

The Incubator **Legal standards, ethical standards, and responses to social–sexual conduct at work[†]**

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Summary When individuals investigate a sexual harassment claim that stems from a dissolved workplace romance, their responses to the claim are likely influenced by their ethical standards and legal standards. We propose a person–situation interactionist decision-making process through which investigators' ethical standards may override legal standards when responding to social–sexual conduct at work. Copyright © 2005 John Wiley & Sons, Ltd.

It is estimated that nearly 10 million consensual romantic relationships develop annually in the United States between employees working for the same organization (Spragins, 2004). Although these workplace romances can benefit the participants with respect to factors such as their job satisfaction, they can also result in punitive managerial actions such as a denied promotion, job relocation, or an employment termination (Pierce, Byrne, & Aguinis, 1996). Furthermore, like many other romantic relationships, workplace romances often fail to stand the test of time. And like many other romantic relationships, dissolved workplace romances do not always end amiably. The Society for Human Resource Management (SHRM, 1998, 2002) conducted two nationwide studies that indicate sexual harassment claims are increasingly being made as a result of previously dissolved workplace romances. Indeed, several recent federal cases have entailed a sexual harassment claim that stemmed from a dissolved workplace romance between the plaintiff and defendant. Some of these claims were supported by the courts (e.g., *Jones v. Keith*, 2002; *McDonough v. Smith*, 2001). Considering that dissolved workplace romances can result in harassment claims, it is imperative that employers, employees, and courts gain an understanding of the decision-making process used by investigators (e.g., affirmative action officers, human resources staff, managers, jurors) when they are asked to respond to these claims.

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Although workplace romance and sexual harassment are examples of social–sexual conduct at work, only sexual harassment is illegal organizational behavior. Both workplace romance and sexual harassment may, however, be construed as unethical organizational behavior. Any voluntary action or pattern of behavior may be perceived as unethical (immoral) if it has the potential to inflict harm upon another person (Jones, 1991). It is conceivable, however, that there are extenuating circumstances in which individuals' moral responsibility for their social–sexual conduct at work may be absolved. One possible scenario is when employees are unaware of or uncertain about stipulations set forth in a workplace romance or sexual harassment policy because of the organization's lack of an effective training program. Notwithstanding, a variety of instances of social–sexual conduct at work can be perceived as unethical. For example, a supervisor–subordinate romance that is extramarital, in violation of an organizational policy that forbids supervisor–subordinate romantic liaisons, and motivated by the subordinate's desire for career advancement and the supervisor's desire for sexual gratification is apt to be perceived as unethical. Moreover, because sexually harassing behavior poses a potential risk to the target's physical and psychological well-being, it too may be perceived as unethical. The bottom line is that an employee's participation in either a workplace romance or sexually harassing behavior can constitute unethical behavior at work (cf. Bowes-Sperry & Powell, 1999; O'Leary-Kelly & Bowes-Sperry, 2001). Given that sexual harassment is legally actionable and, moreover, that workplace romance and sexual harassment can constitute unethical behavior, we think legal standards as well as ethical standards influence investigators' decisions about sexual harassment claims that stem from a dissolved workplace romance.

The extant literature on investigators' decision making about sexual harassment claims that stem from a dissolved workplace romance has primarily focused on features of the romance–harassment scenario and not on individual differences among investigators. In this article, we focus on individual differences among investigators. Specifically, we propose a person–situation interactionist decision-making process through which investigators' ethical standards may override legal standards when responding to social–sexual conduct at work. While reading this article, ask yourself the following: Are there circumstances in which illegal organizational behavior may be condoned because it is not perceived as unethical organizational behavior? Our goal is to initiate a discussion aimed at the following research question: Under what conditions do investigators' ethics schemas become sufficiently activated that they override legal standards when making decisions about social–sexual conduct at work? When responding to social–sexual behavior at work, we think some investigators may rely more on their own ethical standards and internal norms than on current legal standards and external norms.

We recently conducted a series of experiments in which we assessed investigators' responses to sexual harassment claims that resulted from a dissolved workplace romance (Pierce, Aguinis, & Adams, 2000; Pierce, Broberg, McClure, & Aguinis, 2004). We knew from previous research that investigators' mere knowledge of a prior history of workplace romance between an accused and a complainant affects their judgments of responsibility and recommended personnel actions regarding an ensuing sexual harassment complaint. However, it was unknown whether contextual features of the romance–harassment scenario affect investigators' responses. We therefore examined whether investigators' knowledge of specific features of the prior romance, and knowledge of specific features of the subsequent harassment, affects their judgments of responsibility and recommended personnel actions regarding an ensuing sexual harassment complaint (Pierce et al., 2000, 2004).

The Pierce et al. (2004) studies provide preliminary support for Jones' (1991) *issue-contingent* ethical decision-making framework as an explanation for the underlying social-cognitive process through which investigators make decisions in response to sexual harassment that stems from a dissolved workplace romance. Our results show that the degree to which investigators recognize a dissolved workplace romance/sexual harassment scenario as unethical varies as a function of features of the romance (e.g., whether it was non-extramarital or extramarital), features of the harassment (e.g., whether it was

hostile work environment or quid pro quo), and features of the organization (e.g., whether or not it had a policy prohibiting workplace romances). More important, however, was our finding that investigators' degree of recognition of the romance–harassment scenario as unethical varied despite their evaluating the accused's social–sexual conduct as constituting sexual harassment. We obtained this key finding for male and female investigators as well as for hostile work environment and quid pro quo scenarios. Altogether, our results suggest that depending on their degree of perceived moral intensity of contextual features of the romance–harassment scenario, investigators may or may not tolerate sexually harassing behavior as manifested by the nature of their judgments of responsibility and recommended personnel actions. For example, investigators are less apt to attribute blame to a male accused of sexual harassment, and less apt to recommend that he receive a punitive action (e.g., suspension, termination), if the features of the romance–harassment scenario are low in moral intensity as follows: A non-extramarital (vs. extramarital) romance that was not in violation (vs. in violation) of a written organizational policy and resulted in hostile work environment (vs. the more blatant quid pro quo) harassment (Pierce et al., 2004).

Drawing from these results and those reported by Bowes-Sperry and Powell (1999), we think all types of investigators (e.g., affirmative action officers, human resources staff, managers, jurors) may proceed through the following stages of decision making when asked to respond to a sexual harassment claim that stems from a dissolved workplace romance:

- *Stage 1 (Evaluate the conduct and impose an ethical standard)*. Investigators evaluate social–sexual conduct for the purpose of determining whether or not it constitutes sexually harassing behavior. Evaluating this social–sexual conduct activates investigators' ethics schemas. Consequently, investigators vary in the degree to which they recognize the social–sexual behavior as unethical. This individual-difference variability is a function of investigators' prevailing ethics schemas and their perceived moral intensity of features of the social–sexual conduct.
- *Stage 2 (Adopt a legal standard)*. Investigators are asked to adopt a sexual harassment legal standard such as the reasonable person test or the reasonable woman test. These objective standards are used to assist investigators in evaluating whether or not offensive behavior, as judged from the perspective of either a reasonable person or a reasonable woman, is unwanted as well as sufficiently pervasive and severe to constitute sexual harassment. The reasonable person standard is gender neutral and hence does not require investigators to evaluate social–sexual conduct from either a man's or a woman's perspective. In contrast, the reasonable woman standard requires investigators to evaluate social–sexual conduct from a woman's perspective (Wiener & Hurt, 2000).
- *Stage 3 (Respond to the claim)*. Even if investigators determine that the social–sexual conduct constitutes sexually harassing behavior per a legal standard, they may or may not recognize the conduct as constituting unethical behavior. Investigators therefore attribute responsibility and recommend actions in a manner consistent with the degree to which they recognize the social–sexual conduct as constituting unethical behavior and not merely illegal behavior. Consequently, illegal organizational behavior may or may not be condoned as exhibited by the nature of investigators' responses to the claim.

Why might these stages of decision making occur? We think that in addition to contextual features of a romance–harassment scenario, individual–difference factors such as observers' ethical ideologies play a central role in determining whether their ethical standards override legal standards. From a theoretical standpoint, we posit that ethical decision making about sexual harassment claims that stem from a dissolved workplace romance should be conceptualized not only from an *issue-contingent* perspective (Jones, 1991), but also from a *person–situation interactionist* perspective (Trevino, 1986). That is, in addition to contextual features of the romance and harassment, variance in investigators' responses to a sexual harassment claim may be a function of their prevailing ethics schemas

(Bowes-Sperry & Powell, 1999). These prevailing ethics schemas (i.e., ethical ideologies) can, for example, be idealistic, relativistic, utilitarian, or virtuous in nature (Aguinis & Henle, 2002). We think investigators' prevailing ethics schemas, together with specific contextual features of the romance–harassment scenario, underscore the conditions under which their ethical standards may override legal standards. We posit that investigators' ethical standards are determined by their prevailing ethics schemas (i.e., the person) and features of an ethical issue under scrutiny (i.e., the situation). We also posit that investigators' ethical standards moderate the impact of legal standards on their responses to social–sexual conduct at work.

Next, we provide a hypothetical example to illustrate this process through which we think investigators' ethical standards serve as a moderator variable that can override legal standards. Suppose an individual is asked to investigate a sexual harassment claim that a female employee files against one of her male co-workers. Details of the case are as follows:

- The two employees are peers but work in different departments within the same organization.
- The two employees were previously involved with one another in a workplace romance. Both employees were motivated to partake in the workplace romance because of a sincere desire to seek a long-term companion or loving spouse. Their organization does not have a written policy prohibiting romantic relationships between employees.
- The two employees are single, neither having ever been married.
- The female employee claims that for several weeks after she terminated the romance with her male co-worker, he repeatedly attempted to rekindle the relationship by showing her unwanted sexual attention at work. Specifically, despite her repeated refusals and explanations for why she no longer desired an intimate relationship with him, he persisted in leaving her romantic and sexually explicit messages via telephone, email, and greeting cards at work. Also despite her repeated refusals, he persisted in making sexual advances toward her such as trying to put his arms around her, rub her neck and shoulders, and kiss her at work. She promptly reported her complaint to management.

Although we did not ask study participants to base their evaluations on a legal standard, Pierce et al.'s (2004) results lead us to think that individuals who are asked to investigate this claim would evaluate the unwanted sexual attention as legally constituting harassment per the reasonable woman standard and perhaps the reasonable person standard. However, above and beyond evaluating the social–sexual conduct as illicit, we think investigators' responses to this claim would be moderated by their prevailing ethics schemas.

Investigators who are relativistic, for example, do not adhere to universally accepted moral rules because they do not believe in a code of ethics (Bowes-Sperry & Powell, 1999). Relativistic investigators may therefore not perceive the details of this romance–harassment scenario as constituting unethical behavior. Instead, they may consider this scenario to be low in moral intensity because it entails a peer–peer, love-motivated, non-extramarital romance that was not in violation of an organizational policy. Furthermore, the dissolved romance resulted in behavior that, albeit sexually harassing, was previously mutually desired and subsequently intended to rekindle an intimate relationship. In this case, the operative ideation of relativistic investigators may be along the lines of 'It's no big deal, the two employees were previously involved romantically and he was merely trying to get back together with her.' If investigators whose prevailing ethics schemas are relativistic perceive this scenario as low in moral intensity, they may not attribute responsibility for the harassment solely to the accused. Moreover, they may not recommend that punitive action be taken toward the accused (cf. Pierce et al., 2000, 2004).

In contrast to relativistic investigators, idealistic investigators believe in a code of ethics such that actions which may harm another person should never occur nor be tolerated under any circumstances

(Bowes-Sperry & Powell, 1999). Idealistic investigators, unlike relativistic investigators, may therefore consider this romance–harassment scenario to be moderate or high in moral intensity. In this case, the operative ideation of idealistic investigators may be along the lines of ‘The prior romance is no excuse for his illicit conduct and he should be punished.’ If so, idealistic investigators may attribute responsibility for the harassment solely to the accused and, moreover, recommend that punitive action be taken toward him.

In closing, we propose that a person–situation interactionist ethical decision-making process can occur when investigators evaluate claims of sexual harassment that stem from a prior workplace romance. To determine whether or not our proposed stages of decision making are valid, investigators’ prevailing ethics schemas must be assessed first before they are asked to adopt a legal standard and evaluate social–sexual conduct. Assuming our proposition is correct, then employers, employees, and courts should be aware that sexually harassing behavior stemming from a dissolved workplace romance may be condoned by investigators who have prevailing ethics schemas that inhibit them from perceiving features of the social–sexual conduct as unethical.

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