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Off-Duty Employee Fraternization Invades The Office: A Case Study of Dosis Pharmaceuticals

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**INTRODUCTION:**

Managers continue to struggle with defining appropriate interpersonal conduct between employees, and taking action when dating and relationships cross the line into a hostile work environment. Likewise, employment law attorneys are increasingly faced with giving advice in these situations and defining what is legal and illegal. Providing a scenario in the workplace involving a relationship between an administrative assistant and a professional can illustrate to business majors some of the issues raised in workplace relationships.

This case involves employment law and HR issues arising out of an affair between two employees at a pharmaceutical plant. The case is based upon an actual situation; however, the names of the parties, some of the descriptive facts, and the type of manufacturing plant have been changed for reasons of confidentiality. The affair ends badly and the tension and animosity between the male engineer and female administrative assistant is affecting the morale of the entire

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department. The twist in this case is that the female is the active "pursuer," and is rumored to have engaged in multiple relationships with co-workers. The male employee, however, is the one facing disciplinary action by his supervisor and the HR Director.

This case would be appropriate for presentation in an undergraduate or graduate Business Law/Legal Environment course, an Employment Law course, or a Human Resource Management course. The case is divided into three sections: The "A" case is written from the perspective of the engineer facing disciplinary action; the "B" case is written from the perspective of the HR Manager, who must decide how to resolve the problem, and the Epilog contains a brief description of what actually occurred. Discussion questions and suggested responses are contained in the Teaching Note.

This case presents the opportunity to teach about the following Employment Law related topics:

- Sexual Harassment (both quid pro quo and hostile environment harassment)
- Employment at Will
- Employee Dress Codes
- Employee Non-Fraternization Policies
- Issues Specific to Unionized Employees
- Using Employer Equipment for Personal Matters
- Gender Discrimination

Given all of the topics this case potentially covers it may at first appear too complicated for an introductory level course; however the many issues involved allow the instructor to touch on as few or as many of the legal issues raised in this case as the instructor deems appropriate. Since this case is based on an actual workplace occurrence it demonstrates to students that workplace issues rarely revolve around just one area of law. The case's authenticity as well as the numerous subjects it covers will draw students in as they spot many issues that may have been or will be covered in class.

Use of case studies in a business law course provides students the opportunity to examine real-world problems in the business, to identify the issues involved, and to suggest possible solutions. The various employment law issues contained in this scenario encourage students to analyze and apply critical thinking skills as future employees and managers. Dosis Pharmaceuticals enables professors to utilize active learning techniques by presenting a complicated employment scenario, the resolution of which by the company may be judged by students as less than ideal.

**DOSIS PHARMACEUTICALS CASE VERSION A:**

Steve O'Connell walked forlornly out of his boss' office. He had been summoned to a meeting with the Vice President of Engineering, Jerome Davis, and the Director of Human Resources, Ann Thomas, concerning a complaint which had been filed against him. Steve could not believe what was happening. Not only was his marriage in serious trouble, now his job was in jeopardy. Both troubles were related- they were the result of an affair with a co-worker, Sherri Martino. Sherri was an administrative assistant in the Engineering Department at Dosis Pharmaceuticals. At the meeting, Steve was told that the Human Resources manager, in consultation with Davis, would have to decide what action needed to be taken as the result of Sherri's complaint.

Steve was employed as a manufacturing support engineer at the Dosis Pharmaceuticals plant for three years. When he was
hired, his predecessor made a comment about “staying away” from Sherri Martino unless it was absolutely necessary to work with her, and even then to limit his contact to a minimum. Steve quickly knew why. Sherri was in her late forties, married, and was the only woman in the engineering department. She seemed to enjoy that role. Sherri dressed in short skirts, low-cut tops, and constantly joked and flirted with the men in the department. Her conversations were laced with off-color remarks and innuendo. None of the male engineers specifically complained to management or HR about Sherri’s behavior, although a few of them privately voiced their disgust and unease. Although not certain, it was rumored that Sherri engaged in a string of affairs with several engineers, sometimes leaving the building at lunch and allegedly driving to a secluded park nearby for a “rendezvous.” Steve had heard her on several occasions call over her cubicle to another engineer, asking for a shoulder rub.

Steve did not intend to become involved with Sherri. He was five years younger, and a married father of two boys. One day, Steve had an argument with his wife on the phone after he told her he had to work late. Sherri overheard the discussion, and began to pay attention to Steve by complimenting him and asking him questions about his work. Eventually, they ended up socializing at a local restaurant celebrating a co-worker’s retirement, and Sherri asked Steve for a ride home. Against his better judgment he agreed, because Sherri lived on his way home and she seemed a bit tipsy. This is the night the affair began.

After about a month and a few clandestine meetings, Steve realized he was in way over his head, and ended the affair with Sherri. Sherri was furious. She always liked to be the one to end the affair and move on to a new conquest. It became obvious to everyone in the engineering department that the interaction between Sherri and Steve was frosty and hostile. Sherri complained to Jerome Davis about work she had to do for Steve, and asked that she not have to have any direct interaction with him. This was impossible, since she processed all of the requisition forms and other corporate paperwork. Even though Steve thought they had kept the affair secret, it was clear that his co-workers suspected it, and maybe even heard about it from Sherri. Steve felt like a fool, and hoped that eventually it would settle down.

Unfortunately, things deteriorated even more. Steve’s wife received an “anonymous” letter disclosing the affair. She threatened to leave and seek a divorce. The pastor of Steve’s church also received a letter. Steve coached the church boys’ basketball team on which his son played. He was trying to save his marriage, he was humiliated, and he was furious. After meeting with his pastor to explain the situation, and seek guidance, he sent an angry text to Sherri stating: “I know what you did and you’re in trouble now.” The text was sent on his company-issued phone. Sherri angrily texted him back: “We’ll see who’s in trouble-LOL.”

Two days later, Steve was meeting with Jerome Davis. Davis had received some complaints that the atmosphere in Engineering was becoming increasingly unpleasant. Sherri had now filed a complaint with HR and showed the text Steve had sent to her. Steve explained that Sherri had texted him as well and was certain that she was behind the letters to his wife and pastor. The HR Director told him that there was no way to verify those allegations; Sherri did not have a company-issued phone, and there was no way to trace the letters. As for Sherri’s previous conduct, there were never any formal complaints filed. All that is documented is Steve’s text on his company issued cell phone, which Sherri said she perceived as a threat. Jerome was sympathetic to Steve’s plight- he knew of the
rumors about Sherri, and Steve’s employment ratings were always stellar. He had saved the company large amounts of money working on developing more efficient manufacturing processes. Sherri was a member of the labor union representing the plant’s manufacturing workers and clerical staff. She was supervised by the manager of the administrative staff, and not by the engineering department, so Jerome did not have authority to directly discipline her.

Steve was now awaiting a decision by HR regarding his fate. He felt that it was extremely unfair that a consensual affair would only have consequences for him. He was not even the one who initiated the relationship, and now he was the one who might lose his job. He hoped that he would be able to salvage his career at Dosis.

**DOSIS PHARMACEUTICALS CASE VERSION B:**

Ann Thomas, H.R. Manager for Dosis Pharmaceuticals, had a big problem on her hands. One of the company’s top engineers had apparently been sexually involved with his department’s administrative assistant, ended the relationship, and now the administrative assistant had filed a complaint claiming that she felt threatened.

Steve O’Connell was an engineer in Dosis Pharmaceuticals manufacturing support department. He had been with the company for three years and always received top ratings on his yearly salary reviews. His redesign of certain manufacturing processes had saved the company a significant amount of money. Sherri Martino was the administrative assistant in manufacturing support and the only woman working in that department. Sherri was a member of the union which represented the manufacturing and clerical workers. Steve reported to the Vice President of Engineering, Jerome Davis, while Sherri reported to the manager of the administrative staff.

Sometime over the past several months Steve and Sherri became involved in an extra-marital affair. Although Steve said it was never his intention to become involved with Sherri in this way it somehow happened. Ann strongly suspected that this was not Sherri’s first affair with someone in the Dosis engineering department but she couldn't prove that, and besides, she could only deal with the facts that were immediately before her in this matter.

Steve said that it all began one night after a party for a colleague at a local restaurant. Sherri asked Steve for a ride home and Steve agreed because it appeared that Sherri might have had too much to drink. Sherri had been paying attention to Steve ever since she overheard Steve have an argument with his wife over the phone, but then again Sherri flirted with all of the men in the department at one time or another. Sherri also tended to dress provocatively—short skirts and low cut blouses, but since Sherri wasn’t supervised by engineering, there was nothing the department could do about this. It was on this ride home that the affair began, but within a month Steve regretted his actions and ended it. However, according to Steve, Sherri didn’t take this well and her behavior toward Steve became angry—she even asked Davis to tell Steve not to give her any work to do (impossible since she was the only department Administrative Assistant and she handled matters such as supply requisitions).

Not long after the relationship ended Steve’s wife received an anonymous letter in the mail telling her of the relationship. Steve’s wife told Steve she wanted a divorce. A second letter was sent to Steve’s pastor at the church where Steve coached the basketball league that one of his two sons played in. After
discovering that not one, but two letters had been sent, Steve sent an angry text to Sherri saying, “I know what you did and you’re in trouble now.” Steve used his company issued cell phone when he sent that text. Sherri didn’t have a company phone so she texted Steve back a reply on her personal phone: “We’ll see who’s in trouble-LOL.” However, the company had no way to trace either the letters or the origin of the text that Steve received. In the meantime Sherri had filed a complaint against Steve with Jerome Davis saying she felt threatened. Ann and Jerome now had a decision to make: what to do about Steve? Even though Steve and Sherri’s affair may have happened “off the clock” it was definitely impacting what happened during work hours. Ann strongly suspected that Sherri was not innocent in this situation, but the only evidence of wrongdoing she had was the text that Steve sent to Sherri. If the company failed to take action Sherri might file a complaint with the EEOC alleging a hostile work environment, or file an unfair labor practice claim with the union. Ann had much to think about and a decision to make.

EPILOG (WHAT ACTUALLY HAPPENED):

Steve O’Connell was reassigned to a company office in another town. The new position he was “offered” was considered a demotion in terms of the level and salary range. Sherri suffered no adverse employment action.

TEACHING NOTE:

Suggested Teaching Organization:

The cases are designed to be taught in one of two ways:
1. A portion of the class reads the A case, and simultaneously the other portion of the class reads
2. The class reads and discusses the A case; then the B case is read and discussed; then the actual result in the Epilog is read and discussed.

Discussion Questions:

1. To the extent that the affair between Steve and Sherri is distracting the other employees in the department, is this a problem for Dosis? Why?

An employer has legitimate business interests in preventing the type of conduct engaged in between Sherri and Steve, even if it is consensual and there is no distraction to the other employees. It could be perceived by other employees that Sherri is receiving preferential treatment from Steve, even though she does not directly report to him. This could eventually result in a morale problem for the whole office and affect productivity. The added element of distraction to the other employees would create an even greater justification for disciplinary action.

It may be noted that even when the relationship is not between a supervisor and a subordinate, employers should not discipline only one employee in the relationship and not the other, because the disciplined employee may claim gender discrimination (favoritism of one gender over the other). Another type of favoritism actionable under Title VII occurs when an individual involved in a relationship with a superior in the workplace receives preferential employment treatment over someone who is not involved with the superior. A co-worker not involved in the romantic relationship has a legally
recognizable claim for gender discrimination for the reason that the relationship engendered favorable treatment.  

Thus, there are many reasons why an employer may be concerned about workplace romance and take steps to prevent or at least monitor them.

2. Is there an issue with Steve using his work issued cell phone to communicate with Sherri? Explain.

Steve’s use of the company issued cell phone may generate a discussion of employer monitoring of company-issued electronic equipment. Many employers now provide company-issued devices so that employees are easily accessible for work-related communication. Many employees use work-issued cell phones for personal calls as well. As long as the employer announces that this equipment is subject to monitoring, there is no “reasonable expectation of privacy,” even if the equipment is used by the employee at an off-site location. Accordingly, Steve could not claim that the employer invaded his privacy or claim wrongful termination based on invasion of privacy. As an at-will employee (see question 6 below), disciplinary action against Steve would most likely be upheld.

3. What would you do if you were the HR Manager? Should adverse employment action be taken? Who is more “guilty,” or do you think both participants in the affair are equally at fault?

The HR manager has to carefully balance the interests of the employees involved with the interests of the company while taking care to not incur liability for actionable adverse employment action. In this situation, a carefully crafted non-fraternization policy clearly communicated to employees may have helped. It may be mentioned that drafting a clear policy regarding employee fraternization and enforcing this policy equitably can provide considerable legal protection to employers. However, many employers choose not to put non-fraternization policies in place and deal with situations on a case-by-case basis. Even without a formal non-fraternization policy in place, an employer should be proactive in discussing the relationship with the employees involved and reminding them about the company’s sexual harassment and anti-nepotism policies. Discussion of the pros and cons of enacting a non-fraternization policy may ensue.

Regarding who is more “guilty” in this situation, that may depend upon the perspective. In terms of engaging in the affair, both Sherri and Steve are “consenting adults.” In terms of employee misconduct, it may be suggested that Steve may be considered more “guilty,” at least in terms of proof, because he used a company-issued cell phone to communicate with Sherri and therefore had no reasonable expectation of privacy as discussed in #2 above. Sherri may have sent letters or called, but she did not use company issued equipment and it might be difficult to prove she sent the anonymous notes. Sherri and Steve also both contributed to the “frosty” atmosphere in the office after the affair ended, and perhaps Sherri’s supervisor could have become involved in order to address Sherri’s refusal to do work for Steve.

4. Is this a hostile work environment situation? Why or why not? Can Steve claim a hostile environment because of Sherri’s post-affair conduct? What about Sherri’s choice of clothing?
In terms of hostile work environment, there are several distinct issues. First, is Steve the victim of hostile work environment sexual harassment after the affair? Next, what about the co-workers and their exposure to the affair and its aftermath? Would they have a hostile work environment claim? Finally, is Sherri a victim of sexual harassment because of Steve’s text to her?

Class discussion here may revolve around general types of conduct which constitute hostile work environment under the law. Regarding Steve’s possible claim of hostile work environment, it may be difficult to claim that the tension and animosity after the break-up is sexual in nature, since not speaking and refusing to do work does not rise to the level of severe and pervasive conduct required in these situations (see question 9 below). Likewise, Steve’s text to Sherri: “I know what you did and you’re in trouble” does not contain anything of a sexual nature and may or may not be sexual harassment. However, the text may be troublesome to the HR manager because it may be interpreted as a threat or “ordinary” harassment warranting disciplinary action against Steve.

Awareness of the affair itself by employees in the department may not be hostile work environment sexual harassment, but Sherri’s pattern of off-color jokes and innuendo may rise to the level of actionable conduct (although nobody complained). Point out the distinction between “hostile” in the legal context of “hostile work environment” sexual harassment and the use of the word “hostile” in the case meaning “unpleasant” or “unfriendly.”

Another type of hostile work environment case which may be discussed under these facts is the so-called “bystander injury” type in which a third party witnessing hostile work environment harassment sues under Title VII. Generally, these cases involve instances in which the bystander witnesses unwelcome advances towards a co-worker. It would be difficult to establish this type of claim when the sexual relationship being witnessed is consensual and welcomed as is the case here. An additional cause for concern would be the potential liability to which the employer is exposed should the consensual relationship end as in this situation. For example, one of the employees involved in the relationship may claim sexual harassment for the reason that the other party is stalking, making unwelcome advances, or coercing him or her to remain in the relationship.

As far as Sherri’s choice of clothing, whether or not there is a company dress code could be an issue. Employers are free to enact dress codes as long as they do not impose an “unequal burden” based on gender. Since Sherri is the only female employee in the department, an employer would have to take care in drafting a dress code, since males and females dress differently. Enactment and even-handed enforcement of a dress code could eliminate potential hostile work environment claims by coworkers who find Sherri’s choice of clothing sexually provocative, offensive, or inappropriate.

5. Why are employers concerned about employees’ off-duty conduct? Isn’t it their (the employees’) own private life? Should employers be able to discipline their employees for off-duty fraternization?

Employer ability to regulate or limit certain types of employee off-duty conduct, including dating, involves law from a variety of sources. First is the concept of “employment at will,” which could justify an employer’s decision to
terminate an employee for any reason which is not an exception to the doctrine. Balanced against the at-will doctrine is the employee’s right to privacy stemming from common-law invasion of privacy tort theories, the right to privacy in the U.S. Constitution, and by state statute (commonly called “lifestyle discrimination statutes”) in approximately one-half of the states. Employers have legitimate business interests in avoiding potential liability and maintaining employee morale and productivity as stated previously. Even in states where adverse employment action is statutorily prohibited for engaging in certain off-duty conduct such as “recreational activities,” courts have upheld legitimate disciplinary action based on dating between employees.

An interesting parallel exists between the off-duty conduct in this case (dating) and the recent prohibitions against employee smoking (even at home) which employers are imposing. The legitimate business interests of the employers in both situations may be compared and contrasted.

Returning to the facts in the case, it may be pointed out that in addition to the off-duty conduct, the affair and its aftermath was “brought into” the workplace by the participants. Therefore, the contemplated disciplinary action against Steve was not only due to the off-duty relationship. Action was taken when animosity between Sherri and Steve permeated the office and affected the entire department.

6. How does the administrative assistant’s union membership fit into the scenario?

Most employees in the United States are employed “at will”. This means that either the employer or the employee can terminate the employment relationship at any time for any legal reason. Illegal reasons for terminating employment include an employer firing an employee for a reason that violates Title VII of the Civil Rights Act of 1964 (prohibiting discrimination based on race, color, national origin, religion and gender), or the Americans With Disabilities Act (where an employee can perform the essential functions of the job with or without reasonable accommodation), or under a state law exception to the at-will doctrine (for example, a public policy exception to the employment at will doctrine would be firing an employee for serving jury duty).

Some employees have employment contracts and cannot be terminated, nor can the employee terminate the relationship, during the term of the contract. Premature termination is a breach of contract. As of 2009, 13.6 percent of US workers were covered by collective bargaining (union) agreements. Under a collective bargaining agreement, employers must follow the process outlined in the contract for taking disciplinary action (including discharging) an employee. Thus, it is highly significant that Sherri is covered by a union agreement in this situation. Assuming that Steve is employed at will it is easier for the employer to discipline Steve for inappropriate conduct related to the workplace. In order to discipline Sherri, a union representative will become involved on Sherri’s behalf and the procedures negotiated in the agreement will have to be followed. The union may challenge the need for any type of action against Sherri as inappropriate under the circumstances. Thus, it is more complicated for Dosis to take action against Sherri than against Steve.

7. An administrative assistant is involved with an engineer. She is unionized and doesn’t report to Steve but could this be construed as a supervisor-subordinate situation? She is
refusing to do work for him. Can we imply a non-fraternization policy here given principal-agent law?

Since Steve assigns work to Sherri, Steve can be considered a supervisor even though Sherri does not report to him. Under principal-agent law the principal (the employer) is responsible for the conduct of the agent employee that occurs within the scope of employment. Under sexual harassment law an employer is strictly liable for a supervisor who commits quid pro quo sexual harassment. Since Sherri received no benefits and suffered no loss of workplace benefits this would be categorized as hostile environment harassment (if in fact harassment did occur).37

The employer principal may still be liable for a supervisor’s actions under hostile environment sexual harassment if the employer did not exercise “reasonable care to prevent and correct promptly any sexually harassing behavior” and the employee availed him or herself of the procedures the employer has in place to report and investigate the harassment (this is the Ellerth-Faragher defense). Under these circumstances, a non-fraternization policy should be implied to protect Dosis as the employer. That could shift the balance to Steve as the supervisor being judged more at fault.

8. What would you put into a non-fraternization policy?

The most obvious prohibitions in an employer’s non-fraternization policy would be that an employee cannot report to someone he or she is related to, whether by marriage or some other family relationship.38 The next decision an employer needs to make is whether there should be an outright ban on all work place dating (which would include co-worker equals as well as supervisors and subordinates) or whether, given principal-agency law, only supervisor-subordinate relationships should be prohibited. Any limitations on conduct outside of the workplace have to be balanced again an employee’s privacy.39 Additionally, given the long hours expected in the US workplace, work may be the primary source for an employer to form social relationships.40

Given the potential for liability for sexual harassment under principal agency law, as well as the potential for workplace disruption due to office chatter and co-worker jealousy and speculation over whether a raise or promotion may have been given to a co-worker not based on merit but based on a relationship with a supervisor, Dosis may choose to put a non-fraternization policy in place that prohibits supervisor-subordinate dating relationships. Dosis will have to decide whether to ban all supervisor-subordinate relationships or just those relationships in which the subordinate reports to the supervisor. Additionally, Dosis will have to decide whether, for the purposes of this policy, Dosis will distinguish between relationships where either or both employees are married to other people or whether Dosis will implement a ban on supervisor-subordinate relationships irrespective of employee marital status.

Penalties for violating this policy can include demotion, reassignment of one or both employees, and termination. Dosis will have to be nondiscriminatory in assigning penalties.

If Dosis regularly reassigned male supervisors who violate this policy Dosis could face a Title VII gender discrimination lawsuit.41 The better approach would be to have a policy where supervisors who become involved with subordinates face consequences since supervisor involvement puts the employer at risk under principal-agency law.
9. Would you feel differently if this were a man "coming on" to various women in the company?

When "sexual harassment" is mentioned people often assume that the perpetrator must be a male and the victim a woman. As this case demonstrates, women as well as men can be harassers. In judging whether hostile environment sexual harassment has occurred, the courts use a "reasonable victim" standard. This standard differs from the "reasonable person" standard in that it recognizes that the "reasonable person" standard is often reflective of a male viewpoint. The "reasonable victim" standard looks at the perceptions of a reasonable woman (or man if the harasser is male) in the harasser's shoes to determine whether hostile environment sexual harassment has occurred. "Conduct that many men consider unobjectionable may offend many women."33

Using the reasonable victim standard, the following factors must be present for actionable hostile environment sexual harassment:

1. The harassing behavior must be unwelcome by the harasser.
2. The harassment must be based on gender.
3. The harassment must be sufficiently severe or pervasive to create an abusive working environment.
4. The harassment must affect a term or condition of employment.34

If the employer has actual or constructive knowledge and does not act to remedy the situation then the employer is liable. Based on the mysterious letters that are sent to Steve's wife and pastor and Sherri's conduct toward Steve once the relationship has ended the students may conclude that Steve is the victim of hostile environment harassment.

Another issue to discuss is how the students would feel if this were a man "coming on" to a man or a woman "coming on" to a woman. While Title VII does not protect someone from discrimination based on affinity orientation, Oncale v. Sundowner Offshore Services, Inc. held that same gender sexual harassment is actionable when a hostile environment exists even if the perpetrator and victim are of the same gender, as long as the harassing activity is based on gender.35

10. If Sherri were punished but not Steve, how would you feel? Do you think Steve is being punished so that it does not look like the company is discriminating? Why do the supervisor and HR Manager only act against Steve if they know the rumors about Sherri?

This question may be discussed either before or after the Epilog is presented. When this case was presented to an Employment Law class, the class overwhelmingly stressed that given the consensual nature of this relationship Steve and Sherri were equally culpable. Therefore, both employees should have faced workplace consequences.

Unfortunately the HR manager feels constrained in acting against Sherri because of the lack of concrete proof against her. Combined with Sherri's union membership, it may have been easier to address the situation through Steve. This underscores the realities of employment decisions: employment law must be applied taking into account the facts and realities of the workplace.

This does not change the fact that Sherri's behavior is disruptive and inappropriate to the workplace. Her behavior goes beyond socially acceptable workplace banter. Sherri
should be warned about her conduct and be required to attend sexual harassment training.

CONCLUSION:

When this case was piloted in one of the co-author’s upper level Employment Law classes, students were engaged and enthusiastic. The co-author divided the class into two groups, and had one group read the A case and the other the B case. A student assistant led the A case group in a discussion of the questions, while the co-author led the B group through the discussion questions.

Both groups had similar reactions to the questions and seemed to focus on the need for an official company policy on employee fraternization and the need for a dress code. In group B the co-author pointed out that dress codes tend to disproportionately impact women but this did not change the students’ strident response that a dress code would have perhaps prevented what occurred in this case.

Both groups were also clear that Dosis Pharmaceuticals needs to have a policy on employee fraternization. The students felt that co-worker dating should be allowed as long as it does not impact what happens in the office. The students did feel that the policy should prohibit supervisor-subordinate dating (but not friendships). The students felt that it was immaterial whether the parties involved in dating relationships were married or single.

Even without an official policy, the students felt that the relationship between Steve and Sherri was inappropriate because even though Steve did not officially supervise Sherri he did give her work to do and thus a supervisory relationship could be implied. The students believed that Steve and Sherri were equally at fault; Steve for using a company issued cell phone for personal business, and Sherri for bringing the relationship into the office by being aloof toward Steve and refusing to do work for him. The groups felt that it was unfair to punish one employee and not the other and that Steve should have been sent to a training class but not demoted. Finally, both groups understood that the collective bargaining agreement complicated the issue of disciplining Sherri.

These observations reinforce the original purpose of the creation of this case: students were able to critically analyze the facts and apply employment law concepts to the scenario through this active learning exercise. The case is brief enough for students to read and retain, and the facts presented generated interest and discussion. The varied legal issues in this case will assist the employment law instructor in coverage of key concepts typically covered in the course.

1See Tammy W. Cowart and Wade M. Chumney, I Phone, We All Phone with iPhone: Trademark Law and Ethics from an International and Domestic Perspective, 28 J. LEGAL STUD. EDUC. 331, 332 (2011) (discussing the benefits of case studies in business law classes).
4Id. at 80.


Wilson, supra note 3, at 86-87.


See Leibovitz v. New York City Transit Auth., 4 F. Supp 2d 144 (E.D.N.Y. 1998); Christopher M. O’Connor, Stop Harassing Tier or We’ll Both Sue, Bystander Injury Sexual Harassment 50 CASE W. RES. L. REV. 501 (1999).

Id. at 536-37.

Wilson, supra note 3, at 80.

When this case was presented to an Employment Law class, the issue of dress codes in the workplace was raised.


Id.


Pagnattaro, supra note 6, at 630-640.

Wilson, supra note 3, at 81.

See Pagnattaro, supra note 6, at 646-670 (discussing the laws of California, New York, Connecticut, Massachusetts, Colorado, and North Dakota, and cases interpreting these statutes).

See McCavitt v. Swiss Reinsurance America Corp., 237 F. 3d 166 (2d Cir. 2001) (plaintiff denied a promotion and allegedly terminated due to dating a co-worker; held not to be “legal recreational activities outside work hours” protected by New York statute); See also New York v. Wal-Mart Stores, 621 N.Y.S. 2d 158 (App. Div. 3d 1995).

Pagnattaro, supra note 6, at 641-45.


For a summary of exceptions to the employment at will doctrine see James A. Sonne, supra note 15, at 157-160.

Id. at 142.


See Scott, supra note 8, at 26-27.

See Wilson, supra note 3, at 86-87.

For a discussion on benefits of allowing workplace romance, see C. Boyd, The Debate Over the Prohibition of Romance in the Workplace, 97 J. BUS. ETHICS, 325 (2010).

See Sanguinetti v. United Parcel Service, 114 F.Supp.2d 1313 (S.D. Fla. 2000), in which plaintiff supervisor brought an action for discrimination under Title VII and lost summary judgment motion as the court found he was not similarly situated to female employees who either reported harassment or violated no-dating policy, but the risk of a lawsuit still remains to employers who do not have a gender neutral policy for dealing with violations of a non-fraternization policy.

Ellison v. Brady, 924 F.2d 872, 878 (9th Cir. 1991).
35 Oncale, 523 U.S. at 80.