

PARAMOUR CLAIMS/REDUCING EMPLOYER LIABILITY FOR CO-WORKER/EMPLOYER CONSENTING SEXUAL RELATIONSHIP

Under Title VII, employers may be liable when employees are denied employment benefits because of a co-worker's consenting sexual liaison or relationship with a representative of the employer. Such claims are called paramour claims.

As with employer liability under Title VII for sexual harassment claims, an employer's potential liability may be predicated upon conduct by agents, supervisors, co-workers, and non-employee third parties.

The EEOC recognizes paramour claims as an issue related to sexual harassment, thereby making paramour issues governed by general Title VII principles.

Employer preventive measures or protections against paramour claims parallel protection against sexual harassment claims and include:

- ___ provisions of an internal complaint/resolution process with confidentiality protections,
- ___ training of all employees in how to make such internal appeals,
- ___ provisions of a policy which prohibits sexual harassment and which addresses sexual liaisons on the job,
- ___ training of supervisors and employees in that policy and specifically warning supervisors of the legal perils associated with sexual liaisons and of the potential for paramour claims,
- ___ promptly identifying and prudently taking steps to correct job performance deficiencies caused by relationships, on or off company premises, between employees and between employees and supervisors,
- ___ utilizing "confidential" record keeping procedures in documenting (such as sealed envelopes with limited access notations), corrective job performance counseling, disciplinary action, or other corrective measures taken toward employees and supervisors,
- ___ requiring that supervisors justify in writing (for review by top-level managers) reasons for all promotions where two or more aspirants or potential promotees exist, whether or not there exists any form of consenting relationship and whether or not there is a difference in sex or sexual preference between the job aspirants or between a job aspirant and the supervisor,
- ___ management review of all such promotions, whether or not sexual liaison/relationships are known to exist, even if company policies do not explicitly prohibit such relationships,
- ___ MARC CHECKLIST/CONSIDERATIONS IN "SEXUAL LIAISON" OR "SEXUAL PROMISCUITY" SITUATIONS.

Reference: EMPLOYEE RELATIONS LAW JOURNAL Vol. 15, No. 1, Summer 1989, pgs. 57-66.