

The Lights Don't Always "Guide You Home": Lessons From Astronomer

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By: Sarah Wisniewski

Until last month, if you did a Google image search for "Astronomer" your search results would likely have included images of Galileo and Edwin Hubble. Now, however, thanks to a viral moment caught on a "kiss cam" at a Coldplay concert, Galileo and Edwin Hubble have been replaced by memes of former Astronomer CEO, Andy Byron, and Chief People Officer, Kristin Cabot, trying to hide from the spotlight. Since that night, both Mr. Byron and Ms. Cabot have left Astronomer.

The Astronomer scandal highlights important issues regarding workplace relationships at an executive level. Interoffice romance in the C-suite, in particular, can create conflicts of interest, generate claims of harassment, gender discrimination, and unfair treatment, and can have an overall negative impact on company morale. Employers should ensure that clear policies exist surrounding workplace relationships, including disclosure protocols for all employees to mitigate against these potential liabilities. For example, an employer may require that all employees, regardless of rank, disclose whether they are in a workplace relationship. Disclosures like these can work to reduce the risk of a potential sexual harassment claim under the New Jersey Law Against Discrimination (NJLAD), if the relationship ends.

The NJLAD prohibits sexual harassment in employment. There are two categories of sexual harassment: (1) quid pro quo and (2) hostile work environment. Quid pro quo harassment involves circumstances when a benefit to an employee is conditioned on sexual favors or an employee is threatened with an adverse employment action if they refuse a sexual advance. A hostile work environment occurs when an employee is severely harassed based on their gender. The NJLAD places the burden on employers to take action if they knew, or should have known, about such harassment. Title VII of the 1964 Civil Rights Act provides similar protections under federal law, and almost all states have laws that prohibit sexual harassment under the same or similar standards.

A relationship between a supervisor and employee, and the attendant workplace power imbalance, creates a tapestry of thorny issues for employers. Those issues become even more of a problem if the employer does not know of the relationship, does not have a written policy requiring that such relationships be disclosed, and is forced to attempt to piece together what occurred through an after-the-fact investigation. If the relationship ends (and particularly if it ends badly), any future adverse employment decision regarding the subordinate employee is immediately suspect. Even worse, the subordinate employee may claim that the relationship was never legitimate and rather resulted from improper pressure constituting quid pro quo harassment.

To reduce the risk of potential NJLAD claims, employers can take steps to preempt claims of sexual harassment by ensuring that employees who are in a relationship do not also supervise or evaluate one another. Companies can easily address this issue by evaluating and adjusting chains of command when necessary. An altered chain of command, in which a supervisor no longer evaluates or participates in decisions regarding the employment of a subordinate employee with whom the supervisor is in a relationship, will insulate the employer from claims that an adverse employment action constituted unlawful retaliation. Similarly, a written policy requiring the disclosure of such relationships will allow employers to take

proactive measures to avoid favoritism and conflicts of interest. Moreover, by requiring that employees disclose their relationships so that the employer can protect both employees from conflicts of interest and retaliation, such policies will guard against claims that an employee was forced into a clandestine and unwanted relationship due to an unlawful quid pro quo.

In addition to the development and maintenance of clear policies surrounding workplace relationships, employers should also consider creating and updating policies that provide their employees with guidance regarding acceptable workplace conduct. Importantly, policies should note that acceptable workplace conduct extends beyond the four walls of the employee's office and should be exhibited in any place where work-related activity occurs. For example, the same policies that govern an employee's conduct during a conference call also govern their conduct at a company outing. To that end, a good policy will also explain the difference between "workplace" events and private events outside the employer's purview. Employers should be aware, however, that in a relationship between a subordinate and a supervisor, the lines between a workplace event and a private event blur. Employees should not, for example, conduct private conversations regarding their relationship on their work phones or through their work email addresses. Creating such clear boundaries will also guard against, though not completely resolve, difficult fact questions regarding whether intimate conversations constituted unlawful harassment.

Implementing clear policies is a great first step to help safeguard against incidents that can erode employee trust. Employers should pair these policies with annual trainings. In New Jersey, public employees are subject to a mandatory annual sexual harassment training requirement. Although not a requirement in the private sector, annual trainings that provide a refresher on an employer's policies and applicable laws, such as the NJLAD and Title VII, are a best practice and help mitigate an employer's potential risk and liability.

Conflicts of interest can arise not just from romantic relationships, but from familial relationships as well. Former CNN news anchor Chris Cuomo filed suit in 2022 against the network, seeking \$125 million in damages after he was fired. Cuomo helped his brother, former New York Governor Andrew Cuomo, address sexual harassment allegations raised against him. CNN argued that Cuomo violated the network's journalistic ethics by interviewing his brother. Cuomo, on the other hand, argued that CNN breached its agreement with him and caused him reputational damages. Cuomo's lawsuit is still ongoing. Familial conflicts of interest do not just arise at major media companies; smaller businesses, which are often closely held and may employ family and friends, run the risk that employees may perceive familial conflicts of interest.

To help mitigate the risk of legal liability and bad press, employers should consider the specific language included in their executive employees' contracts regarding professional conduct and conflicts of interest of all kinds. A well-defined termination clause or a morality clause may assist employers in quickly addressing any misbehavior. Termination clauses can include references to violations of company policy and ethical standards; a morality clause can include any conduct that might bring negative attention to the company. Overall, by ensuring employment contracts lay out, in detail, the ethical and professional obligations expected of all employees, including executives, employers can minimize the risk of future litigation from a disgruntled ex-employee, and perhaps avoid the legal and public relations fallout that both Astronomer and CNN have recently suffered.