

**ROMANCE AT THE WORKPLACE:  
THE ISSUES, THE LAW, AND SOME SUGGESTIONS**

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**ABSTRACT**

Romance in the workplace is a growing phenomenon that can be seen as a blessing or a curse. Some of the issues that have generated discussion involve the impact of romance on productivity, morale, and the careers of the romantic couple; the effects on the business; questions of individual privacy and managerial surveillance; and the potential connection between workplace romance and sexual harassment. This article begins with background material on the extent of workplace romance, its origins, and its effects. The core of the article is in the sections that examine the embedding law and what a company can do to protect itself from the unpleasant consequences of workplace romances while maintaining a positive environment for all of its employees.

Ten to fifteen years ago, many large and small organizations prohibited workplace romances by policy and custom. The rationale behind these anti-Cupid edicts was puritanically straightforward and prudishly severe. Because dating could change the atmosphere and the feel of the workplace, people who were romancing one another could not and should not work together [1]. Many companies not only forbade dating, but they had equally strict policies about being married to a co-worker. These ideas have not completely disappeared. For example:

1. American Express prohibits executives from managing any individual with whom the employee has a close personal relationship, and violations are punishable up to and including dismissal.

2. Staples' supervisors are barred from having romantic or sexual relationships with their subordinates, or when they can influence the employee's pay or working conditions, or when an executive is so senior that the fact of a relationship would discourage others from supervising an employee.
3. Harvard warns its faculty members that any romantic involvement with their students makes them and the university liable for formal action. Sanctions can range from informal counseling to forced leave.
4. In the U.S. military, superiors who have amorous relationships with subordinates, even when neither is married, are subject to career-ending reprimands or court-martial [2, 3].

Many studies have documented the fact that workplace romance has become part of our lives. What we see on *Ally McBeal* and *ER* reflects some part of reality. This article explores several aspects of workplace romance, particularly its extent, origin, effects, legal context, and management response.

### **EXTENT, ORIGIN, AND SOME EFFECTS OF WORKPLACE ROMANCE**

With men and women working in almost equal numbers and putting in more and more hours at the workplace, the workplace is becoming a prime meeting spot for personal as well as professional networking. Shared coffee breaks, lunches, business travel elevators, and late nights all help to spark romantic interests. Many of us have been told to keep our work lives and our personal lives separate, but circumstances may have made that proscription a relic of an outmoded age.

A 1994 American Management Association survey of 485 managers reported that nearly four-fifths (79 percent) of the managers had been aware of a workplace romance and almost one-quarter (24 percent) had experienced a romantic relationship with at least one workplace colleague [4]. According to the Equal Employment Opportunity Commission, some seven million Americans enter into romantic relationships with fellow employees each year. Roughly half of these couples end up getting married or having long-term, committed relationships [5].

Proximity is an important factor that helps to explain the spread of workplace romance. Geographical closeness of individuals to each other can heighten their mutual attraction. And when they spend long hours working on projects together, sharing problems, successes, and accomplishments, shop talk can lead to pillow talk. Employees who work together, furthermore, often share similar attitudes and values. When interviewing a new candidate, many organizations look for a fit—not just in skills and experience—but in values as well. The geographical spread of business contributes to the spread of workplace romance. Mutually shared travel provides opportunity for a sexual liaison, as the travelers are

separated from the demands and pressures of daily life and, perhaps, from their at-home partners as well. Sixty-three percent of the workplace romances examined in a 1977 study developed from geographic proximity and 77 percent from shared task assignments [6].

Studies of the impact of workplace romances yield mixed results. A recent review article concluded that some positive benefits may accrue to the organization, including a more enjoyable workplace, reduced stress, lowered anxiety, increased morale, and sometimes increased productivity [7]. Other studies, however, report negative effects including co-worker disapproval, cynicism, and hostility; destabilized work relations; jealousy; and interrupted lines of communication [8]. Many researchers suggest that women are more often harmed than men by workplace romances, including a higher probability of being fired and receiving an adverse job reference.

### **THE EMBEDDING LAW**

Workplace romances can raise a number of legal issues, ranging from privacy rights to sexual harassment [9]. The probability of a court case increases if management disciplines someone for engaging in the romance, if the romance turns sour, or if the attraction ends for one party but not the other. The most dangerous relationships are those that involve supervisors with their subordinates, but the possibility of future cases arising from hostile environment charges brought by co-workers is far from zero. Because there are no general laws specifically directed to workplace romance, the guidance on this topic comes almost entirely from the courts. To complicate matters further, legal concepts differ in the public and private sectors.

#### **The Public Sector: The Issue of Privacy**

The first court cases involving workplace romance came from the public sector, and the employee's right to privacy is a recurring theme. The privacy rights of American citizens are protected against the government and, because the government is the employer, public employees have constitutional protection for their right to privacy from governmental interference [10]. Although the Constitution does not address the issue of privacy directly, the concept has been read into the document because of its association with other constitutional rights, such as the right to be protected against unreasonable search and seizure, due process, free speech, and free association [11]. The general rule might be stated as follows: The state must show that an intrusion into an employee's personal space is justified by a compelling public interest, and the government is further required to employ the least meddlesome alternative available.

*Hollenbaugh v. Carnegie Free Library:*  
Cohabitation and Equal Protection, 1978

Rebecca Hollenbaugh and Fred Philburn were employees at the Carnegie Free Library [12]. They began dating even though Philburn was married. When Philburn discovered that Hollenbaugh was pregnant with his child, he left his wife and moved in with her. Hollenbaugh was granted a pregnancy leave of absence by the Carnegie Free Library. Because of complaints from members of the community about the couple's living arrangements, the library attempted to discourage them from living together. When the couple refused to alter their living arrangements, their employment was terminated [12].

In 1975, the couple brought suit in federal district court against the Carnegie Free Library and its board of trustees. The couple argued that the trustees had violated their First, Fourth, Ninth, and Fourteenth Amendment rights [13]. The district court determined that because the plaintiffs had worked directly with the public on a regular basis, and because the community was well aware of their living arrangements, the trustees did not act in an arbitrary, unreasonable, or capricious manner when it terminated their employment [10, at 1333]. The court concluded that the library did not act in a way that violated the couple's constitutional rights, including the right to privacy. The Third Circuit Court of Appeals affirmed this decision, and the Supreme Court denied certiorari [12].

*Shawgo v. Spradlin:* Cohabitation and Privacy Rights, 1983

Janet Shawgo and Stanley Whisenhunt were officers of the Amarillo (Texas) Police Department [14]. They sued the city, its chief of police, and other parties when they were fired for off-duty dating and alleged cohabitation. The couple claimed their rights to privacy and due process had been violated [14].

Both plaintiffs were on the police force, and neither was the other's subordinate. When the relationship began to get serious, Whisenhunt told his supervisor about it and was told by his lieutenant: [T]hat would probably be fine, but I don't want the two of you setting up housekeeping" [14, at 472]. Following this admonition, the couple continued their relationship but maintained separate residences. When the chief of police later heard rumors that Shawgo and Whisenhunt were living together, he did not confront either of them or discuss the issue with their supervisors, but he ordered the department's detective division to conduct a surveillance of their off-duty activities. Shawgo's visits to Whisenhunt's home were monitored from a parked car and from an apartment rented for the purposes of the surveillance. The surveillance team reported that Shawgo and Whisenhunt spent considerable time together but were maintaining separate residences. The chief recommended that the plaintiffs be disciplined for violating a general rule of the Amarillo Police Department, i.e., engaging in action that, "if brought to the attention of the public, could result in justified unfavorable criticism of that member or the department" [14, at 473].

No Amarillo police officer had ever before been disciplined for dating or cohabitation, and there was no evidence that the plaintiffs' relationship had interfered with their job performance. Still, the chief suspended Shawgo and Whisenhunt for 12 days without pay and recommended that Whisenhunt be demoted from sergeant to patrolman. He did not give the plaintiffs an opportunity to respond to these charges before suspension. Shawgo and Whisenhunt requested a hearing before the Civil Service Commission of Amarillo, as was their statutory right. The commission excluded evidence of other known and unpunished instances of dating and cohabitation among superiors and subordinates, sustained the suspensions, and ordered Whisenhunt's demotion to patrolman [14].

Shawgo and Whisenhunt resigned and sued. The federal district court found the commission's hearing was fair and did not constitute a deprivation of a property interest protected by the Fourteenth Amendment; it upheld the punishments they had suffered. The plaintiffs appealed on several counts. They claimed a number of due process violations, including the organization's failure to give them an opportunity to respond to the charges before they were suspended; the breadth and the vagueness of the rules and regulations; the city's failure to provide them with notice that their dating off-duty could expose them to disciplinary action; and selective enforcement of the rules (other couples had engaged in similar activity without penalty). They also claimed the department's surveillance of their off-duty activities violated their rights to privacy and did not serve a legitimate state interest [14].

The Fifth Circuit Court of Appeals did not find these arguments convincing. The court found the hearing before the Civil Service Commission had satisfied their rights to due process and the disciplinary actions and the surveillance had not violated their rights to privacy. The court said that police officers are not entitled to a constitutionally protected right to privacy against undercover investigations [14, at 483].

*Naragon v. Wharton: Same-Sex Relationship, 1984*

Kristine Naragon was pursuing a doctorate in musical arts at Louisiana State University (LSU) at Baton Rouge and serving as a graduate assistant, teaching a music appreciation class. She brought suit against the university for interfering in her relationship with a freshman student and for violating her constitutional rights when the university took her teaching duties away [15].

Naragon had been teaching as a graduate assistant for several years. She was serving as a full-time, visiting instructor during the sabbatical of a music professor when she met a female freshman music major who was not a student in any of her classes. Their relationship became a same-sex romance, and the student eventually moved into Naragon's home. When the student's parents learned of the relationship, her father became enraged and complained to the Dean of Music. The situation escalated to a point where campus police were called in. The student's

parents ultimately met with the vice chancellor for academic affairs and insisted that the school do something to stop Naragon's influence over their daughter. The dean of students asked the student to meet with him, and she showed up with Naragon at her side [15].

The dean of students testified that Naragon would not let her lover speak for herself, announced that their relationship was not the university's concern, grabbed her by the arm, and stormed out of the dean's office. In an effort to control the worsening situation, the university reappointed Naragon as a graduate assistant with the same compensation, but without the responsibility of teaching undergraduates. Naragon took her case to the federal court, arguing that the real reason for her change of duties was her sexual orientation and that denying her teaching duties for that reason was an equal protection violation that infringed on her right to privacy as well as her First Amendment right of association [15].

The court found the LSU authorities had acted appropriately. The court was convinced the university's action stemmed from a genuine concern for maintaining positive relations with students, parents, and the public, and that it was not motivated by concerns over sexual orientation. The court also was influenced to the fact that the university reappointed Naragon to another position with the same salary and that the university did not act in a way that impaired her reputation or career. LSU argued that the role of a teacher requires him/her to set an example for students and maintain a position of trust. The university argued further that intimacy between a teacher and a student is an ethical breach because of the perceptions of other students and because of the damage done to the relationship between the university and the public. Both the district court and the Fifth Circuit Court of Appeals found this argument to be convincing and ruled in favor of LSU [15].

### **The Private Sector: Policy Issues**

The constitutional protection given to the privacy rights of public sector employees is far greater than the protection given to those of private sector employees. When a private sector employer interferes with the personal life of a private sector employee, however, the employer may be sued for:

*Breach of contract:* When an action alters the intended result of a contract.

*Breach of covenant of good faith and fair dealings:* A person involved in a contract cannot act in a way that interferes with the right of the other to receive the benefits of the agreement.

*Intentional imposition of emotional distress:* Involves extreme and outrageous behavior that causes emotional distress to another.

*Charges of discrimination:* When policies are not enforced in an equal and consistent manner [26].

*Rulon-Miller v. IBM Corp: Dating a Rival, 1984*

Virginia Rulon-Miller, a marketing manager for International Business Machines (IBM), was fired because she was romantically involved with a manager from a rival company [16]. Her superiors were aware of the relationship; in fact, her boyfriend even played on IBM's baseball team. A week after Rulon-Miller received a substantial raise and a glowing performance review, she was called into her supervisor's office and asked whether she was dating the rival manager. When she questioned the relevance of the inquiry, her supervisor said he was concerned about a conflict of interest. He told her she could either end the relationship or lose her job and gave her a week to make her decision. The next day, however, her supervisor told her he had made the decision for her and she would be dismissed [16].

Rulon-Miller brought suit against IBM alleging wrongful discharge and intentional imposition of distress. At the trial level, the jury awarded her \$100,000 for compensation and \$200,000 for punitive damages. On appeal, the California Appellate Court found that IBM had violated its own privacy policy, which states that employees can keep their jobs even if their supervisors disapprove of their off-the-job behavior. The only exceptions are: 1) if the behavior has an adverse impact on an employee's job performance, or 2) if it substantially affects the reputation of the company. Because Rulon-Miller had just received a raise and a glowing performance review, the court concluded that her relationship with the rival manager had not had an adverse impact on her job performance [16, 17].

The court also concluded that her behavior did not substantially affect IBM's reputation and that her relationship did not pose a conflict of interest because her friend did not have access to confidential information. Furthermore, IBM's conflict of interest policy had never before been interpreted in a way that prohibited employees from dating employees from a rival company. The court additionally held IBM liable for intentionally imposing severe emotional distress because Rulon-Miller's supervisor took it upon himself to make the decision for her. This action implied that she was incapable of making the decision for herself. The court concluded that her supervisor's behavior did constitute extreme and outrageous behavior, and the court therefore supported the award for punitive damages [16].

*Fayard v. Guardsmark, 1989*

Fayard was employed by Guardsmark as a security guard until her employment was terminated for violating the company's antifraternalization policy after she began dating a fellow employee [18]. Fayard sued Guardsmark for wrongful termination and invasion of privacy in violation of the 1974 Louisiana Constitution. She contended that the employer's policy did not prohibit off-duty fraternalization and that she had received permission from her supervisor to date her fellow employee outside of work hours [18].

The court placed upon Fayard the burden of showing that she would not have been fired had she not engaged in the dating. The court concluded that she had not borne this burden, and it sustained the discharge. Despite the fact that the company had watched Fayard's house and had run license checks on cars that came to and from her home, the court did not consider that her right to privacy had been violated. The court affirmed Guardsmark's motion for summary judgment [18].

*The New York State Off-Duty Conduct Law (1995)*

The Wal-Mart Corporation instituted a fraternization policy that prohibits a dating relationship between a married employee and another employee, other than his/her spouse [19]. When Wal-Mart discharged two of its employees for violating the policy, the New York State Labor Department brought suit against Wal-Mart seeking reinstatement of the employees with back pay. The department claimed that the employees' discharge violated the state's Legal Activities Law, also known as the Off-Duty Conduct Law, which prohibits employers from discriminating against their employees based on their participation in "legal recreational activities" outside of work hours. These activities are defined as "any lawful, leisure time activity, for which the employee receives no compensation . . . including but not limited to sports, games, hobbies, exercise, reading, and the viewing of television, movies, and similar material" [20].

The plaintiff argued that dating should fall under protection of this law. The Supreme Court of New York, however, determined that dating was not "recreational activity" as it is laid out in the Off-Duty Conduct Law. The court found that the law did not cover personal relationships. Judge Mercure argued, "dating is entirely distinct from, and in fact bears little resemblance to recreational activity," and the court ruled in favor of Wal-Mart [19, at 150].

But in another New York case, *Pasch v. Katz Media Corporation*, the court determined that dating *should* be considered a recreational activity under the Off-Duty Conduct Law, [21]. Judy Pasch was employed by Christal Radio, a division of Katz Media, and had resided with her co-worker, Mark Braunstein, for ten years. Braunstein, a vice president of Christal, was fired by the president of the company ostensibly for having a "personal relationship" with Pasch, even though the company had had knowledge of the relationship for nearly ten years. Shortly after Braunstein was fired, Pasch was told that her position was going to be eliminated due to reorganization of the company. She was later demoted to an entry-level position [21].

Pasch argued that she was demoted because of her relationship with Braunstein and that it was an attempt to humiliate her and force her to quit. Pasch argued further that no reorganization of Christal ever occurred and that a male employee with fewer qualifications was given her position. The district court looked to the legislative history and determined that the Off-Duty Conduct Law was intended to include social activities, such as dating, as long as it occurs outside of work hours.

The court ruled that the narrow interpretation urged by the company was indefensible and denied its motion for summary judgment [21].

### **The Status of the Law on Office Romances**

Up to this point only a few court cases have dealt specifically with romance at the workplace. However, a few general principles may be teased out of those that we examined. First, employee claims based entirely on privacy rights are probably on shaky grounds. No employee-plaintiff who based a case on privacy rights prevailed in the cases we reviewed. We suspect that unless the intrusion into the employee's privacy is severe, or the method employed to do so is crude (e.g., a surveillance camera in an employee restroom), employers will be able to defend themselves successfully against most privacy-based claims.

Second, if the employer has no policy that covers romantic relationships in the workplace or has one that is vague and ambiguous, it may be difficult to enforce penalties. The more closely any disciplinary action is based on clear and unambiguous policies of the organization and the more tightly the discipline is tied to employee performance and/or demonstrated needs of the organization, the more likely the action is to survive a court test.

Finally, a potential link exists between office romances and sexual harassment. The most obvious link comes in a romance between a supervisor and a subordinate, as was the case in the one of the most significant sexual harassment cases, *Meritor v. Vinson* [22]. If the romance deteriorates, the employer, through application of the rule of agency, appears to be vulnerable [23]. In addition, the employer may be found liable for the actions of an unwelcome suitor. In *Ellison v. Brady*, IRS agent Gray sought a date with a co-worker, wrote her two notes, made requests for lunch, and visited her at her desk [24]. The co-worker complained, and the agency transferred Gray. He grieved and won; when the results of his grievance became known, his co-worker sued in district court for sexual harassment. The court found the employer liable. It ruled that the mere presence of a former harasser was enough to constitute a hostile environment and that the IRS had not placed Gray on probation or otherwise sufficiently disciplined or reprimanded him [24].

Another potential area of liability is in suits from co-workers charging that the affairs of other workers create a hostile environment. In *Broderick v. Ruder*, the Securities and Exchange Commission was required to pay an employee \$88,000 in back pay and award two retroactive promotions to settle his complaint about the atmosphere created by an apparent plethora of office romances [25].

### **BUT WHAT IS THE EMPLOYER TO DO?**

Employers cannot ignore workplace romance. The issue is not how to stop them, but how to balance the competing claims of employee privacy with the

organization's need for performance and protection against possible unfavorable effects. Some practical advice:

1. *Awareness.* There will be romantic relationships between employees. Ignoring them may result in surprises for which the company will be unprepared. A specific individual should be designated as the person to whom relationship problems can be reported on a confidential basis. The employees should be informed about the identity of this individual and the degree of confidentiality given to information provided.

2. *Job-Related Policies.* Policies that prohibit employee dating completely probably fly in the face of current business realities. Furthermore, such policies may provide a doubtful defense against a lawsuit, unless the employer can show a relationship between the dating and either the employee's performance or the requirements of the organization. Whatever policies are adopted should be clearly enunciated, written, and communicated to the employees.

3. *Sexual Harassment.* Although most companies already have such a policy in their handbooks and/or collective bargaining agreements, it is important for employees and managers alike to understand what constitutes harassment and what the penalties will be.

4. *Education and Training.* Educate employees about the risks of workplace romance. Awareness can promote caution and cooperation with management in resolving conflicts before damage is done. Companies should hold training sessions for managers that cover romantic-relationship and sexual-harassment policies and point out when managers should call in an experienced mediator, counselor, or attorney.

5. *Prohibited Relationships.* On learning that employees may be engaged in a prohibited relationship, employers must inform the employees of the charges made against them. Employers should promptly conduct a thorough investigation to determine whether an infraction has actually occurred. At the very least, the employees themselves and any other employees who may have knowledge of the alleged relationship should be interviewed. If the investigation produces sufficient evidence to clearly establish the relationship is a prohibited one, discussions should continue to remove all conflicts of interest by transferring duties to another manager, transferring one partner to another workplace or department, and, if necessary, determining which employee needs to leave the organization. These penalties must be consistent with provisions of the policy and penalties imposed in previous infractions by other parties.

6. *Expert Assistance.* If the designated individual is not able to iron out the difficulties creatively, then s/he should be empowered to bring in an expert facilitator, mediator, or counselor. Adopting a legalistic attitude toward workplace relationships appears to create the very problems that most organizations are trying to avoid. Human Resource departments can also help by making the same internal and/or external resources available to employees who come to them

regarding the breakup of a nonmarital relationship as they would provide to employees going through a divorce.

7. *Documentation of Notifications and Actions.* Records that deal with workplace romances should be kept and kept confidential. Disciplinary documentation is essential in the event of a court challenge.

### **GUIDELINES FOR A NONFRATERNIZATION POLICY**

Seventy-two percent of human resource professionals surveyed in 1998 by the Society for Human Resource Management said their companies did not have a written policy to address romance in the workplace. Fourteen percent did not have a written policy, but said their firms had an unwritten understanding. Only 13 percent of the HR professionals surveyed said their companies had a written policy [26].

Before an employer implements a nonfraternization policy, it should understand why it needs such a policy. What is the legitimate business need that causes the company to attempt to regulate its employees' personal relationships? Nonfraternization policies adopted for the purpose of satisfying personal desires, such as an executive's religious beliefs, are not likely to pass court challenges, while policies based on concerns about productivity or morale stand a better chance.

Once an organization can legitimize its need for such a policy, management needs to understand what relationships and behaviors it wishes to prohibit or discourage—should the target be restricted to supervisors and their subordinates or broadened, say, to include client, customer, and/or competitors? Should only public displays of affection be prohibited or should the prohibition extend to cohabitation without benefit of clergy? Companies also need to be clear as to what disciplinary actions will be taken against those who violate the policy. What kinds of action justify counseling only, and what kinds may make the employee subject to termination? With these questions answered, a policy can be written. Conceptually, the policy should:

1. Include a statement that the company recognizes that workplace romances occur, but that it expects participants to be discreet and avoid, if at all possible, public displays of affection. Participants should strive to maintain a professional work image at all times and leave any relationship ups and downs at home. Having sex at the workplace is never appropriate, nor should it be allowed;
2. Establish a mechanism whereby problems can be reported before there is a sexual harassment complaint;
3. Incorporate the problem of boss/subordinate relationships in all its possible manifestations: immediate supervisor, executive-level superior, etc.;

4. Employ mediation or counseling as a first resort to solving problems with partners, warnings as a second measure, and extreme discipline measures as a last resort;
5. Separate romance from sexual harassment but keep harassment policies in effect for issues that can not be mediated; and
6. Create an environment of trust and resolution instead of encouraging punishment [27].

Whatever policy is adopted, it must be applied consistently and fairly to all employees across the board. If exceptions to the rules are permitted, the courts may find that there is no rule at all or that there is no real business need for the rules. If a policy is neutral on its face, and is consistently applied to all employees, regardless of race, age, sex, or other protected characteristic, a plaintiff will find it very difficult to prove a *prima facie* case of discrimination.

## CONCLUSIONS

Workplace romance is not a new phenomenon. It is simply a growing phenomenon that many organizations are not prepared to handle. In the past, organizations have taken a stance of forbidding romance outright, ignoring its existence, or turning away. As we move into the twenty-first century, the attitude appears to be one of cautious acceptance.

However, acceptance of the existence of workplace romances does not imply that organizations can simply ignore the attendant problems, the feelings of the participants and their co-workers, and the balance between the employee's right to privacy and the company's need for performance and for protection from legal challenges.

While the decision of the courts and the policies and practices of other organizations may provide guidance, any organization's approach to the issue should be based on an awareness of the firm's culture, needs, concerns, and the inherent risks. At a minimum, however, prohibited behaviors and relationships should be carefully defined, communicated to the employees, and handled fairly and consistently across all levels of the organization. As long as this is practiced, the employees will feel they are working in an open, fair, and equitable work environment, and the policy will have a better chance of standing up if challenged in court.

## ENDNOTES

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14. *Shawgo v. Spradlin*, 407 F. 2d 470 (5th Cir. 1983).
15. *Naragon v. Wharton*, FEP Cases 748. The student is referred to as Jane Doe.
16. *Rulon-Miller v. IBM Corp.*, 208 Cal. Rptr. 524 (1984).
17. IBM's case was complicated by a memo written by its founder and former president and chairman, Thomas Watson. Watson's memo expressed concern with employee off-duty behavior, but only when it reduced the employee's ability to perform regular job assignments. IBM was not able to produce any evidence showing that Rulon-Miller's work was poor.
18. *Fayard v. Guardsmark*, 5 IER Cases 516 (La. 1989).
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21. *Pasch v. Katz Media Corporation*, 10 IER Cases 1574 (N.Y. 1995).
22. *Meritor v. Vinson*, 477 U.S. 57 (1986).
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