



Addressing Fraternization in the Urgent Care Workplace

Urgent message: Whereas sexual harassment is defined as *unwanted and one-sided*, many times employees *choose* to become romantically involved, requiring that urgent care centers have a policy and a plan to address workplace fraternization.

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In 2019, McDonald's fired its Chief Executive Steve Eastbrook for engaging in a relationship that violated company policy. The fast-food giant's standards of business conduct prohibit employees with "a direct or indirect reporting relationship" from "dating or having a sexual relationship."¹ In 2020, Nine Entertainment Co-Chief Executive Hugh Marks admitted to a relationship with a former subordinate.² And earlier this year, Eli Lilly announced that its chief financial officer would be replaced after discovering a consensual but "inappropriate personal relationship" he had with an employee.³

This behavior is not exclusive to executives of major corporations. It occurs in small and medium-size businesses of every stripe around the country. Here, we examine fraternization in the workplace and how urgent care owners can address this behavior with a company policy.

How Is Fraternization Defined?

Merriam Webster defines fraternization as associating or mingling as brothers or on fraternal terms.⁴ Fraternization in the military is defined as prohibited personal relationships between military service members of different ranks and positions.⁵ In today's corporate settings, fraternization generally means improper relationships, from overly casual relationships to friendships to romantic relationships.⁵

Fraternization is different from sexual harassment, which is defined as unwanted and one-sided. This activity is consensual and two-sided. Even so, what often starts as a consensual relationship may evolve into allegations of sexual harassment if the relationship disinte-



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grates, particularly if there's a power disparity (subordinate/supervisor) between the two individuals.⁶ And even when the coworkers are on an equal footing, fraternization to the point of a romantic relationship can be a significant risk and detrimental to an urgent care operation.

Legal Issues Concerning Fraternization

Fraternization when the individuals are "just friends" may be innocuous enough. Friendships at work can cultivate loyalty and job satisfaction and create a better

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product or service. However, friendships can also alienate those who feel “left out” from out-of-work activities. These employees may hear about important information after the fact. This can fuel gossip and foster perceptions of favoritism, exclusion, or discrimination. In addition, a manager may undermine his or her leadership credibility and authority among other employees who view him or her as unethical if they believe he or she is romantically involved with someone on the team or in the company. Plus, a subordinate may later claim that he or she was coerced into the relationship by the manager.⁷

Non-fraternization policies are designed to protect the company from liability and other issues. For example, an employee may allege that they were wrongfully discharged from their position because they fraternized with another employee.⁸⁻¹³ An employee may also bring a claim of negligent hiring, negligent training, or negligent retention when a company fails to address fraternization that impacts work.¹⁴⁻¹⁶ An employee may also bring a claim for negligent monitoring or supervision.¹⁷

In addition, claims of sexual harassment and a hostile work environment may arise from an employer's lack of enforcement of a non-fraternization policy or from failing to address such issue with a policy in the employee handbook.

Fraternization in Urgent Care Centers

As far as urgent care centers—even those that are owned by larger companies—are concerned, the clinic workplace is typically small with no more than five to seven employees working at any given time. These employees have specific assignments, and if two (or more) employees are involved in a personal situation, the entire operation may come to a screeching halt, impacting revenues, company image, recruitment, and word-of-mouth.

Teamwork is critical for quality patient care. Anything that undermines the team—including toxic gossip, workplace bullying, and sexual harassment—must be addressed by management.

Creating a Fraternization Policy

In the case of Easterbrook, McDonald's said its board determined the CEO engaged in a relationship that violated company policy. The restaurant chain's standards of business conduct prohibit employees with “a direct or indirect reporting relationship” from “dating or having a sexual relationship.”¹

It's highly unlikely that you can legally create a “no dating” policy for your employees because a policy that restricts an employee's free choice to do legal and lawful things could be considered an infringement or violation of their rights. In addition, there are legal protections for privacy rights. For example, in California, the state constitution protects privacy rights at work *and outside of it*. Thus, a policy requiring employees to disclose romantic relationships with coworkers there would violate state law.¹⁸⁻²⁰ State privacy laws differ, however, so an urgent care owner or manager inquiring into rumors of fraternization that disrupts work may or may not be prohibited.

One court has said that while “privacy expectations may be significantly diminished in the workplace, they are not lacking altogether. An employer may have sound reasons for monitoring the workplace, but that does not mean an employer has carte blanche to monitor all the activities of every employee.”²¹

Company policies that prohibit employees from fraternizing with coworkers may not be legal, depending on the circumstances. Policies that ban all fraternizing without specifying romantic relationships can be in violation of labor protections under the National Labor Relations Act.²² That law protects the right of employees to meet and organize for mutual support. As a result, policies that ban romantic relationships specifically can violate worker's privacy rights in some states.¹⁸

For example, a security company, Guardsmark, enforced a non-fraternization policy that forbids employees to “fraternize on or off duty, date or become overly friendly with the client's employees or with co-employees.”²³ The U.S. Court of Appeals for the District of Columbia Circuit held that the NLRB erred in approving the rule prohibiting fraternization with clients on- or off-duty because the rule failed to distinguish between union fraternizing and social fraternizing. In effect, the company was defining fraternization too broadly.²⁴

A clear company policy is critical to enforcing fraternization in the workplace. The legality of a fraternization policy depends on three factors:

1. The policy itself
2. The wording of the policy

3. The policy's application²⁵

Most common antifraternalization policies prohibit romantic or sexual relationships between supervisors and their direct subordinates.²⁶ In addition, there are companies that prohibit consensual relationships between coworkers. This is aimed at shielding the company from potential problems caused by distraction or romantic conflict.²⁵ If two employees at an urgent care start dating, they may pay so much attention to each other that their work suffers and patients receive poor service and treatment. There may also be the issue of public displays of affection which can be disruptive to other employees. Employees who are romantically involved may spend a disproportionate amount of work time or work resources such as email and text messaging on a company phone in non-work-related conversations and activities. Moreover, if the relationship ends badly, it could create an even greater distraction.

Urgent care centers must not create a policy that is too broad, like Guardsmark. Moreover, the policy must not violate state or local law. The policy should focus on how relationships, romantic or otherwise, impact the productivity and efficiency of the team. The policy should not be exclusionary, but should apply to all employees regardless of gender or sexual orientation. It's vital to create a fraternization policy that will minimize the impact of the things that can go wrong in the workplace and maximize the positive aspects of employee relationships.²⁷

The Contents of Fraternization Policies

A fraternization policy needs to have multiple parts and must do the following:

- Identify the types of relationships that are forbidden because of their potential impact at work
- Define the romantic and friendly behavior that is acceptable and what is unacceptable
- Prohibit romantic relationships between a manager and a direct report
- In larger organizations, prohibit dating relationships between employees who are separated by two levels in the chain of command, no matter the reporting relationship or department
- State the potential consequences of violating the policy
- Provide courses of action that leave an employee with opportunities to understand and comply with the policy²⁸

This type of policy should not prohibit all relationships, but rather, define how the relationship exists in

the work environment at the urgent care. The fraternization policy should be included in the employee handbook and incorporated with other training.

Takeaway

Many companies run into trouble because they do not have a corporate policy on fraternization.²⁶ The safest course of action for an urgent care operation is to draft clear and specific policies and then enforce them fairly and consistently. ■

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