

Professional relationships: how close is too close?

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EY recently made headlines when they came under scrutiny from the US Securities Exchange Commission (SEC) for allegedly breaching auditor independence rules, which require a degree of separation between auditors and the companies they audit. Gregory Bednar, a partner at EY, had, according to the SEC, sent hundreds of personal messages to the CFO of its client and they had travelled together with family members for no

valid business purpose. Significant fines resulted. These headlines raise an interesting question as to some of the legal, regulatory and employment law issues that can arise when professional relationships with clients or colleagues become personal.

The client relationship

In the UK, being seen to develop to close a relationship with clients can pose legal risks to the company. For example, auditors in the UK are also under a legal obligation to be independent from the audited entity. There will also potentially be exposure for firms under the Bribery Act if their employees either accepting or offering corporate hospitality inappropriately.

Trips to sporting events or celebratory dinners for business reasons should not pose a problem. However, lavishing extravagant trips or gifts on clients as the result of a personal relationship could create an exposure under the Bribery Act as well as being an act of misconduct on the part of the employee concerned.

Other professional obligations can come into play if advisers develop personal relationships with their clients. For example, whilst there is no professional rule preventing lawyers having relationships with their clients, solicitors owe their clients a fiduciary duty and certain relationships could pose a breach of that duty, such as entering into a personal relationship with a vulnerable client who is going through a divorce.

Relationships at work

Many employers are also concerned about internal relationships between their employees. It is not unheard of for partnerships

to operate a “no sibling policy” or “no spouses/partners policy” at recruitment stage to avoid the risk of its partnership placing personal allegiances over the interests of the business. Job applicants are protected against discrimination on the grounds of protected characteristics.

This will not assist a job applicant who is prevented from making an application due to a sibling in the business but the position is not quite so clear with a no spouses/partners policy. Marriage is a protected characteristic under the Equality Act, however, there is conflicting case law as to whether someone will be protected as a result of a marriage or close relationship with a particular person (the wider view), or whether protection will only apply if a person would be treated less favourably because they are married to the person in question, rather than in a long-term co-habiting relationship for example (the narrower view). If the narrower view applies then, providing the policy is appropriately worded, it will be lawful.

There is a distinction to be drawn between not hiring someone because of a personal relationship and dismissing someone because of it (assuming that it had not been improperly concealed). Any snap decision to dismiss an employee on the grounds of personal relationships will be unfair, if that employee has two years’ service.

However, employees can be dismissed for “some other substantial reason” under the Employment Rights Act, which can include a breakdown of personal relationships and if these have reached the stage that hostilities have arisen, it may be reasonable to fairly dismiss one of the employees concerned. In this case there is an expectation that employers avoid the dismissal by mediating or reallocating one individual to another team so the larger a firm is, the less likely it is that a dismissal on these grounds would be considered fair.

On a practical level, it may also create practical

difficulties if internal relationships are, or are perceived to be causing favouritism. For example, most employers would want to avoid a situation where an individual was deciding their partner's bonus and sensible measures should be taken to avoid that risk.

Work socials

Whilst work social events are often important for the morale of a team, they also pose business risks. Employers can still be vicariously liable for their employees' actions at out of hours work social events, including any harassing behaviour. No employer can eliminate this risk but they can minimise it by having clear policies in place and training and dealing with all complaints seriously.

Each workplace and each sector will pose its own challenges for employers, however, it is key for employers to be aware of the potential issues that could result from the stance they take on any form of personal relationship in the workplace and to act promptly and fairly.

Rolleen McDonnell and Paul McAleavey

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