

When Lawyers Court: Dating in Law Firms

BNA Snapshot

- Law firms should refresh workplace dating policies
- Policies should require notification, prevent favoritism
- Ethical rules may expand firm liability



By Gayle Cinquegrani

The #MeToo movement has prompted a flurry of activity at law firms.

Worker-side lawyers continue to file lawsuits alleging that bosses sexually harassed their employees and companies failed to respond adequately. Management-side lawyers are hosting webinars and writing blogs advising employers how to avoid situations that give rise to such lawsuits.

But what are the conditions inside law firms?

Of course, we've all heard that former President Barack Obama met his wife, Michelle Robinson Obama, at Sidley & Austin in Chicago, where she was his mentor. But Bloomberg Law wanted to find out how common law firm romances are, and what ramifications they have for law firms as workplaces.

It wasn't easy. Bloomberg Law contacted 50 law firms, but none would reveal their official policies on workplace dating. We were able to get a few lawyers to discuss law firm dating in general terms, however. The consensus seems to be that the occurrence, and the fallout, vary greatly.

#MeToo Movement

"I think that most law firms do not have formal policies about it," but it's hard to tell because "law firms are private about their policies," Angela Brandt told Bloomberg Law Jan. 29. "Law firms have been pretty quiet about the issue so far," said Brandt, the president of the National Association of Women Lawyers and a partner at Larson-King in St. Paul, Minn. "With the #MeToo movement, there is more of a spotlight" on the issue of sexual harassment, she said.

The #MeToo movement has encouraged women to come forward with their stories of sexual misconduct and gender inequity.

"The issue with law firms is that, unlike a company, law firms are partnerships, so it's less clear who the boss is," Debbie Epstein Henry, the founder of DEH Consulting, told Bloomberg Law Jan. 26. "In a law firm structure, the equity partners share the control and power," so there is "opportunity for abuse of power."

"Every partner is an owner," Andrew Horowitz, an associate at Obermayer who handles sexual harassment and discrimination claims, told Bloomberg Law Jan. 26. "It's very hard to tell them what to do."

The governing structure of law firms also isn't conducive to policing workplace dating. "It's a male-dominated industry, and the management of a law firm tends to be even more male-dominated," Horowitz said. Members of a firm's management committee may lack the time to deal with sticky personnel issues because they're busy with their law practices, he said.

Surreptitious Relationships

Even if a firm has a policy governing office dating, "it's also a difficult thing to create and enforce in law firms," Brandt said. "Typically, the dating that occurs, especially when there's a power imbalance," takes place behind closed doors. "I don't know that a policy would prevent those relationships," she said.

Some working conditions for lawyers, such as out-of-town trials or late-night hours organizing business deals, "could lend itself to relationships forming," Brandt said, but "I'm not sure it's any more prevalent" in law than in other professions.

Some amount of workplace dating seems inevitable, said Barry A. Hartstein, a co-chair of Littler's EEO and diversity practice group. "We spend more time at work than anywhere else" during our waking hours, Hartstein told Bloomberg Law Jan. 30.

Hartstein identified a few workplace trends that could fuel fraternization. "We hear more and more about working as teams," he said. "When does collaboration go over the line?"

"We cannot prevent people from developing affection for each other," Hartstein said. "I have seen so many relationships evolve in a work setting over the years," Hartstein said. Some have been successful, including relationships consisting of lawyers and paralegals, partners and associates, and lawyers from the same job level.

Moving to Another Firm

"Sometimes the individuals will self-police it and say they don't feel comfortable," Hartstein said. They may decide they value the relationship more than their jobs, so one will move to another law firm.

"For many years, the thought was that somebody would leave if they were dating," according to Ronda Muir, principal at Law People Management, in Greenwich, Conn. "It was usually the younger person, which was usually the woman," she told

Bloomberg Law Jan. 26.

Other couples remain at their firms, and their relationships eventually run their course. "More than 90 percent of the time you don't ride off into the sunset and go to your honeymoon," Hartstein said. Resentment and retaliation could result from furtive flirtations and romantic breakups.

Therefore, "law firms should have policies like any other" business, Hartstein said. The goal is "to make sure people conduct themselves appropriately so it's not a distraction for themselves, the firm, or the client." The main point is ensuring "that people are treated fairly in the workplace," he said.

Hartstein doesn't advocate a one-size-fits-all strategy for workplace dating. "Every one of these situations needs to be looked at on an independent basis," he said. If repercussions are too strict, the firm "could lose a very good lawyer," he said. "Is that the best thing for the client?" he asked.

Ensuring Fair Treatment

Nevertheless, Hartstein identified some basic parameters. "Full disclosure in any of these situations is critical," he said. "I think we need to be aware of conflicts of interest and avoid bias and favoritism." Firms should ensure that one member of the couple isn't supervising the other one, Hartstein said.

"Firms that have multiple systems in place in terms of assigning work, evaluating work, and deciding bonuses are less at risk for developing the power imbalances that could develop into the types of relationships they don't want," Brandt said.

If a powerful partner is dating an associate, "it can create issues of paramour preference," Horowitz said. Preferential treatment could include positive evaluations as well as plum work assignments, he said.

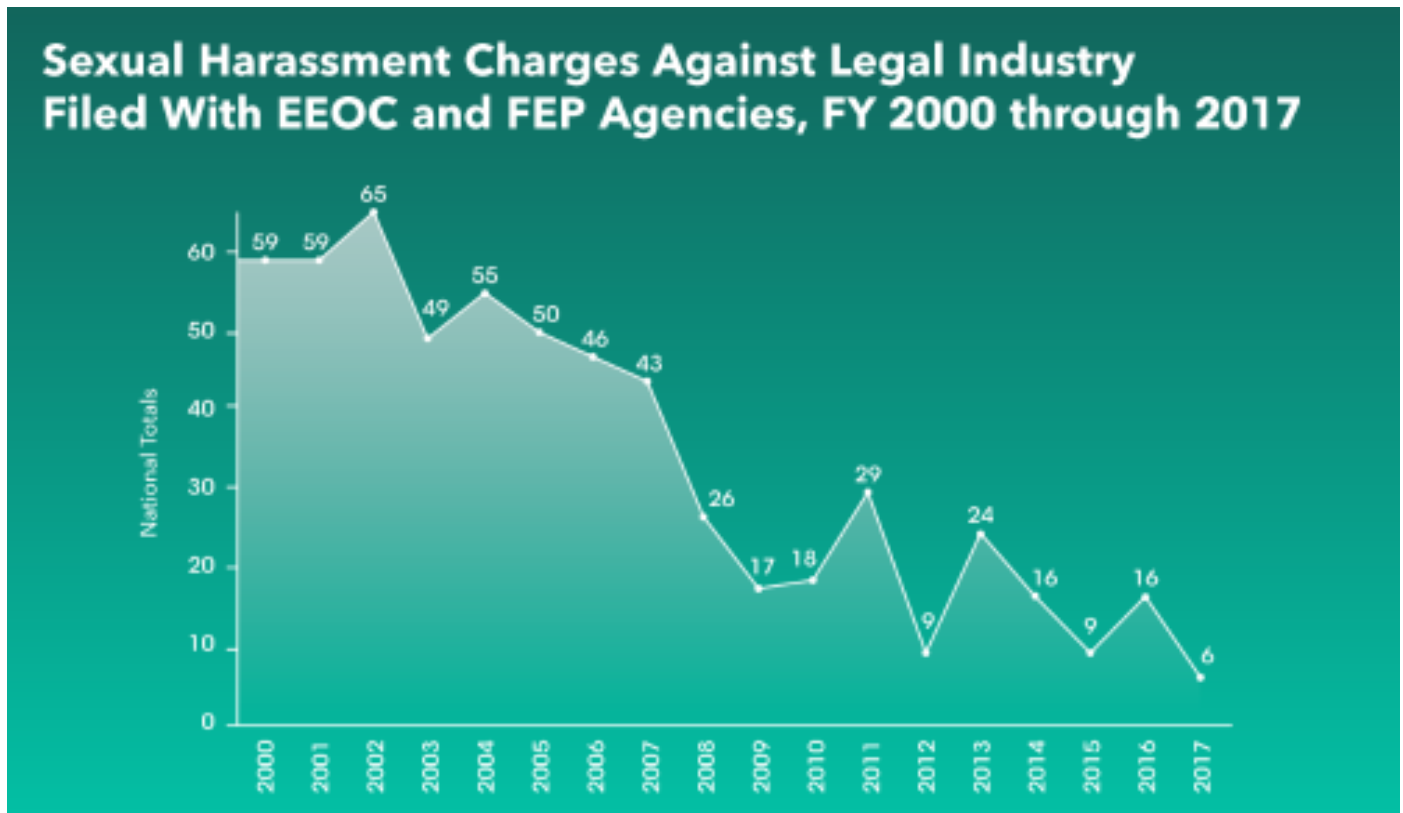
Some law firms may adopt a non-fraternization policy, but "that can actually be difficult for women in law firms because it precludes them from some opportunities they would otherwise have," Brandt said. "Even if it's not an inappropriate relationship," male partners could be reluctant to include a woman in a group of men going out to dinner or a happy hour, Brandt said.

To lessen the perception of risk, a female lawyer could suggest going out for coffee or lunch instead of drinks or dinner, inviting additional people, or using her own transportation, Brandt said. "If you're on the lower end of the power imbalance, you can still direct" some of the details of such encounters, she said.

Updating Policies

"In this climate, given all the sexual harassment allegations, firms need to rethink their policies," Henry of DEH told Bloomberg Law. Law firms should look at their workplace dating policies "and see if they need refreshing and make sure lawyers and staff are aware of them."

Statistics from the Equal Employment Opportunity Commission show a drop in the number of sexual harassment charges filed against the legal services industry with the EEOC and state or local fair employment practices agencies since fiscal year 2000. Fifty-nine such charges were filed in fiscal year 2000, compared with six in FY2017. The highest number of charges was 65, in fiscal year 2002.



"Though there is a drop, if you take our nearly 100,000 charges received per year," a drop from 65 to six "would not be a big difference percentage-wise," EEOC spokesman Joseph Olivares told Bloomberg Law in a Feb. 1 e-mail. The legal services industry includes lawyers, paralegals, legal support workers, social workers, judges, and other workers providing legal services, he said.

A recent change in lawyers' ethics rules could significantly broaden the legal profession's exposure to liability for sexual harassment and discrimination, Muir said. "In my opinion, that's going to force firms to clarify" their policies for handling complaints, she said.

Ethical Obligations

The American Bar Association in 2016 amended Rule 8.4(g) of its Model Rules of Professional Conduct to prohibit lawyers while practicing law from engaging in conduct that constitutes harassment or discrimination based on sex or other specified factors, Muir said. Rule 8.3 requires lawyers who see such misconduct to inform the appropriate professional authority, she said.

Lawyers who feel they've been sexually harassed may be reluctant to report it for fear that speaking out will damage their careers, Brandt said. They may consider the legal standards for their case, knowing that "if you come forward and you lose and then you're looking for employment elsewhere, that's a difficult situation to be in," Brandt said.

"At NAWL, we provide a support system for women lawyers" that can help them develop their practice, find a new job, and "navigate tricky situations," Brandt said. NAWL can help a woman to become "confident in her talent and ability" so "she's not relying" solely on her law firm for sponsors and mentors, Brandt said.

The best advice may be to avoid office-based romantic relationships altogether. "The notion of getting involved with somebody at work is not a good choice because of the complexity and all the problems it could create if things go wrong," Hartstein said. "The minute you add romance, you add a wrinkle."

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