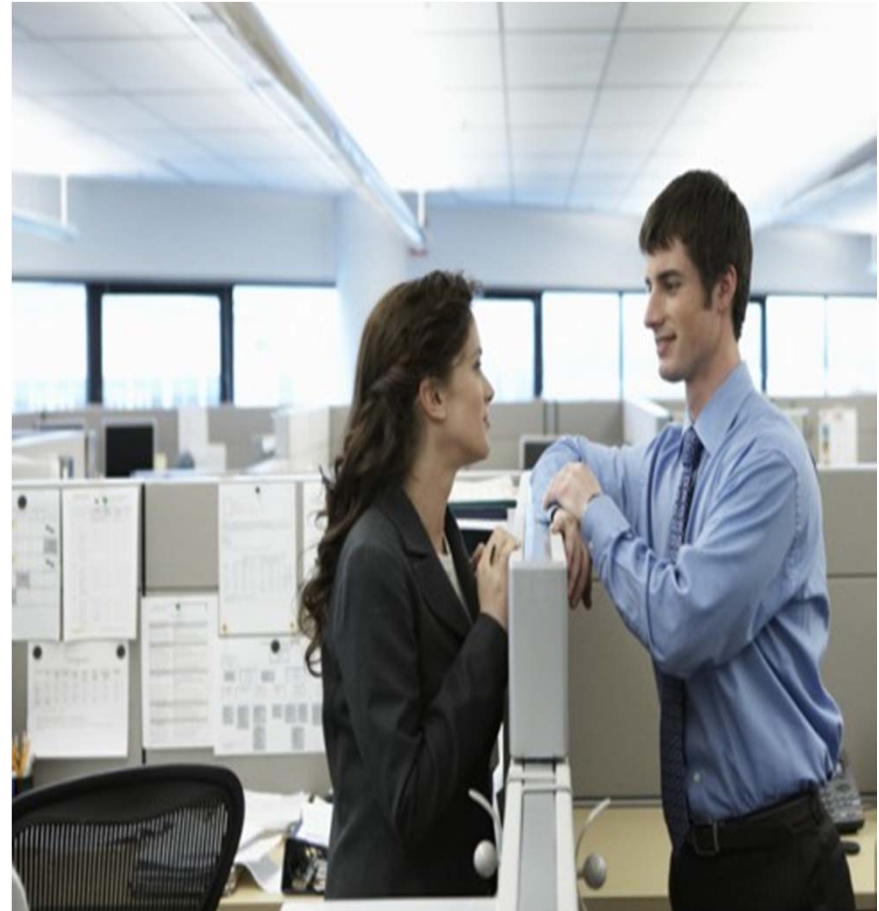
Who needs a heart when a heart can be broken

Tina Turner

## Love by the numbers...

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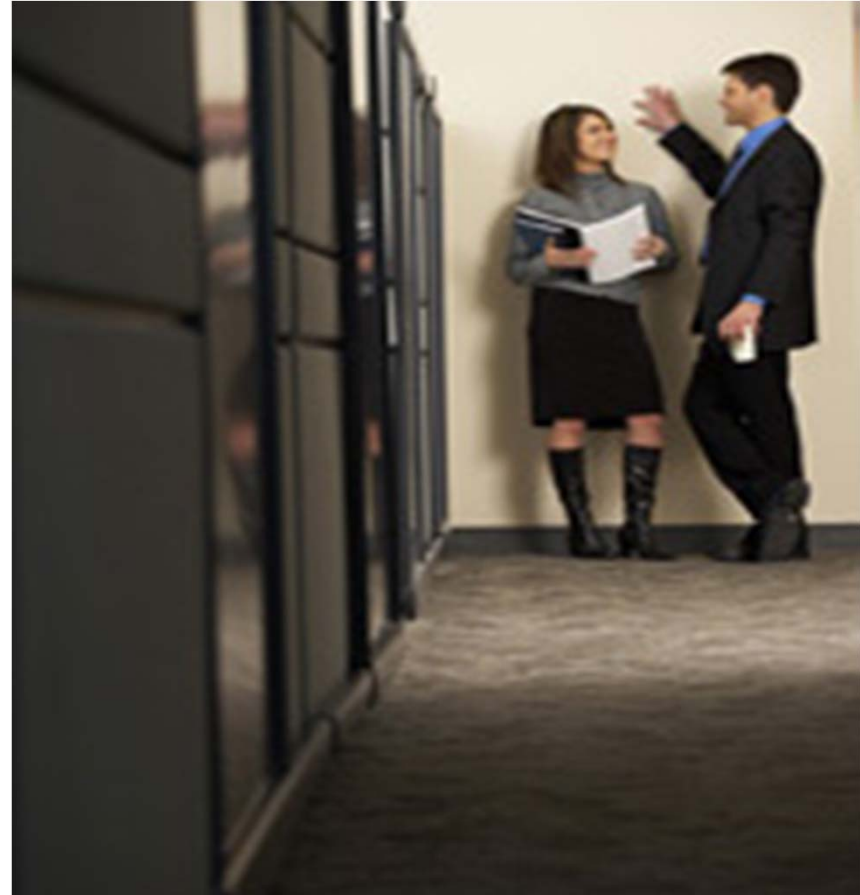
- A 2011 Vault.com survey showed that 59% of respondents said they had participated in an office romance
- 26% of those who had engaged in an office romance said they had dated a subordinate
- 18% said they had dated their supervisor
- 35% of women who had dated co-workers dated people higher up in their organization, compared with 23% of men



## Love by the numbers...

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- 31% of the people who had dated co-workers said their office romance ended in marriage
- 38% of those who engaged in an office romance said they felt a co-worker gained a professional advantage because of a romantic relationship with a co-worker or superior
- 31% said they felt uncomfortable because of co-workers' intra-office romantic relationships
- 37% said they had to keep their relationships secret





# Understanding the Dynamics of the Workplace Romance

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# The Dynamics of the Workplace Romance

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1. Why do co-workers date?
  - a. 13% ran into a co-workers outside of work
  - b. 12% met at happy hour
  - c. 11% met at lunch
  - d. 10% met working late nights
2. The different types of office romances
  - a. peer-to-peer
  - b. manager-subordinate
  - c. extramarital
  - d. the divorce
3. The breakup

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# Potential Legal Implications



# **Workplace Romances**

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**Ripe for Quid Pro Quo  
and Hostile Work Environment  
Harassment Allegations**

# When is an Employer Liable for Harassment?

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- Quid Pro Quo
  - Liability is automatic
- Hostile Work Environment
  - Who is involved?
  - Severe/Pervasive?
  - When does Management find out?
  - What is Management's response?

## Quid Pro Quo

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- “This for that”
- Typically involves Supervisor/subordinate relationship
- Any time harassment by a supervisor results in the victim suffering a tangible employment action, such as being fired, the employer is automatically liable, and there are no defenses available to the employer
  
- **BUT, IF NO TANGIBLE EMPLOYMENT ACTION**  
The employer may have a defense

# Hostile Work Environment

[HWE definition]

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Any conduct that has the  
**PURPOSE OR EFFECT**  
of unreasonably interfering w/employee's work  
performance or creating an  
**INTIMIDATING, HOSTILE,  
OR OFFENSIVE  
WORKING ENVIRONMENT**

## HWE: “Severe & Pervasive” Standard

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- Is the conduct unwelcome?
- How frequent is the conduct?
- How severe?
- Is the conduct physically threatening or humiliating?
- Does the conduct unreasonably interfere with an individual’s work performance?
- Objective and Subjective Tests

“CUMULATIVE EFFECT”

## Defense to Hostile Work Environment Claims

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- 1) The employer exercised reasonable care to prevent and promptly correct harassment AND**
- 2) The employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer**



# Harassment claims are not your only worry!

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- Favoritism – real or perceived
- Sexual favoritism claims – type of sex discrimination claim

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**You can't make this stuff up...**

**STORIES FROM ACTUAL CASES**

## *Gallagher v. Delaney* (NY)

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- Plaintiff was a former executive secretary at the defendant company. She filed suit against her former employer and supervisors for sexual harassment.
- Although the plaintiff was married, she had an affair with an engineer at the company and she regularly accepted gifts, compliments and kisses from other managers at the company
- Plaintiff worked for the General Manager – her allegations against the General Manager included:
  - He told her he had a dream that he kissed her
  - On one occasion when she went into his office, the office chairs were full of boxes, and the General Manager told her that the only place to sit was on his lap
  - He invited her to lunch on numerous occasions
  - He bought her jewelry, a Vermont Teddy Bear, a single pink rose and a book about angels
  - Gave her handwritten notes, including one that said “Believe me, you’re the last person on Earth I want to see hurt.”
  - Gave her days off without charging personal or sick time
  - Reminded her that he was the boss and told her he had control over her career
  - Never directly asked the plaintiff to engage in sexual relations, but according to the plaintiff, the request was implicit

THE COURT OF APPEALS REVERSED A DISMISSAL OF THE CASE FOR THE EMPLOYER AND REMANDED THE CASE FOR TRIAL!

## *Rothenbusch v. Ford Motor Company* (Ohio)

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- “The classic story of workplace romance turned sour.”
- The plaintiff, a line supervisor, met and married her husband, another supervisor
- After 7 years of marriage, they separated and filed for divorce.
- Thereafter, her husband began making degrading remarks about his wife; and placing copies of posters and adulterated greeting cards throughout the plant containing sexual innuendo, partial nudity and insults aimed at his wife.
- At one point, the plaintiff, while driving a scooter around the plant, got grease on her pants. Believing that her husband had placed grease on the seat of her scooter, she sprayed him in the face with mace – an act for which she was eventually terminated.

## *Johnson v. West* (Illinois)

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- The plaintiff worked as a secretary to the Chief of Police at a VA Hospital
- After one sexual encounter between the plaintiff and the Chief of Police (plaintiff testified that she did so out of fear she would lose her job), the Chief of Police would touch plaintiff inappropriately and verbally abusing her
- He also sent her cards:
  - “It’s nice to be able to share the simple things of life with you: a quiet walk, a candlelit dinner, an evening by the fire . . . sex that registers on the Richter Scale.” The card was signed “Luv Chief a/k/a Will a/k/A Maurice a/k/a Batman a/k/a Darkman.”
  - Valentine’s Day Card which read: “I can’t imagine loving you more than I do today . . . but tomorrow I will. HAPPY VALENTINE’S DAY, SWEETHEART.”

## *Pucci v. USAIR* (Florida)

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- Among many types of inappropriate behavior to which the plaintiff was subjected, the plaintiff was given a large red Valentine's Day card which read: "On Valentine's Day, remember – candy is dandy . . . but sex won't rot your teeth! So, what do you say?"



# Policy Considerations

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# To Date or Not To Date, That is the Question

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- Policy Options:
  1. Not have a policy
  2. Absolute prohibition of relationships between co-workers
  3. Prohibition of manager-subordinate relationships
  4. Require employees to report a relationship with a co-worker to management
  5. Combination of 4 and 5

**REMEMBER, IF YOU ARE GOING TO HAVE A POLICY,  
ENFORCE THE POLICY AND IMPOSE DISCIPLINE ON EACH  
MEMBER OF THE COUPLE EQUALLY AND WITHOUT  
EXCEPTION!**

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# **RUMORS**

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# **TIPS**

for Proactively Addressing  
Workplace Harassment

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**T** raining  
**I** nvestigation  
**P** olicy  
**S** elf-analysis

# TRAINING

- Who should I train?
- How often should I train?
- What should my training consist of?



## TRAINING (Cont'd)

Educating your supervisors and managers is essential to preventing workplace harassment.

What about the non-supervisory/  
management level employees?

# TRAINING (Cont'd)

## How often should I train?

1. Annually for all supervisors and managers;
2. When a new manager or supervisor joins the company;
3. When a current employee is promoted to management;
4. As part of the resolution of a complaint
5. When concerns are observed about employment law compliance.

# Keys to a Successful Training Program

- Definition of harassment
- Statutory provisions prohibiting unlawful harassment
- Types of conduct that constitute unlawful harassment
- Strategies to prevent unlawful harassment

# Keys to a Successful Training Program (Cont'd)

- Your policy
- Confidentiality of complaint process
- No retaliation
- How to effectively investigate a harassment complaint
- HAVE FUN – role play, case studies, group discussion, quizzes

# INVESTIGATION

- When should I investigate?
- What are the keys to an effective investigation?
- How do I conduct an investigation?

# INVESTIGATION

- Any and all complaints or situations involving harassment
- Confidentiality, Promptness, Thoroughness, Impartiality
- Interviews; Appropriate Interim Action; Follow-up Interviews; Determining Credibility; Reaching a Conclusion; Enacting Corrective Measures

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# POLICY

- Shouldn't it be first?
- What must my policy contain?

# POLICY

- Clear explanation of prohibited conduct  
Assurance of protection against retaliation
- Clearly described complaint process –  
must permit both informal and formal  
complaints and provide a mechanism for  
bypassing a harassing supervisor



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# POLICY

- Confidentiality
- Requirement that supervisors report incidents of harassment
- Prompt, thorough and impartial investigation
- Training
- Immediate and appropriate corrective action

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# SELF-ANALYSIS

- Workplace Culture
- Email/Internet/Electronic Communications
- Top-down buy-in