

# WILL YOU BE MY VALENTINE?

Posted on February 10, 2020

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As Valentine's Day approaches, some relationships between colleagues may start to blossom. While this is not forbidden when it is done respectfully, it is important not to cross over into what we call psychological harassment.

What we mean by psychological harassment is any vexatious behaviour in the form of repeated (a single serious incidence may also be enough) and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological integrity and that results in a harmful work environment for the employee. This includes actions or gestures of a sexual nature<sup>[1]</sup>.

The idea of harassment should be evaluated on a case-by-case basis, but some behaviours are clearly inappropriate for the workplace, such as:

- Initiating unwanted physical contact (touching, brushing);
- Staring and looking towards a person's intimate body parts;
- Making jokes of a sexual nature or with sexual connotations;
- Making inappropriate comments with sexual connotations;
- Making remarks about a person's body or appearance;
- Soliciting unwanted sexual favours; and
- Catcalling.

It is the employer's responsibility to offer a work environment free from psychological harassment, which includes sexual harassment. In order to do so, the employer must take reasonable action to prevent harassment and, when it becomes aware of such behaviour, put an end to it. The employer must, in particular, adopt and make available to its employees a psychological harassment prevention and complaint processing policy that includes a section on behaviour of a sexual nature<sup>[2]</sup>. In addition, the employer must also issue occasional reminders of the policy to its employees.

Of course, not all relationships between employees should be called harassment. Some employees may have consensual and wanted intimate relationships. That, in itself, is not a problem except when it leads to a real conflict of interest – situations where an employee's personal interest conflicts with the company's interest. For

example, this may be the case for an employee whose duties include overseeing the compensation of another employee while they are engaged in a relationship. Another issue may arise when an intimate or personal relationship between colleagues does not work out, or worse, if it ends on a negative note and these employees have to continue working together.

All of these situations must be dealt with within the scope of a well thought out and comprehensible conflict of interest policy. As such, it is strongly recommended for employers to implement internal policies on conflicts of interest and on managing them.

If your company does not have a psychological harassment or conflict of interest policy, or if the policy is not up-to-date and needs amending, it would be our pleasure to help you.

by Shari Munk-Manel and Mireille Germain

[1] Section 81.18 *Act respecting labour standards*.

[2] Section 81.19 *Act respecting labour standards*.

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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