

Brachers Bitesize

Romance in the Workplace

Tricky issues of workplace personal relationships

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A close-up, microscopic view of numerous red blood cells, which are biconcave discs, filling the frame. The cells are a vibrant red color and are slightly out of focus, creating a sense of depth. A large, dark blue arrow-shaped graphic points from the left side of the image towards the right, partially overlapping the red blood cells.

Welcome



Poll 1

Have you experienced workplace issues because of workplace romantic relationships?



Poll 2

Does your organisation have rules governing workplace personal relationships?

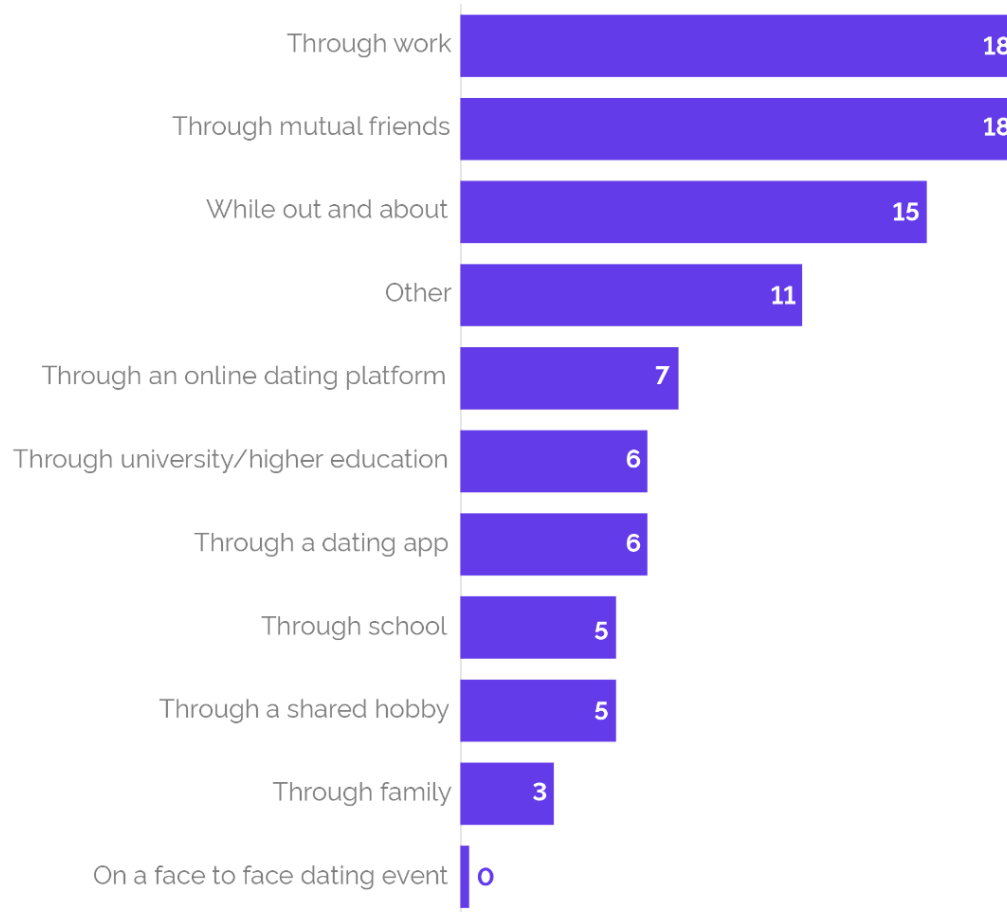


Workplace Relationships

Workplace Romance Statistics

Looking for a partner? Your best bet is the office party

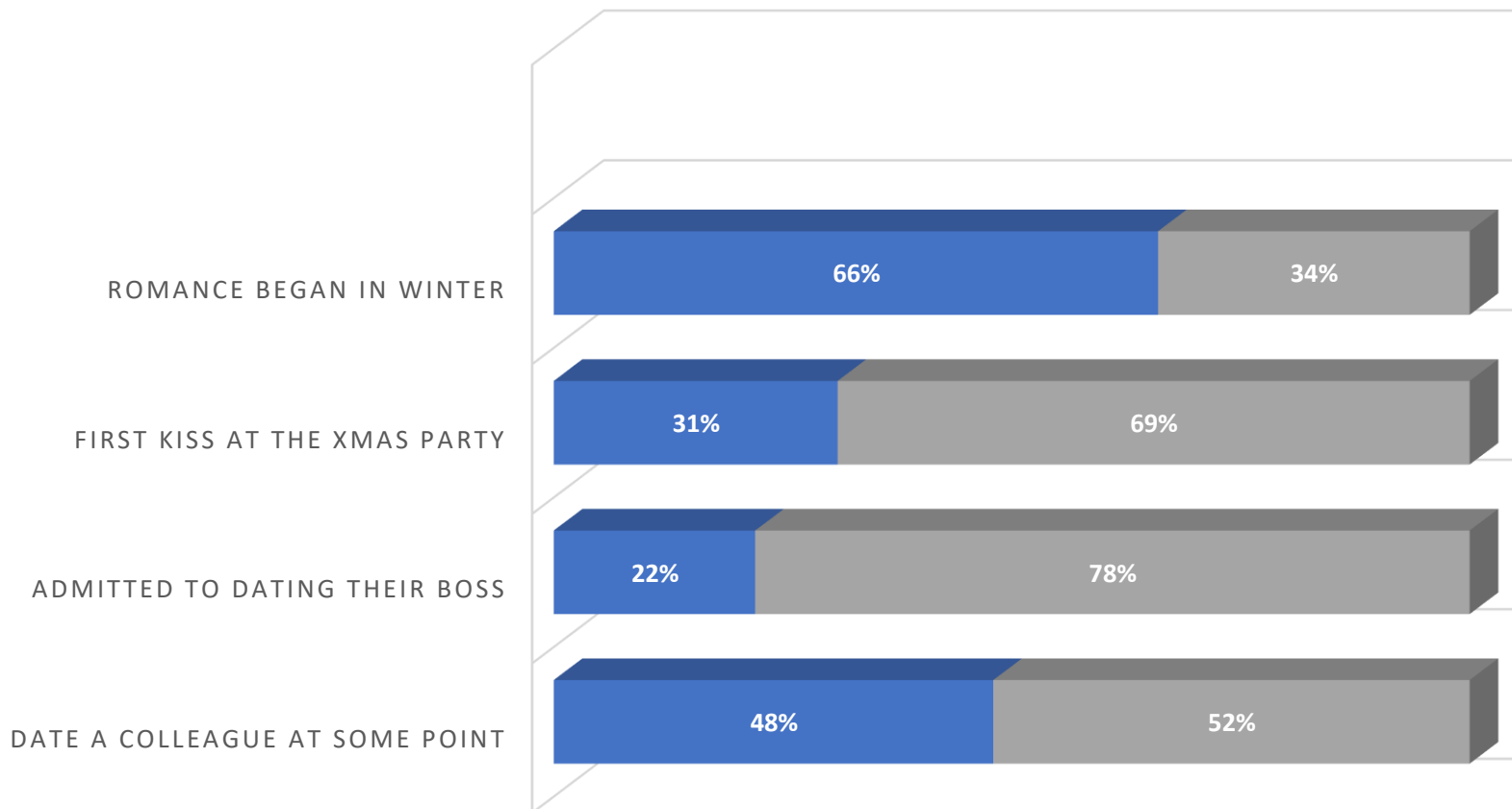
How did you meet your current or most recent partner? %



Workplace Romance Statistics

WORKPLACE ROMANCES

■ Yes ■ No

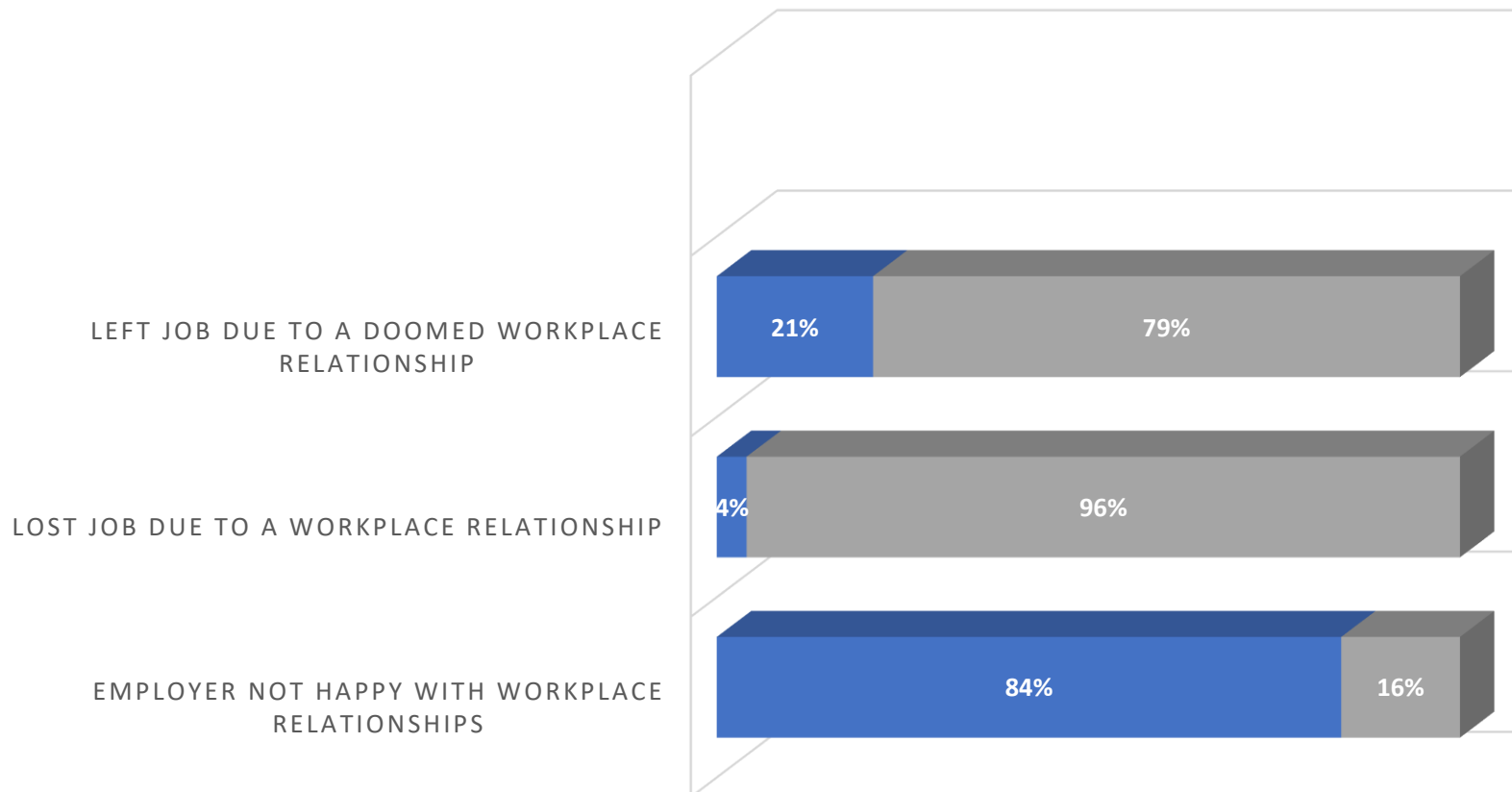


Taken from a survey of over 4,000 people

Workplace Romance Statistics

WORKPLACE ROMANCES

■ Yes ■ No



Taken from a survey of over 4,000 people



The Risks

Risks

- Abuse of power
- Favouritism
- Confidentiality breaches
- Loss of productivity
- Increased workplace disruption
- Jealous or retaliatory behaviour
- Sexual harassment

Sexual Harassment

S26(1) Equality Act 2010

A person (A) harasses another (B) if—

- a. A engages in unwanted conduct related to a relevant protected characteristic, and
- b. the conduct has the purpose or effect of—
 - i. violating B's dignity, or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Sexual Harassment

S26(2) Equality Act 2010

(2) A also harasses B if—

(a) A engages in **unwanted** conduct of a sexual nature,
and

(b) the conduct has the purpose or effect referred to in
subsection (1)(b).

Sexual harassment

S26(3) Equality Act 2010

A harasses B if—

- a. A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- b. the conduct has the **purpose or effect** referred to in subsection (1)(b), and
- c. because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

Examples

- Inappropriate touching
- Making sexual remarks about someone's body, clothing or appearance
- Sexual advances
- Sending suggestive messages
- Making inappropriate gestures
- Displaying or sharing sexual images or content
- Telling sexual jokes or “flirty banter”

Can a consensual relationship lead to sexual harassment?

- Yes.
- *A v Chief Constable of West Midlands Police [2015]*
 - A complained she was subjected to sexual harassment for 18 months
 - ET found most of the relationship had been consensual, but in the last few months problems had occurred

Can a consensual relationship lead to sexual harassment?

- B relentlessly pestered A and said he would leave his girlfriend for her
- A was successful in her claim of sexual harassment
- If a consensual relationship ends and one party wants to continue, there is potential for sexual harassment.

Marriage Discrimination

8 Marriage and civil partnership

(1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

(2) In relation to the protected characteristic of marriage and civil partnership—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;

(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

Can a consensual relationship lead to sexual harassment?

- Graham Ellis v 1) Ms K Bacon 2) Advanced Fire Solutions Ltd (In Administration).
- Ms Bacon had married the managing director and majority shareholder of Advanced Fire Solutions after joining as a bookkeeper. She later became a director of the company.
- Following her decision that she wished to separate from her husband she was suspended, became the subject of false allegations and was dismissed.

Can a consensual relationship lead to sexual harassment?

- Her claim that she had been subject to marriage discrimination failed.
- The key issue was whether she had been treated unfavourably because she was married to the managing director.
- The appropriate question to ask was whether an unmarried woman whose circumstances were otherwise the same as hers, including being in a close relationship with Mr Bacon, would have been treated differently.
- The fact that they were married was therefore irrelevant; the same would have happened to her even if they weren't married but were instead in a relationship with one another.

STOP

Can I ban them?

Banning workplace romances

- No specific laws preventing office romances
- No specific laws preventing you from banning them

Banning workplace romances

- Practical aspects:
 - Difficulties in monitoring and enforcing the ban
 - May be considered too extreme
 - Defining what is and is not a banned romance!
 - Unpopular?

Banning workplace romances

- Legal aspects:
 - Unfair Dismissal – would a dismissal be fair?
 - Gross misconduct?
 - Some other substantial reason?
 - Human Rights Act – Article 8 and Article 12 – is it proportionate?

Banning workplace romances

- Article 8 – European Convention on Human Rights:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

- Article 12 – European Convention on Human Rights:

“Men and women of marriageable age have the right to marry and to found a family...”

Article 8 - Employment

- An employment tribunal when applying unfair dismissal law is required to give effect to Convention rights under HRA 1998 s 3.
- Public sector and private sector employees are treated the same for these purposes.
- So when considering a dismissal that engages this right an employment tribunal is required to consider whether any interference with this right renders a dismissal unfair.
- In practice (and law) this is assessed within the standard band of reasonable responses test for all dismissals which is HRA compliant.

Article 8 - Employment

1. Do the circumstances of the dismissal fall within the ambit of one or more of the articles of the Convention?
2. If they do, does the state have a positive obligation to secure enjoyment of the relevant Convention right between private persons?
- 3. If it does, is the interference with the employee's Convention right by dismissal justified?**
4. If it is not, was there a permissible reason for the dismissal under the ERA 1996, which does not involve unjustified interference with a Convention right?
- 5. If there was, is the dismissal fair, tested by the provisions of ERA 1996 s 98, reading and giving effect to them under HRA 1998 s 3 so as to be compatible with the Convention right?**

Article 8 - Employment

- Antovic and Mirkovic v Montenegro 2017
- Barbulescu v Romania 2017
- Cases about surveillance in the workplace (emails and video/CCTV)
- Both indicated "private life" must be interpreted broadly, to include the right to lead a private social life at work.
- This right potentially covers a wide range of family relationships, not just between married couples, children and parents, but including de facto relationships.
- The courts will look at the substance of the personal connection involved, rather than at the form of relationships.

Article 8 - Proportionality

- The right to respect for private and family life, home and correspondence under Article 8 is a qualified right.
- The right is not absolute. Interference with it is justified where it is:
 - In accordance with the law.
 - In pursuit of one of the legitimate aims listed in Article 8(2), that is, national security, public safety, economic well-being, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.
 - Necessary in a democratic society.

So can you ban them entirely?

- As yet untested from an Article 8 perspective.
- Would need very clear and strong – non discriminatory – justification to be considered fair as the basis for dismissal in our view.
- Hard to see how an absolute ban could be sustained as fair in a normal employment case but not impossible.
- Safer to manage the issue they cause than seek to outright ban them.

A person with short brown hair and black-rimmed glasses is seen from the side, writing on a dark green chalkboard. The chalkboard has a grid pattern. The person is holding a white marker and has just finished writing the word 'fol' on the fifth line. The text on the board is written in white chalk.

I will follow the rules
I will follow the rules
I will follow the rules
I will follow the rules
I will fol

**So what rules can I
have?**

Workplace relationship policies

- Inappropriate behaviour standards?
- Rules on favouritism?
- Rules on abuse of authority?
- Rules on disclosing personal relationships?
- Rules on disclosing personal relationships giving rise to a potential conflict of interest?
- Rules on prevention of sexual harassment pre, during and post?

Love Contracts

- United States concept
- Consensual relationship declarations
- To protect the employer against accusations of harassment
- Not seen this in the UK Yet!

Love Contracts

- University of Oklahoma:

We, the undersigned employees, have entered into a personal relationship with each other. We have read and understand the Consensual Relationship Policy, part of which is outlined above, and we agree as follows:

1. Our relationship is entirely voluntary, and neither partner feels that the other partner is using their position at the University to cause the other partner to enter into a relationship.
2. We will not engage in any behavior that creates a hostile work environment for others or that makes others uncomfortable.
3. We will act professionally towards each other at all times, even if the relationship has ended.
4. We each understand that, under UW System policy, while in a domestic relationship, pursuing something of value for the other partner is the same as pursuing something of value for ourselves.
5. We will not participate in any university decision making processes that could affect the other partner's pay, promotional opportunities, performance reviews, hours, shifts, or career.
6. We agree that we will not engage in any conduct that is unwelcome to the other partner and we will not engage in any conduct that could violate the Sexual Violence and/or Sexual Harassment Policies, including harassment, stalking, dating or domestic violence, or other prohibited acts.
7. We will inform the university immediately if the relationship ends, or if the conduct or advances of the other person are no longer welcome.



When it goes wrong

Some other substantial reason

- Where a broken relationship is toxic to the wider work environment
- Where other resolutions do not work or are not available i.e.
 - Site Relocation (can you make someone?)
 - Role Change (can you make someone?)
 - No misconduct/harassment
- Possibly SOSR – sound good business reasons, fair in all of the circumstances



Questions