LOVE AT WORK

SHARON RABIN-MARGALIOTH*

I. INTRODUCTION

Work is serious business. Management requires that employees act rationally while on the job. Workers are expected to compartmentalize their on-duty and off-duty lives. At work, they should devote themselves to the tasks of the job and avoid thinking as much as possible about personal issues. This approach is one of the pillars of the 1911 employment volume *The Principles of Scientific Management*,[1] which directed much of how twentieth-century American employers handled their workforce.[2]

Compartmentalization is becoming increasingly more onerous. Today many people form personal relationships at work with co-workers, supervisors, subordinates or clients. As many Americans are getting married at an older age[3] and are working longer hours[4] in less sex-segregated work environments,[5] it is

---

* Associate Professor at Radzyner School of Law, The Interdisciplinary Center, Herzliya, Israel. Comments may be sent to srabin@idc.ac.il.

1. FREDERICK WINSLOW TAYLOR, THE PRINCIPLES OF SCIENTIFIC MANAGEMENT (1947) (advocating for an application of "scientific" methods to the problem of controlling labor). *See* John Fabian Witt, *Speedy Fred Taylor and the Ironies of Enterprise Liability*, 103 COLUM. L. REV. 1, 12-14 (2003). In his article, Witt describes how Taylor's managing theory encourages management to put into place precisely calibrated methods for even the most routine tasks in the production process. *Id.* Scientific reorganization of the processes of work allows management to substitute science for the individual judgment of the workman. *Id.* In advocating the importance of managerial control, Taylor also announces a new principle of managerial responsibility: Firms can be, and indeed, ought to be, responsible for managing wide swaths of American social life. *Id.*

2. Marion Crain, *The Transformation of the Professional Workforce*, 79 CHI.-KENT L. REV. 543, 555-57 (2004) ("An important strategic tool in employers' control over manual labor was scientific management, which achieved popularity during the first half of the twentieth century. Scientific management refers to the systematic process of dividing jobs into discrete components so as to centralize control over the knowledge of the labor process in management and increase profits. Its aim is to wrest from skilled workers control over the knowledge that constitutes the craft. Through the use of time and motion studies designed to maximize output, skilled workers become automatons tending machines . . . . Scientific management, as its name implies, purports to subject workers and employers to the objective laws of science rather than to the arbitrary whims of human beings.").

3. For updated data on first marriage age, see Robert Schoen & Vladimir Canudas-Romo, *Timing Effects on First Marriage: Twentieth-Century Experience in England and Wales and the USA*, 59 POPULATION STUD. 135 (2005), *available at* http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=16096194&dopt=Citation.

4. *See* JULIET B. SCHOR, THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE IN LEISURE (1991) (finding that since the 1960s, annual hours have been increasing).

5. Barbara Reskin, *Sex Segregation in the Workplace*, 19 ANN. REV. SOC. 241, 243 (1993) (finding that occupational segregation has declined since 1970 even though most workers remain in sex

inevitable that some workplace interaction will go beyond the purely professional. This phenomenon is a cause of concern to managers, because the professional and personal spheres are beginning to blur. Employers are now confronted with situations in which employees are not only preoccupied with personal issues arising from outside of work, but with personal interactions with other members of the organization during working hours. This situation threatens traditional ideas of what should take place at work.

In an attempt to manage this problem, employers have instituted a variety of rules and policies that regulate the extent to which employees are allowed to personally interact with one another. In this paper, I discuss examples of two types of regulations that employers have been implementing gradually, antinepotism rules and nonfraternization policies. The proffered rationale for these rules is based on interests other than the employer's desire to keep personal relationships out of the workplace. Supposedly, antinepotism rules are about issues of favoritism and conflicts of interest,[6] while nonfraternization policies are a means to fight the "war on sexual harassment."[7] Both of these are worthy causes, but the tools forged to pursue them are often unwieldy and overly broad.

Antinepotism rules and nonfraternization policies are disquieting to advocates of workers' rights because they threaten employees' right to privacy.[8] These regulations may have the effect of forcing employees to choose between their job and their intimate relationship. This issue is particularly alarming since it is usually the woman who eventually gives up her job when heterosexual couples are forced to make a choice, for example, when no-spouse rules are applied to couples who work together and want to get married.[9] Therefore, these facially neutral policies disparately impact the employment opportunities of women and are arguably discriminatory under Title VII of the Civil Rights Act.[10]

The main argument in this paper is that we must abandon traditional ideologies about work, such as the dichotomy between the professional and the personal, and the unsubstantiated belief that mixing the two is inevitably bad for business. The proliferation of broad policies banning joint employment of spouses or fraternization among co-employees should be replaced with more reasonable rules or standards that better balance employers' business interests and individual autonomy.

---

segregated jobs). Important to my argument is the fact that women and men are performing their jobs in the same physical space where they can interact socially, even if they are performing different tasks or jobs.

6. *See infra* notes 14-15 and accompanying text.

7. *See infra* notes 80-82 and accompanying text.

8. For a discussion of these issues, see Marisa Anne Pagnattaro, *What Do You Do When You Are Not at Work?: Limiting the Use of Off-Duty Conduct As the Basis for Adverse Employment Decisions*, 6 U. PA. J. LAB. & EMP. L. 625, 657 (2004); JEFFREY ROSEN, THE UNWANTED GAZE 78-127 (2000).

9. Timothy D. Chandler *et al.*, *Spouses Need Not Apply: The Legality of Antinepotism and No-Spouse Rules*, 39 SAN DIEGO L. REV. 31, 45 (2002). I discuss this survey of federal and state case law pertaining to no-spouse rules *infra* notes 60-63 and accompanying text.

10. *Id.*

II. THE TWO-BODY PROBLEM AND ANTINEPOTISM RULES

Antinepotism rules are self-imposed restrictions on the joint employment of members of the same family. There are more general policies, which limit the ability of family members to work for one employer, and specific no-spouse rules, which are concerned only with co-employment of married couples. The broadness of no-spouse restrictions also vary: some forbid the hiring of already married couples, but allow co-workers who marry during their employment to continue in their jobs, while others rule out any co-employment within the organization and require that one partner be discharged when two employees get married.[11]

Since the 1980s, more employers are adopting policies that prohibit family members from holding closely-related jobs, a trend especially noticeable in the public sector in which sensitivities to nepotism charges are high.[12] One study from 1986 reported that over forty percent of business organizations had adopted an antinepotism policy.[13] Antinepotism rules often address legitimate issues, such as assuring fairness in hiring and promotional decisions, avoiding potential conflicts of interest, especially when one family member is supervising another,[14] and preventing charges of favoritism.[15] However, while antinepotism rules were originally adopted to thwart the hiring of incompetent male relatives of supervisors and managers,[16] and thus had little impact on heterosexual couples, today, with the growth of female labor market participation, these rules particularly impinge on the career development of women.[17]

Antinepotism rules are applied to couples because employers are afraid that when a couple works together, they will bring their quarrels and tensions with them to work.[18] Managers are apprehensive about the possibility that the

---

11. Saily M. Avelenda, Comment: *Love and Marriage in the American Workplace: Why No-Spouse Policies Don't Work*, 1 U. PA. J. LAB. & EMP. L. 691, 693 (1998).

12. James Podgers, *Marriage Traps in the Workplace: Nepotism Rules make it Harder for Spouses to be Colleagues in Public Sector*, 82 A.B.A. J. 46 (1996).

13. R. Ford & F. McLaughlin, *Nepotism: Boon or Bane*, 31 (11) PERSONNEL ADMIN. 78, 79-89 (1986) (reporting that more than forty percent of all firms have some type of formal antinepotism policy and that an additional seventeen percent reported having informal policies prohibiting couples from working together). *But see* Kenneth E. Newgren, Calvin E. Kellogg & William Gardner, *Corporate Responses to Dual-Career Couples: A Decade of Transformation*, 19 AKRON BUS. & ECON. REV. 85-96 (1988). Only ten percent of all firms preclude husbands and wives working in the same organization. *Id.* However, most companies reported some restrictions, such as prohibiting couples from working in the same department or from working in the same chain of command. *Id.*

14. James Werbel & David Hames, *Are Two Birds in Hand Worth More Than One in the Bush: The Case of Paired Employees*, 2 HUM. RESOURCE MGMT. REV. 317, 318-19 (1992) (delineating the different objective of antinepotism rules when couples are concerned).

15. Christine M. Reed, *Anti-Nepotism Rules and Dual Career Couples: Policy Questions for Public Personnel Administrators*, 17 PUB. PERSONNEL MGMT. J. 223, 224 (1988). Employees may feel that one person has obtained employment or special favors as a result of his/her spouse's influence. *Id.*

16. Joan G. Wexler, *Husbands and Wives: The Uneasy Case for Antinepotism Rules*, 62 B.U. L. REV. 75, 77 (1982).

17. *Id.* at 92. *See also* Leonard Bierman & Cynthia D. Fisher, *Antinepotism Rules Applied to Spouses: Business and Legal Viewpoints*, 35 LAB. L.J. 634, 637 (1984); Timothy D. Chandler et al., *Spouses Need Not Apply: The Legality of Antinepotism and No-Spouse Rules*, 39 SAN DIEGO L. REV. 31, 64 (2002).

18. Saroj Parasuraman, Jeffrey Greenhaus & Cherlyn Granrose, *Role Stressors, Social Support, and Well Being Among Two Career Couples*, 13 J. ORGANIZATIONAL BEHAV. 339 (1992) (discussing the

distinction between home and work life will be erased by such workplace interactions. The fragile distinction between the two is at the foundation of most modern organizations,[19] and no-spouse rules are viewed as a reliable safeguard for maintaining it.[20]

Why should people feel awkward working with couples, when in other social contexts interacting with married couples is natural? Perhaps it is because we were brought up to believe that the skill set we employ while working is not only distinct, but also in direct tension with the skill set we need in order to establish and preserve intimate relationships. To perform well at work, we are presumed to act rationally, to focus on our professional duties, and to control any psychological or emotional intrusions. The ideal worker, as he enters his office or the shop floor, disassociates himself from his personal life and is not occupied with thoughts about his spouse or children.[21] It is no wonder that the literature about women's difficulties assimilating in the paid labor market is framed as a "time-bind problem,"[22] or the "work/family dilemma."[23] Unfortunately even today, most people, including many feminists, have come to view work and home as competing forces.[24] A couple that works together is a constant reminder to everyone around them that this division is artificial, a reminder management apparently wishes to avoid.

Antinepotism rules that target spouses are vulnerable to criticism on many grounds, including that they infringe upon the constitutional right to marry[25] and have a discriminatory impact on women.[26] *Yuhas v. Libbey-Owens-Ford Cocases*[27] was one of the first cases to challenge a no-spouse rule. In *Yuhas*, the employer instituted a rule against the hiring of spouses of incumbent

---

concern that family strife will spill over to the workplace but concludes that the spillover from family to work is actually minimal).

19. Reed, *supra* note 15, at 224 (explaining that according to traditional organization theory, managers should attempt to "exclude or neutralize particularistic family ties that might compete for primary loyalty to the organization").

20. James Werbel & David Hames, *Anti Nepotism Reconsidered: The Case Of Husband and Wife Employment*, 21 GROUP & ORG. MGMT. J. 365, 368 (1996) (noting that supervisory employees are more likely to have negative attitudes toward joint employment of spouses).

21. *See* JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000) (arguing that men unrestrained by care work are able to measure up to this standard, while women burdened by other care responsibilities are unable to measure up to an employer's standard).

22. *See* ARLIE RUSSELL HOCHSCHILD, THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK (1997).

23. *See* Catherine Albiston, *Reflections on our Twentieth Anniversary: Anti Essentialism and the Work/Family Dilemma*, 20 BERKELEY J. GENDER L. & JUST. 30 (2005).

24. *See* Symposium, *Unbending Gender: Why Family and Work Conflict and What to Do About It*, 49 AM. U. L. REV. 823 (2000); Symposium, *Still Hostile After All These Years? Gender, Work, and Family Revisited*, 44 VILL. L. R. 297 (1999).

25. Dennis Alerding, Note, *The Family that Works Together. . . Can't: No Spouse Rules as Marital Status Discrimination Under State and Federal Law*, 32 U. LOUISVILLE J. FAM. L. 867 (1994); Melanie L. Jump, Note, *Wright v. Metrohealth Medical Center*: *Anti-Nepotism Policies Carve a Slice in the Fundamental Right To Marry—Is This the Wright or Wrong Decision?*, 28 U. TOL. L. REV. 841, 847 (1997); Avelenda, *supra* note 11, at 691.

26. *See* Wexler, *supra* note 16, at 92.

27. 562 F.2d 496 (7th Cir. 1977).

employees.[28] The plaintiff, Dorothy Yuhas, contended that she was a victim of sexual discrimination, because the no-spouse rule had a disparate impact on the hiring of women. Since its introduction at the company, seventy-one women and only three men were denied employment because the plant already employed their spouses.[29] The employer offered various job related explanations for adopting the policy, but was unable to show any statistical evidence that employees who worked with their spouses were more prone to absenteeism, tardiness, or scheduling difficulties, and that a no-spouse rule was necessary to prevent these predicaments.[30]

Despite the employer's lack of evidence, the Seventh Circuit accepted the employer's general defense, holding that the no-spouse rule had substantial discriminatory impact, but that the rule plausibly improved the work environment and did not penalize women on the basis of their environmental or genetic background.[31] The court reasoned that:

> the no-spouse rule is predicated on the assumption that it is generally a bad idea to have both partners in a marriage working together. There are a number of reasons why this assumption is plausible. First, the marital relationship often generates intense emotions, which would interfere with a worker's job performance. The typical employee is often able to temporarily put aside these emotional feelings when he or she goes to work because the work environment is sharply differentiated from the home environment. This distinction becomes impossible if the employee's spouse is also his or her coworker.[32]

The court agreed that:

> [i]t would be hard to prove that any of these reasons for maintaining a no-spouse rule are valid in the sense that, without the rule, production would fall. Our devices for measuring industrial efficiency and morale are not so finely tuned that they can easily make such a determination. On the other hand, these reasons are far from frivolous. They correspond to the reasons that have led a number of institutions to conclude that family members should not work in the same environment. The movement to a sharp dichotomy between the workplace and the home may not in the long run prove to be a fruitful one, but it has become widely prevalent in our society.[33]

In *Yuhas*, the no-spouse rule indisputably had a disparate impact on the employment opportunities of women. Despite this disparate impact, the court did not require any empirical showing that the application of the rule had positive effects on productivity, morale or other business interests. In authorizing the use of the rule, the court was satisfied merely by the fact that many organizations implement antinepotism rules. Disparate impact theory is precisely about examining whether unnecessary headwind is disrupting the

---

28. *Id.* at 497.
29. *Id.*
30. *Id.* at 499.
31. *Id.* at 500.
32. *Id.* at 499.
33. The *Yuhas* court found itself "left in a difficult situation. Defendant cannot statistically prove that its rule increases production, but its arguments that the rule 'improves' the workplace are convincing." *Id.*

decision-making process, without being subject to any critical evaluation. The disparate impact model requires the decision-maker (and the trier of fact) to examine closely whether the practice, in this case the no-spouse rule, is a valid "business necessity," or perhaps just an institutional norm the decision-maker can do without.[34] The fact that many organizations enforce no-spouse rules is not a conclusive indication that they are a necessary or effective measure. It only indicates that they are very common. The *Yuhas* court, in particular, after rejecting the absenteeism justification, should have required the employer to offer concrete evidence, such as empirical data, on the benefits of applying a no-spouse rule.

No-spouse rules not only implicate the welfare and constitutional rights of individuals affected by these rules, but also strengthen the documented demographic shift of professional couples to large metropolitan areas.[35] As more women participate in the labor market, it is increasingly difficult for couples with both partners working to find satisfactory employment in the same vicinity. In small towns and more remote areas, labor market opportunities are limited, especially if one is seeking employment in a specific field of expertise. It is not uncommon to find only one hospital, one university or one police squad in many smaller employment markets. A restriction requiring spouses to find employment with different employers might prove to be an insurmountable barrier, because no two employers exist within a reasonable commute. The problem becomes more obvious when both spouses are in the same field. Organizations enforcing these restrictions might encounter difficulty in retaining their employees, as they seek alternative employment in large metropolitan areas, where dual careers in the same field are feasible.

College-educated couples have been moving to big cities in large numbers. In 1970, thirty-nine percent of college-educated couples lived in metropolitan areas of at least two million people.[36] By 1990 this figure had jumped to fifty percent.[37] As described above, dual-career couples face the difficulty of finding two jobs commensurate with the skills of each spouse within a reasonable commute from home. The resulting co-location problem leads to a greater concentration of college-educated couples in larger cities, which offer many more potential job matches.[38] As a result, "low amenity areas may experience reduced flows of human capital . . . and therefore become poorer."[39]

---

34. *See* Robert Belton, *A Brief Look at the Birth, Death, and Resurrection of the Disparate Impact Theory of Discrimination*, 22 HOFSTRA LAB. & EMP. L.J. 431 (2005).

35. *See* Dora Costa & Mathew Kahn, *Power Couples: Changes in the Locational Choice of the College Educated, 1940-1990*, 115 Q. J. ECON. 1287 (2000).

36. *Id.* at 1287.

37. *Id.* The urbanization trend of college-educated couples stands in contrast to the pattern of non-college-educated couples: In 1970 only thirty percent of the latter category lived in large metropolitan areas, and that figure only grew to thirty-four percent by 1990. *Id.*

38. *Id.* at 1288, 1310-1311. *But see* Janice Compton & Robert Pollack, *Why Are Power Couples Increasingly Concentrated in Large Metropolitan Areas?* (Nat'l Bureau of Econ. Research, Working Paper No. W10918, 2004) (arguing the location trends are better explained by the higher rate of power couple formation in large metropolitan areas, and that it is only the education of the husband and not the joint education profile of the couple that affects the propensity to migrate to large metropolitan areas).

39. *Id.* at 1289.

Parks v. Warner Robbins exemplifies the dilemma faced by many working couples in small communities.[40] In 1984, Brenda Parks and A.J. Mathern joined the police department in Warner Robins,[41] a fairly small town in central Georgia.[42] In 1989, the two became engaged.[43] Mathern discussed his plans with the Chief of Police of Warner-Robins, who informed him that his marriage would violate the city's antinepotism policy which prohibited relatives of city employees in supervisory positions from working in the same department.[44] The Chief of Police told Mathern that "if the two married, the less-senior Parks would have to leave the police department."[45] Rather than lose her job, Parks postponed the wedding and sued the city.

Parks argued that the antinepotism policy violated her substantive due process rights by denying her the fundamental right to marry.[46] While the Eleventh Circuit acknowledged that, "the policy may place increased economic burdens on certain city employees who wish to marry one another, the policy does not forbid them from marrying."[47] Because, as the court argues:

> the true intent and direct effect of the policy is to ensure that no city employee will occupy a supervisory position vis-à-vis one of his or her relatives[,] . . . [a]ny increased economic burden created by the antinepotism policy is no more than an incidental effect of a policy aimed at maintaining the operational efficiency of Warner Robins' governmental departments, not a direct attempt to control the marital decisions of city employees.[48]

The court concluded, "because the antinepotism policy does not prevent the less-senior spouse from working in another department or outside the Warner Robins municipal government it is unlikely that the policy will actually prevent affected couples from marrying."[49]

While the court's reasoning that antinepotism will not thaw individual plans to get married may be accurate,[50] it may well lead to both employees quitting their jobs to seek employment elsewhere. Warner Robins is a relatively small municipality in a small county.[51] Parks and Mathern were two

---

40. 43 F.3d 609 (11th Cir. 1995).

41. Brenda Parks was a Sergeant in the Special Investigative Unit of the Warner Robins Police Department, and A.J. Mathern was a Captain in the Criminal Investigative Unit of the Warner Robins Police Department. *Id.* at 611.

42. According to the 2000 Census, the population of the City of Warner Robins was 48,804 persons. In 2002, the population of Houston County, where Warner Robins is located, was estimated at 116,768. *See* Welcome to the City of Warner Robbins, http://www.warner-robins.org/about.htm (last visited Oct. 23, 2005).

43. *Parks*, 43 F.3d at 611.

44. *Id.* at 611-12. The antinepotism policy is cited in footnote 1 of the Court's decision. *Id.* at 611-12 n.1.

45. *Id.* at 612.

46. *Id.*

47. *Id.* at 614.

48. *Id.*

49. *Id.* at 616.

50. Though in the *Parks* case, the couple did postpone their plans to marry by four years. *Id.* at 612.

51. *See* figures, *supra* note 42.

professionals: she, a Sergeant in the special investigative unit, he, a Captain in the criminal investigative unit.[52] Both were already invested in their chosen career. Parks might have found it difficult to find comparable employment within a reasonable commute, and therefore one of the couple's viable options was to relocate to a larger city where both could find employment. Thus, while it is true that no-spouse rules do not formally prevent marriage, they can influence the decision if and when to get married.

In *Equal Employment Opportunity Commission v. Rath Packing Co*mpany,[53] another no-spouse rule was attacked in a small community with limited job opportunities. Rath's Columbus Junction facility employed approximately 250 persons, of which, ninety-five percent were male. The population of Columbus Junction was approximately 1500 persons;[54] thus the company employed a sixth of the town's population. In August 1973, Rath prospectively implemented a no-spouse rule prohibiting the employment of spouses of Rath employees.[55] From approximately 1966 to the time of trial, Rath employed seven married couples at the Columbus Junction plant.[56] From January 1, 1973, to February 15, 1978, twenty-six female applicants were denied employment because they were spouses of current employees.[57] The Equal Employment Opportunity Commission (EEOC) filed a lawsuit alleging in its complaint that Rath refused to hire women at its Columbus Junction plant and that Rath's policy of not hiring spouses of employees excluded a disproportionate number of women from employment.[58] The Eighth Circuit did not give any special consideration to the fact that the antinepotism rule was applied in a very small community, thus substantially limiting the ability of married couples to both find employment. However, the court did strike down the antinepotism rule, basing its decision on a Title VII disparate impact theory.[59]

Despite that victory, most legal challenges of antinepotism rules have been fairly unsuccessful. A recent, extensive survey of the case law involving claims challenging no-spouse rules[60] revealed that out of the thirty-four federal cases and thirty-five state cases, the plaintiff prevailed in only nine percent of the federal lawsuits and in less than half of the cases presented in state courts.[61] Moreover, the vast majority of the seventy-nine alleged victims were married employees (84%) and most often, they were women (71%).[62] These findings are consistent with the claim that antinepotism rules disparately impact women.

---

52. *Parks*, 43 F.3d at 611.

53. 787 F.2d 318 (8th Cir. 1986).

54. *Id.* at 322.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. For the court's reasoning why Rath lacked a "business necessity" justification for the no-spouse rule, *see id.* at 328.

60. *See* Chandler, *supra* note 9.

61. *Id.* at 43-44. Lawsuits are more likely to prevail in state courts, because while federal law (Title VII of the Civil Rights Act) does not prohibit discrimination based on marital status, some states have legislated particular prohibitions on marital status employment discrimination. *Id.*

62. *Id.*

Although neutral on their face, these rules disproportionately affect the female partner in the relationship, whether upon the mutual decision of the couple concerned or the unilateral decision of the employer. It is thus surprising that only one Title VII disparate impact lawsuit pertaining to antinepotism rules has succeeded in federal court.[63]

Formal rules against spousal co-employment should be replaced with flexible standards which take into account specific circumstances. We should reject the *Yuhas* standard of legitimizing no-spouse rules by referring to popular beliefs about the harms of joint employment.[64] The only point on which the managerial literature agrees is that co-employment of spouses in a direct supervisory relationship may create problems.[65] There appears to be no other consensus on the harms of joint employment, and most research actually points out advantages to allowing spouses to work for the same employer.[66] Most obviously, employers experience less turnover because couples are less likely to look for new jobs. Offering co-employment to couples can also lure talent, particularly to geographical areas in which employment opportunities are limited. Some spouses of incumbent employees are good candidates for employment (or good employees, in the case they met during their joint employment), and a restriction on hiring them, or an obligation to fire one of them, simply does not benefit the organization. In addition, workers also often find it satisfying to work with their spouse, thus motivating them to work harder and to feel connected with the workplace.[67]

Not all cases of joint employment of spouses lead to organizational strife, favoritism, jealousy, and tension among other co-workers. It depends on the personalities of the people concerned, the setting of the organization, and the specific positions and jobs of the couple.[68] Therefore, the legality of no-spouse rules should usually be restricted to circumstances in which one spouse is in a direct supervisory relationship with another spouse. Such restrictions would diminish the impact of the prohibition substantially, enabling more couples to obtain and retain employment. The antinepotism case law survey revealed that only nineteen percent of the cases actually involved a supervisor-subordinate relationship,[69] meaning that eighty percent of the cases would be resolved if these rules were narrowed to supervisory situations.

---

63. *Rath Packing Co.*, 787 F.2d at 318.

64. The *Yuhas* court explanation of why it authorized the no-spouse rule is discussed *supra* notes 28-33 and accompanying text.

65. Reed, *supra* note 15, at 223, 224, 227; Werbel & Hames, *Are Two Birds in Hand Worth More Than One in the Bush: The Case of Paired Employees*, *supra* note 14, at 317, 320; Werbel & Hames, *Anti Nepotism Reconsidered: The Case of Husband and Wife Employment*, *supra* note 20, at 365.

66. Reed, *supra* note 15, at 223 (the ability to retain and recruit good workers eases the family-work tension); Werbel & Hames, *Are Two Birds in Hand Worth More Than One in the Bush: The Case of Paired Employees*, *supra* note 14, at 317 (paired employees facilitate group performances, reduce stress, and reduce staffing problems); Werbel & Hames, *Anti Nepotism Reconsidered: The Case of Husband and Wife Employment*, *supra* note 20, at 365, 367 (more unity between professional and personal lives encourages better coordination and employment stability).

67. For discussion of these advantages, see Avelenda, *supra* note 11, at 704.

68. Werbel & Hames, *Are Two Birds in Hand Worth More Than One in the Bush: The Case of Paired Employees*, *supra* note 14, at 317.

69. Chandler, *supra* note 9, at 44.

By scrutinizing more closely the business justification for antinepotism rules, the courts can play a significant role in breaking down the unfounded work-family dichotomy. Allowing spouses to work together reduces the tension between the personal and professional sphere.[70] Given the rise in the number of dual career couples, such a policy change is warranted to ensure equal employment opportunities for women, to guarantee the right to privacy, and to give couples greater geographic flexibility.

III. ROMANCE IN THE WORKPLACE

Romantic relationships at work are everywhere. Everyone working is aware of them, and many have been involved in a workplace romance. According to Vault's *2005 Office Romance Survey*, fifty-eight percent of employees say they have been involved in an office romance, which is up from forty-six percent two years ago.[71] In addition, surveys consistently document that eighty percent of American employees are aware of some type of romantic relationship between two employees at their workplace.[72] Romantic relationships are legally distinguishable from sexually harassing behavior, since they are consensual and welcomed by both parties involved.[73] However, they differ from other personal intimate relationships, because they include a sexual component.[74]

---

70. *See* UMA SEKARAN, DUAL-CAREER FAMILIES 43-70 (1986) (arguing that co-employment of couples may enable them to manage work-family conflicts more effectively).

71. *See Cupid in the Cubicle, Says New Vault Survey*, VAULT, Feb. 1, 2005, http://www.vault.com/nr/newsmain.jsp?nr_page=3&ch_id=420&article_id=23513899 (surveying 610 employees representing a variety of industries across the US). Other sources support this point. *See e.g.*, Vicki Schultz, *The Sanitized Workplace*, 112 YALE L. J. 2061, 2124 n.254 (2003) ("Most studies suggest that between twenty-four percent and thirty-seven percent of all employees have participated in an office romance at some time."); Claire J. Anderson & Caroline Fisher, *Male-Female Relationships in the Workplace: Perceived Motivations in Office Romance*, 25 SEX ROLES 163, 171 (1991) (indicating that thirty percent of 168 employees admitted to involvement in an "intimate affair" at some time with someone at the same firm).

72. *See* Yiannis Gabriel & Rita Mano-Nergin, *Workplace Romance in Cold and Hot Organizational Climates: The Experience of Israel and Taiwan* (Tanaka Business School Discussion Paper: TBS/DP04/30, 2004), *available at* http://www3.imperial.ac.uk/pls/portallive/docs/1/40409.PDF. These estimates align with Schultz's research. *See* Schultz, *supra* note 71, at 2124 n.254 (citing a handful of surveys conducted since the mid-1980s on this issue, which confirm that about eighty percent of employees have observed romantic interaction in their workplaces).

73. The distinction between voluntary participation and welcomed involvement was set forth in the seminal case *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 68 (1986) ("The fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII. The gravamen of any sexual harassment claim is that the alleged sexual advances were 'unwelcome.' . . . The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.").

74. The workplace is a stage to form other types of personal relationships such as strong friendships or mentorships. These relationships may become psychologically intimate but are not characterized by physical intimacy. I restrict my discussion to those relationships that are sexual in nature. For a study of other intimate relationships formed at the workplace, see Sharon Lobel et al., *Love Without Sex: The Impact of Psychological Intimacy Between Men and Women*, 23 ORGANIZATIONAL DYNAMICS 1 (1994) (finding that psychologically intimate work relationships are characterized by

Research demonstrates that workers with higher physical and/or functional proximity are more likely to be sexually attracted to each other.[75] Physical proximity arises when two workers are physically occupying the same space, such as sharing an office or working side by side on the shop floor.[76] Functional proximity refers to closeness which results from the actual conduct of work, such as when employees interact with each other while working together on a project or deal.[77] It should come as no surprise that in organizations in which men and women work long hours together and share professional goals, they find one another sexually attractive and often act upon their attraction.[78]

When defending its decision to regulate its employees' sexual relationships, management often points to its perception that such relationships will lead to conflicts of interest, favoritism, inefficiency resulting from spending time and energy on non-work social activities, and reduced morale or jealousy of co-workers.[79] However, by far, the greatest concern employers voice is that one of the parties, or another employee, will charge the company or one of its employees with sexual harassment.[80] In a 2001 Society for Human Resources Management (SHRM) survey, ninety-five percent of human resource professionals cited a "potential for claims of sexual harassment" as a reason to ban or discourage workplace romances.[81] Under the guise of protecting their employees from sexual harassment, employers are continuously expanding their sexual harassment policies to incorporate non-fraternization clauses or other informal means of restricting and regulating intra-organizational intimate interaction.[82]

---

affection and concern for one another, shared attitudes and affirmations of one another's worth and accomplishments).

75. *Id.*

76. Charles A. Pierce, Donn Byrne & Herman Aguinis, *Attraction in Organizations: A Model of Workplace Romance*, 17 J. ORGANIZATIONAL BEHAV. 5, 10-11 (1996).

77. Gary N. Powell & Sharon Foley, *Something to Talk About: Romantic Relationships in Organizational Settings*, 24 J. MGMT. 421, 428-31 (1998).

78. *See* LISA MAINIERO, OFFICE ROMANCE: LOVE, POWER, AND SEX IN THE WORKPLACE (1989).

79. These issues are present in the literature dealing with romantic relationships at work. *See* Gary M. Kramer, *Limited License to Fish off the Company Pier: Toward Express Employer Policies*, 22 W. NEW ENG. L. REV. 77, 83 (2000). That these types of concerns are prevalent is evident from SOC'Y FOR HUMAN RES. MGMT., 1998 WORKPLACE ROMANCE (1998) [hereinafter 1998 SHRM SURVEY]. Of the 617 human resource professionals polled about the outcome of romantic relationships at work, twenty-eight percent reported complaints of favoritism from co-workers, twenty-four percent reported decreased productivity by those involved in the romance, eleven percent reported decreased productivity by co-workers, eight percent reported decreased morale of those involved in the romance, and sixteen percent reported decreased morale of co-workers. *Id.*

80. Charles Pierce et al., *Responding to Sexual Harassment Complaints: Effects of a Dissolved Workplace Romance on Decision Making Standards*, 95 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 66 (2004); Kramer, *supra* note 79, at 86-87. Citing several human resources experts, Kramer concludes that it is unclear just how often sexual harassment claims grow out of a failed office romance, but abundant anecdotal evidence suggests that it is a common occurrence. *Id.*

81. SOC'Y FOR HUMAN RES. MGMT., 2001 WORKPLACE ROMANCE (2001) [hereinafter 2001 SHRM SURVEY]. In comparison, the second most widely cited rationale, "concerns about lowered productivity by those involved in the romance," was cited by only forty-six percent of respondents. *Id.*

82. *See* discussion *infra* notes 88-98 and accompanying text.

A 1999 survey reported that ninety-seven percent of the 496 companies that responded to a faxed survey indicated that they had written sexual harassment policies, and sixty-two percent indicated that they had training programs.[83] Another survey conducted in 1997 reported that ninety-five percent of employers contacted adopted sexual harassment grievance procedures and more than seventy percent had training programs.[84]

In addition, many companies adopt policies that reach beyond the legal requirements of Title VII of the Civil Rights Act.[85] Some regulate consensual workplace relationships, which are by no means prohibited by the Supreme Court's sexual harassment decisions. The 1998 *SHRM Workplace Romance Survey* revealed that twenty-eight percent of human resource respondents work at companies that have written non-fraternization policies.[86] Another fourteen percent of respondents reported that although their employers lacked a written policy, there is an unwritten understanding that office romance is frowned upon and discouraged.[87]

In general, policies prohibiting consensual relationships between employees take three forms. The first is an outright, formal prohibition of coworker fraternization, although in many companies, this prohibition is limited to supervisor-subordinate relationships.[88] Legal challenges to non-fraternization policies have been unsuccessful where employers forewarned their employees about them and then applied them consistently.[89] Human Resource experts continue to encourage companies to adopt express written policies, which prohibit, in specific circumstances, intimate relationships between coworkers, especially those between supervisors and the employees whom they supervise.[90]

A less authoritative monitoring device is to informally disapprove of and to discourage intra-organization fraternization.[91] The 2001 *SHRM Workplace*

---

83. Schultz, *supra* note 71, at 2094 n.96 (citing SOC'Y FOR HUMAN RES. MGMT., SEXUAL HARASSMENT SURVEY 6, 8 (1999)).

84. *Id.*

85. Schultz, *supra* note 71, at 2094-95 ("These policies tend to reach broadly to forbid many forms of potentially harmless sexual conduct without demanding inquiry into the surrounding factors that would determine legal liability.").

86. 1998 SHRM SURVEY, *supra* note 79 (providing that seventy percent of the respondent companies prohibit romance between a supervisor and subordinate, nineteen percent prohibit romances between department members, and fifteen percent require that those involved in the romance inform their supervisors of the relationship). Vicki Schultz reports similar numbers: "The available research suggests that between twenty-two percent and thirty-nine percent of companies have written or verbal policies or clear organizational norms on workplace romance, and that the overwhelming majority of these companies prohibit or discourage such romance." Schultz, *supra* note 71, at 2129.

87. 1998 SHRM SURVEY, *supra* note 79.

88. *See* Schultz *supra* note 71, at 2129, for estimates of the prevalence of formal prohibitions in organizations.

89. Cindy Schaefer, *Managing Workplace Romances*, 66 SAM ADVANCED MGMT. J. 3, 5 (2001).

90. Kramer, *supra* note 79, at 77-78 ("An emerging consensus among business academics, labor and employment law attorneys, human resource management specialists, training consultants, and other personnel professionals encourages and recommends these policies.").

91. Fourteen percent of respondents of the 1998 SHRM SURVEY reported that although their employers lacked a written policy, there is an unwritten understanding that office romance is frowned upon and discouraged. 1998 SHRM SURVEY, *supra* note 79.

Romance Survey reported that half of all employees surveyed believed that workplace romance "should be hidden by the parties involved."[92] One shortcoming of an informal approach is the uncertainty of communication. If the policy is unwritten, employees do not know what steps the employer will take once the relationship is revealed.[93] This creates an ambiguous working environment for employees who cannot be expected to adhere to policies that are not clearly defined or communicated.[94]

The third alternative is to formally require employees to report the initiation and the aftermath of consensual relationships. The 1998 *SHRM Workplace Romance Survey* revealed that fifteen percent of respondents require that those involved in the romance inform their supervisors of the relationship.[95] Another popular solution is to request the parties involved to sign a "love contract."[96] This contract essentially allows the couple to continue their business and personal relationship, but presumably eliminates the employer's liability in a future sexual harassment claim.[97] In the contract, both parties agree that the relationship is consensual and does not violate the company's sexual harassment policy.[98]

Given management's concern that any kind of external sexual manifestation at work is counterproductive,[99] human resource managers are using the public's growing interest in sexual harassment to prevent consensual, welcomed sexual relationships as well. The current judicially-created definition of sexual harassment sometimes covers instances in which the plaintiff consented to the relationship, but felt coerced or did not welcome it.[100]

---

92. 2001 SHRM SURVEY, *supra* note 81.

93. Schaefer, *supra* note 89, at 5.

94. *Id.*

95. 1998 SHRM SURVEY, *supra* note 79.

96. Schaefer, *supra* note 89, at 7; Kramer, *supra* note 79, at 138-43.

97. *Id.*

98. A typical love contract will contain the following provisions: "We hereby notify the Company that we wish to enter into a voluntary and mutual consensual social relationship. In entering into this relationship, we both understand and agree that we are both free to end the social relationship at any time. Should the social relationship end, we both agree that we shall not allow the breakup to negatively impact the performance of our duties. Prior to signing this Consensual Relationship Contract, we received and reviewed the Company Sexual Harassment Policy, a copy of which is attached hereto. By signing below, we acknowledge that the social relationship between us does not violate the Company's Sexual Harassment Policy, and that entering into the social relationship has not been made a condition or term of employment." Schaefer, *supra* note 89, at 7. For another version of a love contract with very similar content, see Kramer, *supra* note 79, at 140.

99. GARY POWELL, WOMEN AND MEN IN MANAGEMENT 122-43 (2d ed. 1993). Involvement in a romantic relationship may affect how the partners conduct themselves in their formal work roles. *Id.* Romantic relationships in organizational settings may result in conflicts of interest, flawed or biased decision making, and other workplace inequities that have a negative impact on individual and organizational performance. *Id.* *See also* ANDREA BARIDON & DAVID EYLER, WORKING TOGETHER: THE NEW RULES AND REALITIES FOR MANAGING MEN AND WOMEN AT WORK 149 (1994) (arguing that the introduction of gender into workplace groupings opens up issues such as jealousy, triangles, favoritism, territoriality, mismatched attraction and awkward breakups).

100. *Meritor Sav. Bank, FSB*, 477 U.S. at 68-9 ("The District Court in this case erroneously focused on the "voluntariness" of respondent's participation in the claimed sexual episodes. The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.").

Employers become anxious because they view this broad definition of sexual harassment in conjunction with the possibility of being held vicariously liable for sexually harassing behavior committed by supervisors against employees. The standards of sexual harassment law are articulated in *Faragher v. City of Boca Raton*,[101] *Burlington Ind., Inc. v. Ellerth*,[102] and most recently in *Pennsylvania State Police v. Suders*.[103] The rationale that employers thus offer when they regulate their employees' sexual behavior is that they cannot distinguish between welcomed relationships from sexually harassing ones,[104] that consensual relationships may culminate in sexual harassment claims,[105] and that the Supreme Court encourages employers' self-regulation and inquiry into the sexual activity of their workers by recommending that employers institute an anti-sexual harassment policy with grievance procedures.[106]

---

101. 524 U.S. 775 (1998).

102. 524 U.S. 742 (1998). This case stands for the proposition that:

> an employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. . . . The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. . . . No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.

Id. at 765. The exact affirmative defense is articulated in the twin decision *Faragher*, 524 U.S. at 807.

103. 542 U.S. 129 (2004). *Suders*, decided on June 14, 2004, is a clarification of the *Ellerth/Faragher* standard of vicarious liability. *See id.* In *Suders*, the Supreme Court refused to recognize constructive discharge as a "tangible employment action," a recognition that would trigger *Ellerth/Faragher* strict liability in the case that the harasser was a supervisor. *Id.*

104. *See* Kramer, *supra* note 79, at 82 n.20 (citing business sources warning about the impossibility of the distinction: "[C]onfusion arises when office romance shifts the balance of power, it may look like sexual harassment. That's why dating between supervisors and subordinates is supervisory suicide.").

105. *See* Pierce, *supra* note 80, at 67.

106. *Ellerth*, 524 U.S. at 765 ("While proof that an employer had promulgated an anti-harassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense. And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing any unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense."); *see also Faragher*, 524 U.S. at 807. The encouragement to adopt a sexual harassment policy was further explained in *Suders*, 542 U.S at 219 ("[T]ying the liability standard to an employer's effort to install effective grievance procedures would advance Congress' purpose 'to promote conciliation rather than litigation' of Title VII controversies. At the same time, such linkage of liability limitation to effective preventive and corrective measures could serve Title VII's deterrent purpose by encouraging employees to report harassing conduct before it becomes severe or pervasive.") (citation omitted). It is argued that an employer that specifically discusses and discourages consensual sexual relationships in its sexual harassment policy will be more successful in its argument that it adequately discharged its duty to prevent such behavior, if a sexual harassment claim arises later. *See* Kramer, *supra* note 79, at 121-22.

In addition, feminists like Catherine MacKinnon provide theoretical and moral support for expanding employer self-regulation to cover consensual romantic relationships. MacKinnon argues that virtually all romantic relationships in a workplace setting constitute sexual harassment because they are a product of men's domination and control over women, and not of mutual sexual interest.[107] Anthropologist Margaret Mead argues that society should make intimate sexual interaction between people who work in the same organization a social taboo—just like the taboo against incest.[108] From her standpoint, social networks at work have developed to compensate for the breakdown in the extended family, and the taboo is warranted to restrict this trend.[109]

By contrast, I argue that many of the broad policies are unnecessary to fight sexual harassment, since in most cases individuals can and do make distinctions between sexual harassment and assault on the one hand, and pleasurable, mutually desired sexual interaction and relationships on the other.[110] In addition, legal liability is conferred upon the employer only in cases in which he was negligent in instituting an anti-harassment policy and providing his employees an avenue through which to complain.[111] The legal duty of the employer is to take action in cases in which an alleged victim comes forward and complains, rather than to police all intimate relationships going on within the organization. In addition, when the harasser is a supervisor, the Supreme Court decisions only confer vicarious liability onto the employer in cases where the harassment culminates in tangible employment actions, such as discharge, demotion, or undesirable reassignment.[112] When no adverse tangible employment actions are present, or the harassment was conducted by a non-supervisory employee, the liability standard is a simple negligence standard, whereby courts will simply inquire into whether the employer "knew or should have known" of the harassment.[113]

It is clear from all of these rules that policies forbidding consensual relationships between employees go beyond what is necessary to prevent sexual harassment in the workplace. As some commentators have pointed out, the fight against sexual harassment was possible not only because companies wanted to avoid vicarious liability in sexual harassment claims, but because the

---

107. CATHERINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN, 25-95 (1979). *See also* LINDA LEMONCHECK, LOOSE WOMEN, LECHEROUS MEN: A FEMINIST PHILOSOPHY OF SEX (1997) (arguing that heterosexuality is oppressive to women, particularly in workplaces that are dominated and controlled by men, and that heterosexual relationships that take place at work are inherently involuntary and unequal since men in general have more power, income, and status than women); Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813, 859 n.73 (1991) (arguing that power imbalances between men and women reflected in traditional sex roles are carried over into the employment context and women do what those in power expect and demand, of them).

108. Margaret Mead, *A Proposal: We need Taboos on Sex at Work*, *in* SEXUALITY IN ORGANIZATIONS 53-56 (Neugraten & Shafritz ed., 1980).

109. *Id.*

110. Christine Williams, Patti Giuffre & Kirsten Dellinger, *Sexuality in the Workplace: Organizational Control, Sexual Harassment and the Pursuit of Pleasure*, 25 ANN. REV. SOC. 73, 75 (1999).

111. *See supra* notes 102, 106.

112. *Id.*

113. *Faragher*, 524 U.S. at 799-800.

fight was supportive of pre-existing managerial notions that sex is bad for productivity.[114] The idea that sexual harassment is bad for business has been applied by employers to consensual relationships at the workplace, even between spouses, as discussed above, because "the eradication of sexuality from the workplace is consistent with the bureaucratic ideals in which depersonalized occupational roles serve as model for dedicated work."[115] Again, this eradication reflects the scientific management theory that, while at work, employees should not be preoccupied with their personal lives.[116] "Attempts to banish sexuality from the workplace are a part of the wider process that differentiated the home, the location of legitimate sexual activity, from the place of capitalist production. The concept of disembodied jobs symbolizes this separation of work and sexuality."[117] Thus, it is not surprising that many employers have adopted overbroad policies that prohibit relationships between consenting adults, as well as sexually harassing behavior.

IV. CONCLUSION

Society needs to scrutinize more closely the various policies that employers are voluntarily adopting to regulate their employees' intimate relationships. Society must also ensure that employees are not placed, unnecessarily, in a position in which they are required to choose between a significant intimate relationship and their job. The rules promulgated by many employers are often broader than what is needed to protect them from vicarious liability stemming from sexual harassment claims or to enhance productivity.

These rules have been allowed to evolve, in part, because judicial scrutiny of no-spouse rules and nonfraternization policies is not at all strict, permitting employers to raise general and unsubstantiated claims about the business necessity of the rules at question. It appears that the courts are also influenced by popular beliefs about the harms entailed in the joint employment of spouses or the existence of romantic interaction among co-workers. However, there is no conclusive evidence that co-employment of spouses or of individuals that are intimately involved are less productive than their counterparts, or hamper general productivity.

Theories of how and to what extent intimate sexual relationships affect productivity, organizational efficiency, morale of co-workers, and instances of conflict of interest should receive better empirical validation. Existing research relies heavily on surveys of human resource professionals polled on how office romance impacts the organization.[118] Yet there is hardly any research actually confronting these claims with quantitative measurements of productivity,

---

114. Schultz, *supra* note 71, at 2061.

115. Sharon Lobel, *Sexuality at Work: Where Do We Go from Here?*, 42 J. VOCATIONAL BEHAV. 136, 137 (1993).

116. *See supra* note 1 and accompanying text.

117. JOAN ACKER, HIERARCHIES, JOBS, BODIES: A THEORY OF GENDERED ORGANIZATIONS 139 (1990), *cited in* Lobel, *Sexuality at Work: Where Do We Go from Here?*, *supra* note 115, at 138.

118. Pierce, *supra* note 76, is a comprehensive review of this literature. The review reports of mixed results from surveys: Some find that office romances increase job productivity and worker morale, and others find the opposite. *See id.*

employee morale, or any other substantive measure. It is quite possible that human resource professionals are themselves biased by a century of indoctrination that sex at work is bad for business.

A good starting point for prospective reform is to make a clear distinction. On the one hand, there are cases in which supervisory authority is present and restrictions on relationships may be warranted. On the other hand, there are cases in which no supervisory authority exists and the default rule should be that broad restrictions are not permissible without specific justifications. Instead of promulgating strict rules, employers should be encouraged to adopt standards, or particular procedures, which will overcome some of the difficulties associated with couples who work for the same company. For example, if favoritism and conflicts of interest are a cause of concern in the hiring of spouses, the hiring could be done through an open search process.[119] Another possibility would be to allow only one partner per department or per chain of command, while endorsing an intra-organizational transfer program.

There is much talk about the pressing need to transform the workplace into a more family-friendly environment. Currently the focus is on various programs, such as flextime and other accommodation schemes that would enable women (and men) to better balance their work responsibilities with their childcare responsibilities. But family friendliness is not just about how society factors in that employees have personal lives outside the workplace. It is also about acknowledging that workers may, and often do, form personal relationships on the job. The goal of accommodating the personal needs of workers is partially frustrated when employers force their employees to leave their emotions and personal relationships at the office door.

---

119. Werbel & Hames, *Are Two Birds in Hand Worth More Than One in the Bush: The Case Of Paired Employees*, *supra* note 14, at 317, 320.