



Despite Concerns About March Madness Pools, Don't Shut Them Down

Illegality of gambling isn't only worry but policies can address potential problems

By Allen Smith, J.D.

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Workplace betting often reaches new heights during the March Madness basketball tournament every year. And while office wagering typically escapes HR's attention and law enforcement officials rarely crack down on office bets, they can be a symptom of more serious issues, such as gambling addictions and out-of-control debt.

To be sure, HR professionals shouldn't try to shut down office pools unless their companies have strict no-gambling policies or the pools have buy-ins that are more than a nominal amount. But HR must ensure that workplace rules are applied uniformly, and that no one should feel pressured to participate or suffer retaliation for reporting the illegal conduct, noted John Snyder, an attorney with Jackson Lewis in New York City.

And taking a laissez-faire approach to office pools may not be a good idea at public organizations, where the use of taxpayers' money is likely to attract greater scrutiny.

Consistent Enforcement of Policies

A lot of money changed hands for betting during the 2016 National Collegiate Athletic Association men's basketball tournament—about \$9 billion, according to the Competitive Enterprise Institute, a Washington, D.C., think tank.

But Helene Wasserman, an attorney with Littler in Los Angeles, said that in 30 years of practicing law she's never seen law enforcement raid an employer over office pools. "If employees want to do it, let them do it," she said.

Aside from gambling laws, the most important thing for employers to remember during March Madness is that they must enforce their workplace rules and policies in a uniform, consistent and nondiscriminatory manner, said Thomas Stanek, an attorney with Ogletree Deakins in Phoenix.

Some offices have strict policies against gambling of any kind. These employers typically are concerned about employees being in debt to one another or whether it may lead to an imbalance of power because of the debt, Wasserman noted.

Promote Camaraderie

If pools are allowed, they should be structured to promote friendly rivalry without being overly disruptive or making workers feel like outsiders if they choose not to participate, Wasserman said.

Some people may not participate because gambling is against their religion. These employees should not be ostracized, she cautioned.

Other employees may be recovering compulsive gamblers who choose not to "fall off the wagon." Those with such addictions shouldn't feel coerced to participate, Snyder said.

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The pool's buy-in should not be outrageously expensive and groups of people, such as women, shouldn't be told they can't participate, Wasserman added.

Consider setting aside a room with a television so employees can watch the games during breaks. This can discourage employees from watching on their computers, which can slow down a company's network. Such a room can also boost morale and camaraderie, Snyder noted. Employers may even want to supply food and drinks during meal periods and encourage workers to wear their college colors so that the tournament becomes a team-building opportunity.

Nonretaliation Policy

Because gambling is illegal in many states, employers should have a nonretaliation policy for employees making complaints about gambling, Snyder added. However, he noted that sports betting is lawful in a handful of states, including Delaware, Montana, Nevada and Oregon.

Stanek said the Professional and Amateur Sports Protection Act of 1992, the Interstate Wire Act of 1961, and the Unlawful Internet Gambling Act of 2006 criminalize gambling on amateur sports. But he noted that there is no indication that the Trump administration or state officials will make widespread enforcement a priority.

"The sheer magnitude of participation in March Madness bracket pools makes it unlikely that law enforcement will be able to curtail the practice," he said.

Nevertheless, "the lost productivity caused by March Madness is well-documented," he added. "For example, it has been estimated that the opening rounds of March Madness lead to almost \$4 billion in aggregate lost productivity. When employees gamble on the tournament, there clearly is a greater incentive for them to watch the games, discuss the results and, possibly, bet on future games. All of that leads to further losses in productivity. To address this issue, employers should remind employees of the company's technology policies as well as the need to remain productive during working time."

Public Employers

Public employers may decide to discourage office pools, particularly where public funds are involved, noted Sean Ray, an attorney with Barran Liebman in Portland, Ore. Two police officers in Michigan were arrested in 2012 and charged with regard to an illegal sports betting operation (<http://www.michigan.gov/ag/0%2c4534%2c7-164-58056-282150--%2c00.html>) they were running during work hours with the use of taxpayer resources, he said. The case arose out of an investigation by the FBI-Hed Detroit Area Public Corruption Task Force.

"This case wasn't related to a March Madness pool, but it did involve sports betting. While I'm not sure of the size of the operation in this instance, one losing bettor apparently drained his retirement account to pay off a \$15,000 bet," Ray said. "While this undoubtedly is an extreme example, public employees need to be aware of government ethics rules related to the use of public resources, particularly when conducting such activities on company time."

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