The New York Times

Long Island

SUNDAY, MAY 15, 2005

L.I. @ Work

Untangling Employees' Romantic Liaisons

By STEWART AIN

Phil Marino for The New York Times

Richard K. Zuckerman and Sharon N. Berlin, partners in Lamb & Barnosky in Melville, specialize in labor and employment law. Questions about employees' romantic entanglements have become more common in the last 25 years, Mr. Zuckerman said.

RICHARD K. ZUCKERMAN, a lawyer in Melville who specializes in labor and employment cases, was in the middle of a hearing when his cellphone rang.

It was the supervisor of an East End town — Mr. Zuckerman would not say which one. As Mr. Zuckerman remembers the conversation, when he called back, the supervisor said that two town employees — one married and the other divorced — were having an affair.

"So why are you calling?" Mr. Zuckerman remembers asking.

"I don't know what my rights or obligations are as an employer," the supervisor replied. "Can I ignore it? Do I have to do something?"

The supervisor went on to say that he was tipped off about the affair by other elected officials, who were concerned "about the potential appearance of impropriety, because of legal and moral implications," Mr. Zuckerman said.

And they had some questions: Can we be sued if she is committing adultery? Can we be sued if this affair breaks up her marriage? Do we have an obligation to step in and do something?

Mr. Zuckerman, a partner in the law firm of Lamb & Barnosky, said that as a general rule, the answer to the last question is no: the employer has no obligation to get involved. But he told the supervisor that the first thing he should do was to find out if the report was true.

If it was true (it turned out it wasn't), Mr. Zuckerman said, the employer's next step would be to speak with both the man and the woman, separately and in private, to verify that the affair is consensual.

Once that is taken care of, Mr. Zuckerman advised: "Tell them to keep their romance out of the workplace, don't involve co-workers, don't do personal things on work time and make sure each knows the town's anti-harassment policy."

"I tell employers, 'Beyond setting the rules of the game, I'm not into Big Brother,' " said Mr. Zuckerman, who will become the chairman of the State Bar Association's labor and employment section on June 1.

Sharon N. Berlin, another partner in Lamb & Barnosky, said that allowing both employees to continue to work for the town could become tricky if one of them supervises the other.

"There could be an appearance of favoritism," she said, and if the affair soured, matters could become messy, with charges and countercharges of harassment or worse.

Bernard Vishnick, a senior partner specializing in labor law at the law firm of Capell Vishnick in Lake Success, said that in recent years there had been a proliferation of lawsuits filed by employees who believe they were passed over for raises because a supervisor wanted to reward a spouse or companion.

"That can be demoralizing to the other employees, so companies have said that if you want to date this person, get another job," Mr. Vishnick said. "There are some companies that do not want a husband and wife to be employed in the same company, or that say husbands and wives should not be in the same department where they will interact with one another, especially in an authoritative or discretionary position." Mr. Zuckerman says that romance in the workplace is becoming more common, but a January 2003 survey of 391 corporate managers by the American Management Association

found that only one company in eight has a written policy on employee dating. Companies that do have such policies, the survey found, usually limit them to prohibiting dating between superiors and subordinates.

The survey also found that two-thirds of managers and executives said it was all right to date someone from work, and 30 percent said they had done so themselves. Of that group, 44 percent said their dating resulted in marriage; 10 years ago, that figure was 38.5 percent.

On the other hand, charges of sexual harassment are fairly common in the workplace. The federal Equal Employment Opportunity Commission found that after Anita Hill accused her former boss Clarence Thomas of sexual harassment, the number of similar complaints jumped significantly.

Michael A. Kaufman, a partner in Kaufman, Schneider & Bianco in Jericho, a law firm that specializes in employment, labor relations and construction issues, said that employers had taken a number of steps to defend themselves against harassment and discrimination lawsuits.

"In the last seven or eight years, the Supreme Court has told employers that if they want to have an affirmative defense if they are sued for discrimination, they need to have a written policy promulgating what an employee should do if he or she feels harassed or discriminated against," he said.

"And not only must they have a policy, but they have to train their management people to recognize inappropriate conduct and take appropriate action," Mr. Kaufman said. "Every employer should do it every couple of years. We tell our employers that they should redistribute the policy yearly and conduct training every other year. Some states require mandatory training every year, such as Connecticut and California, but New York does not."

Employers must guard against a hostile work environment, Mr. Kaufman said, one that includes "sexual innuendoes, jokes and pictures and e-mails that are sexually explicit — there is a zero tolerance in the workplace for this type of behavior."

Insurance companies are now selling liability policies to cover employers if they are sued for sexual harassment or any form of discrimination.

Such a policy — or the lack of one — is a major point in one of the Island's best-known sexual harassment suits. In 1999, William T. Perks, the harbor master for the Town of Huntington, filed a $10 million sexual harassment suit accusing Susan J. Scarpati-Reilly, then a Huntington town councilwoman, of threatening to have him fired if he tried to end their affair.

In the suit, Mr. Perks claimed that when he did end the affair in August 1998, Ms. Scarpati-Reilly began sexually harassing him, and that the town knew, or should have known, but failed to act.

But Ernest R. Stolzer, special counsel for the town, said that Ms. Scarpati-Reilly "denies there was harassment and denies there was an affair." Mr. Stolzer, a partner in the Mineola law firm of Bond, Schoeneck & King, said all sides have been ordered by Judge Joanna Seybert of federal District Court in Central Islip to meet with her on June 1 for a settlement conference.

Edward J. Yule, Mr. Perks's lawyer, who practices in Northport, said that because the town did not have a proper sexual harassment policy in place, it "has no affirmative defense."

But Thelma Neira, a special assistant Huntington town attorney, denied his assertion and said the town's anti-harassment policy had been in place since the 1980's.

Mr. Zuckerman said that what made the Perks case notable was that it became public. "In the vast majority of situations, the employer does whatever he can to avoid publicity, and one or both of the employees involved don't want the matter to become public, either," he said. "If the spouse does not know what has been going on, it's not good to find out about it in the newspapers."

"Twenty-years ago, I was never called upon for advice on these types of issues," Mr. Zuckerman said. "Ten years ago, I had a handful of clients. Now I am frequently called upon."