

The Five O'Clock News[®]

from America's Premier Career-Coaching and Outplacement Service

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"One organization with a long record of success in helping people find jobs is The Five O'Clock Club."

FORTUNE

**Celebrating 25 years—
America's Premier
Career Coaching and
Outplacement Network for
Professionals, Managers
and Executives**



Workplace Romance and other hot legal issues

◆ **Discrimination** ◆ **Employee Benefits**



Over 120 HR executives listen intently to a Five O'Clock Club HR Network program on the Hot HR Legal Issues of the Day.

In this issue

◆ **Successful Job Hunters Report** ◆ **Job-Offer Letters** ◆ **Negotiating Severance**

Do Yourself a Favor: HIRE MY BROTHER

Everyone has a handicap—something they think that will hold them back in their careers. It could be that they feel they are too young or too old, have too little education or too much, are of the wrong race, creed, nationality, sex or sexual orientation, or are very aware that they have a physical disability.

In fact, serious prejudice does exist. The subject is so sensitive that there is rarely honest discussion between people with opposing points of view. Yet, in managing their own careers, people must try to forget about discrimination. Those who are too self-conscious about their perceived handicaps will hold themselves back. To advance, they must simply plow ahead and find an open window when doors are slamming shut all over town.

I got this attitude from my family. My younger brother, Robert, developed spinal meningitis when he was two years old. The medical specialists could not help. We all loved him, but in his grade school years we assumed he was mentally deficient. What he actually had was an uncorrectable speech and hearing defect.

Instead of sending him to high school, my parents sent him to a trade school to make sure he could earn a living. There, he became brave and asked his teachers to face him when they spoke so he could read their lips. When they forgot, he reminded them, and he graduated first in his class.

To make up for his lack of a high school education, he went to junior college. Then he majored in metallurgy at the University of Pennsylvania—all the while insisting that his teachers face him so he could read their lips.

Now he runs a highly successful nanotechnology company and travels the world marketing his company's products. His physical limitation is barely noticeable, he works like a demon and, as it turns out, he is as smart as can be.

"No excuses. Do your best." Because of my brother, that's what I've always told myself and my clients.

To managers, I say this: "Most of you do not understand. You have no idea what it's like to be judged on something other than your skills, talents and personality."

Bruce Faulk, a young, clean-cut, gifted actor—and a Five O'Clock Clubber—learned our techniques and did well in his career. He played in *Hamlet* on Broadway and toured Europe with *Hair*. Then they played in the U.S. One night after a show in Boston, Bruce went out for pizza. A few policemen stopped him and asked where he thought he was going. Bruce did not answer as respectfully as he might have. He was thrown in jail. Of course, Bruce is black.

Many black male professionals and executives I know have been treated unfairly by policemen. Or they have been mistaken for messengers or delivery men.

When I ask white male executives if they have ever experienced this sort of thing, they can barely understand my question. It is so foreign to them.

Dear Manager: Try to understand.

Give different people a chance. Young people. Older people. People with physical limitations. People of different races, ethnicities, genders or sexual orientations. You will find plenty who work harder and are smarter than you would have imagined. You will be the winner for it. And you will have hired my brother. ●

Kate Wendleton, President



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Article submissions based on 5OCC methodology are welcome. There is no guarantee of publication. All submissions become the property of The Five O'Clock Club, Inc.



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THE GARDEN of LIFE is abundant, prosperous and magical.

- ☛ In this garden, there is enough for everyone.
- ☛ Share the fruit and the knowledge.
- ☛ Our brothers and we are in this lush, exciting place together.
- ☛ Let's show others the way.

Kindness. Generosity. Hard work. God's care.

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WORKPLACE ROMANCE

and Other Possible Headaches for HR

by David Madison, Ph.D.

Director of The Five O’Clock Club National Guild of Career Coaches

The following article is based on a panel presentation at the July 7, 2006, meeting of the HR Network, which is sponsored by the Five O’Clock Club. The HR Network is a vendor-free venue for HR professionals to meet informally and hear discussions of important issues of the day.

The July meeting every year is devoted to legal issues impacting HR; the panelists on this occasion were Bill Milani of Epstein, Becker & Green, Mark Brossman of Schulte Roth & Zabel and Mark Jacoby, of Weil Gotshal & Manges.

Les Liaisons Dangereuses?

“What the world needs now is love, sweet love. It’s the only thing that there’s just too little of...not just for some, but for everyone.”

Who can disagree with this?—especially when we hear Barry Manilow or the Carpenters crooning the tune (written by Burt Bacharach, lyrics by Hal David).

While we’re all for love, of course, HR professionals, who are responsible for taking care of the human component of the workplace, do have a right to ask: What is appropriate *at work*? To assume that love—romantic love—can

be allowed to run its course, without limits or guidelines, might be asking for trouble.

Most people spend most of their waking hours on the job, and the human chemistry of sexual attraction isn’t turned off during work hours. Hence, romance at work is inevitable, although it may be one of the hardest things to track and quantify. Not surprisingly, two surveys of the topic have yielded wildly different results. According to one, 40 per cent of employees reported involvement in workplace romances, according to another, 58 per cent.

We’re all for love, but what is appropriate *at work*?

Anyone who is sentimental about romantic love can take heart in one report that shows that slightly more than half of workplace romances result in marriage. Supposedly, that’s the good news. But consider this: unless your workplace is overwhelmingly made up of single people, if 58 per cent of the employees are involved in workplace



Mark Brossman, of Schulte Roth & Zabel, had fun engaging the audience.

romances—well, that means that a goodly number are cheating on their spouses! To date, there seems to no data on how many *married* employees are involved in workplace romances. Attitudes on such things may vary widely across the country—depending, for example, whether you’re in the Bible Belt or Silicon Valley; whether management takes a none-of-my-business attitude, or operates on an *in loco parentis* basis.

But the crucial question for alert HR professionals is, *Does workplace romance put the company at risk in any way?* For example, if 40 to 58 per cent of your employees are engaged in romances with co-workers, and many of them *aren’t single*—well, there would appear to be a lot of potential for stressful complications. Whether it is a matter of unwanted advances (reported by 40 per cent of employees in one survey), single employees trying to hook up (consensually), or married employ-



Five O’Clock Club staff takes a break (from left: Shanoza Shamir, Nydia Reid, Jose Mejia).



Mark Jacoby, of Weil Gotshal & Manges, addressed the issue of workplace romance.

ees cheating, any of these activities can create distractions and jeopardize the work's getting done.

Obviously, the role of HR is not to be the morality police or romance monitors, but you may face the consequences of romances that turn sour, or that simply provoke jealousies and resentments among co-workers—which can all be acted out in various ways in the workplace; claims of sexual discrimination or harassment, retaliation, decreased productivity, breeches of confidentiality, or blackmail. There are a lot of things that might not be so sweet about romantic love at work.

HR may face the consequences of romances that turn sour.

For the most part, employers appear to prefer the benign neglect approach. While 10 per cent of companies ban workplace romances outright, about 70 per cent have not developed policies on this issue at all. Maybe you can honestly say that it's never been a problem where you work, but it can take only one case of a workplace romance gone awry to get management's attention. Trying to head off problems, some companies now suggest a "love contract" for employees who are

dating, which provides written guidelines for behavior if things fall apart.

Chances are—given that 70 per cent figure—you work for an organization that hasn't put a policy into writing. Do you need blaze the trail in this area? Maybe not, but it might not be a bad idea to compare notes with HR colleagues in other companies of comparable size in your industry. Is there an emerging consensus on what should be done to protect employers? Do you already have in place prohibitions that cover retaliatory behavior (*e.g.*, harassment, retaliation)?

Also, do a little research on what your state law will allow employers to do: How much control do you have over the personal lives of employees outside of work? After all, most of the actual romancing is probably (hopefully!) being done after work hours and away from the workplace. It can certainly have repercussions on work performance, but this is one area of activity where you're very likely to hear, "Hey, it's a free country."

Damage Control and HR

In addition to office romances, there are other hot legal issues that HR may face. Here are a few nightmare scenarios that have captured the headlines in recent years:

- A \$98 million dollar suit, under the Fair Labor Standards Act, against a top brokerage firm for misclassifying employees as non-exempt.
- A \$29 million dollar jury verdict in a sex discrimination case against a major securities firm.
- A major brand name company lost a \$61 million case involving national origin discrimination against independent contractors.
- A \$1.4 billion glass-ceiling sexual harassment suit.
- A \$190 million sexual harassment case brought by a single plaintiff against a leading auto maker.
- One of the world's leading soft-drink companies saw its stock prices sink as a



Bill Milani, of Epstein, Becker & Green, energetically makes a point.

result of accusations of race discrimination and threatened boycotts.

What do these situations have in common? Probably a lot of things, clearly, but most HR professionals can recognize that all of the above relate directly to the HR function—and, most or all could have been avoided if HR had been as fully involved as it should have been. Yes, corporate counsel is responsible, but HR has a role to play in the real day-to-day workplace where people interact and treat one another decently and fairly—*or not*.

Employers should have zero-tolerance for discrimination and harassment.

In fact, in one high profile sexual harassment case, the Supreme Court expressed its impatience with employee-abuse cases. The court urged that employers should be much more vigilant in adopting policies of zero tolerance for discrimination and harassment—and institute procedures for employees to have recourse, instead of heading to the court house. Of course, HR can play a central role in adopting policies to stop bad behavior.

One important step that employers can take is education and training to avoid getting into trouble. Wal-Mart

lost a discrimination case on appeal because a manager admitted that, *No*, he had not read the Wal-Mart policy against discrimination, and *No*, he had not been trained with respect to obligations under the policy. What more incentive does any company need to get its act together?

In addition to adopting protective policies and procedures, HR needs to pay attention to best practices in the areas of hiring, promoting and compensation. There are three considerations to keep in mind:

- Be able to articulate solid *business reasons* for decisions. You might be on shaky grounds if you promote John to management over Mary simply “because he was a better fit”—*if* it happens that all the other managers are male. The business reasons for giving John the nod had better include superior sales and a larger client base.
- Be able to show that you are acting *consistently* and fairly. If you fire Sally because of chronic tardiness, be sure that Sally’s attorney won’t be able to show the court that Joe has just as much of a problem showing up on time.
- Accept the fact that *juries won’t take your word—i.e.*, the word of management and HR—over the word of the employee who is bringing the suit. You *need documentation*. The rule-of-thumb to follow is: If it is not in writing, in many respects it never happened. And make sure to *preserve documents*. Judges and juries take a very dim view of shredded documents, deleted e-mails and destroyed hard drives. They will presume that destroyed documents would have been harmful to the company.

Be able to articulate solid business reasons for decisions.

Other Items for Concern: A Few Reminders for Avoiding Big Trouble

There are a lot of laws and government regulations to keep up on. Here are a few items of special interest:



Kate Wendleton enjoys moderating this panel of informative and lively experts.

- If you are on an ERISA plan committee, which has discretion with respect to investment decision-making, you are a fiduciary—and fiduciaries are *personally* liable. What to do? First of all, get fiduciary insurance, specifically a non-recourse policy (*not* paid for out of plan assets) and put your house in your spouse’s name!

Preserve documents. Judges and juries take a very dim view of shredded documents.

- Make sure that you are in compliance with the ERISA requirements for bonding. HR is responsible for making sure that the investment managers are bonded.
- If you are out of compliance with DOL or IRA regulations—and if you are not yet officially “under investigation”—you can voluntarily make amends. Hence, if your own audits reveal problems, you can be proactive in making corrections.
- You are responsible for correct administration of COBRA, even if you’ve outsourced the program. That famous sign “the buck stops here” is still on HR’s desk. You are obliged to make sure it’s done right. ●

What Human Resources Executives Say About the HR Network Breakfast Seminars!

Thank you for providing this morning’s program. It stimulated several ideas and confirmed my thinking on others. The handouts are extremely useful. When I returned to the office we had an impromptu meeting of our executive team, where I described the topic and talked about the key points. We had a good discussion—all thanks to this morning’s program.

Each of your panel members contributed excellent ideas, enthusiastically and sincerely. It was an excellent morning.

The session was excellent, one of the best. I make a habit of attending a wide variety of events and yours is by far the best in terms of organization, speakers, content and attendees. It is one of the NY business community’s best kept secrets.

What Is the HR Network, and Why Does It Offer Breakfast Seminars?

The HR Network Breakfast was founded in 2003 by The Five O’Clock Club to provide a learning forum for HR professionals—to help them do their jobs better and advance them in their careers.

This is a way for The Five O’Clock Club to give back to our customers and to serve the HR community, which has shown increasing appreciation for our innovative outplacement services.

We work hard to present six substantive HR Network Breakfast Seminars every year, so that HR professionals can take away information to give them a competitive advantage.

And, by the way, *we never allow vendors to attend*, so HR officers can focus as well on getting to know each other.