

# Workplace Romance Can Weave a Tangled Web for Risk Managers

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A quote beneath David Letterman's photo on the CBS Web page touting his talk show serves as a testament to his wit: "There is no off position on the genius switch."

But that knack for funny faded a bit when faced with an alleged blackmail threat, and Letterman somberly disclosed on a recent broadcast that he engaged in sexual relationships with some of the show's female employees.

Some management experts question the wisdom of a supervisor having a romantic relationship with subordinates, given the ramifications and potential for a growing array of workplace-related claims. In addition to the prospect of costly claims and increased premiums, there's also the intangible impact on employee morale and productivity. [Read more....](#)

Lynn Lieber, an employment law attorney and chief executive of Workplace Answers, said Letterman's situation symbolizes the volatile nature of the potential down-side risk.

"When you get into sex, money, power, lust, love -- all bets are off," Lieber said. "You don't know what's going to happen."

Lieber said judges and juries now have a higher expectation level for supervisors when it comes to sexual harassment charges or hostile workplace claims, especially when training has been provided. She said most companies have a policy to prohibit unlawful harassment that is not only sexual in nature, but also based on race, religion or gender. There must also be effective methods for reporting complaints.

Companies can also implement non-fraternization policies that take one of three tacks: supervisors can't date subordinates; supervisors can't date employees; or employees can't date at all. Lieber said the third option is probably unenforceable given the constitutional ramifications, and that the over-arching subject is an uncomfortable one for employers to address.

"You're trying to put a set of legal rules on human behavior, which is hard enough, but when it's human sexual behavior, that takes it to a whole other level," Lieber said.

Another option involves having two employees sign a "love contract," in which they agree that a relationship is consensual and they are aware of the ways to report harassment. Lieber said even those contracts are not ironclad, because a party can claim they signed under duress.

A spokesman for Letterman's production company, Worldwide Pants Inc., told the Los Angeles Times that the production company's "sexual harassment policy did not prohibit sexual relationships between managers and employees."

Lieber cited the power and aura of Letterman's celebrity, and that it could play a role in any potential claim, regardless of whether he supervised women he was involved with or not. Despite the layer of separation between Letterman's production company and CBS, Lieber believes any potential litigants are apt to take far-reaching legal action.

"If I were CBS' lawyers, I would get waivers from the women saying they were not sexually harassed, that these were consensual relationships," Lieber said. "If you look at it from a purely legal standpoint, I'm sure CBS' lawyers have done this and talked to the various women."

The potential for sexual harassment claims is no longer limited to retaliation charges brought by former paramours.

Four years ago, a California Supreme Court ruling deemed that widespread sexual favoritism in the workplace may be demeaning and create an "actionable hostile work environment." In that case, two female prison guards claimed they were victims of sexual harassment because of favorable treatment given to other employees who were having affairs with a warden.

Attorney Paul Siegel, a partner at Jackson & Lewis, a national firm that specializes in employment law, said the Letterman situation may reinvigorate debate and awareness of the sexual harassment issue. He recalled how nomination hearings for U.S. Supreme Court Justice Clarence Thomas in 1991 sparked widespread public discussion over sexual harassment in the workplace.

"I think for 20 years companies have been issuing stronger and stronger sexual harassment policies," Siegel said.

By the same token, he said, claims are easier to make with the federal Equal Employment Opportunity Commission. Sexual harassment discrimination claims increased nearly 11% to 13,867 in fiscal year 2008, its highest point in five years, according to the EEOC. This is often the first step in a legal claim, and may be indicative of the potential for increased lawsuits in the future.

This doesn't reflect the cases that are being initiated through state and local agencies, according to Eric Ross, claims manager with Beazley Specialty Lines. He said rewards can be capped in a federal claim, and it's hard to quantify how much complaint activity is taking place at the more local level.

At the same time, employees are less concerned about the impact of workplace romance.

A 2008 survey by Spherion, a national staffing and recruiting firm, only 30% of employed adults surveyed believed that openly dating a co-worker would jeopardize job security or advancement. That statistic was down from 41% a year earlier.

According to the survey, which polled nearly 1,400 employed adults, 57% of respondents said their employer did not have a policy on workplace romances. Nearly 30% said they weren't sure if a policy existed.

Dawn Haag-Hatterer said in her experience, workplace romance issues are more prevalent in liberal, innovative workplaces that have a more open culture. Haag-Hatterer owns Consulting Authority, a Washington D.C.-based human resources consulting firm. She said it's critical for human resource personnel to maintain a consistent presence for workplace romance policies, as opposed to letting the guidelines become complacent.

Haag-Hatterer said she's come across numerous instances where a workplace romance, either perceived or actual, is brought into play by someone terminated for cause or performance-related issue. An open EEOC complaint can also affect premium rate at renewal time, she said.

She said a company is never going to totally eliminate the potential for workplace claims.

"But having a good policy is going to be key in keeping that company out of the courtroom," Haag-Hatterer said.