

## Yes, Your March Madness Office Bracket is Technically Illegal

Article By:

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*March Madness* has arrived! The 2017 *NCAA Basketball Tournaments* tip-off tonight (March 15) and continue through the *Women's and Men's National Championship Games* on April 2 and 3 respectively. With this, comes the American tradition of companies and their employees betting on tournament outcomes through office bracket pools.

As lawyers, we have to point out that your company's *March Madness* pool is very likely illegal under at least three federal gambling laws (the Professional and Amateur Sports Protection Act, the Interstate Wire Act of 1961, and the Uniform Internet Gambling Enforcement Act) and many state laws. And we would be remiss to not mention that there is a parade of horrors that could happen from permitting such workplace wagering.

With that said, the more practical reality is that office pools have become a widely-practiced and culturally accepted form of gambling, law enforcement authorities seem to have little interest in enforcing laws that technically prohibit them, and many employers view these office pools as a workplace morale booster.

For those employers – seemingly, most all of them – who will not shut down this popular practice, here are some best practices to help mitigate legal issues when sponsoring or allowing office pools:

- *Make sure that all entry fees are distributed solely to the winner or winners of the pool.* An employer, or employees organizing a pool, should never take a “cut” of entry fees. Under various anti-gambling laws, profiting from the pool in this way raises a host of issues.
- *Limit pools to offices within a particular state.* Doing so may prevent the pool from violating federal laws, as they generally require the transmission of money or communications across state lines to be applicable.
- *Make participation completely voluntary and limit entry fees to nominal amounts.* Expensive or compelled buy-ins may encourage the predilections of employees who are problem gamblers, and expensive buy-ins may tempt those employees responsible for collecting and distributing entry fees to surreptitiously take a “cut.” Compelled buy-ins could implicate wage and hour and religious anti-discrimination laws. Following these guidelines helps ensure that an office

pool is low-stakes and simply intended to promote friendly rivalry.

- *Do not retaliate against or single-out employees who may complain to the pools.* There are plaintiff's lawyers out there who will try to tether an internal complaint of unlawful activity to later adverse action against the complainer.
- *Prohibit employees from gambling in other pools on company time or through company equipment.* Apart from a workplace pool, employees may choose to participate in other pools with non-employees, and there are many options to do so online (including through company-issued or owned computers). These other pools can raise additional concerns about potential violations of the law, to the extent they involve large wagers, are structured to profit the organizer, or involve interstate communications. Consequently, for reasons of both legality and ensuring employee productivity, employers are best served by a policy that prohibits employee gambling in other pools on company time or company equipment.
- *Consider sponsoring a free pool that provides a non-monetary award.* Although employees may not find it as interesting, an employer concerned about the legality of its office pool may consider sponsoring a pool that is free to enter, with a non-monetary award (a gift card or some other prize) for the winners. The lack of an exchange of money in such a pool may avoid the reach of potentially applicable anti-gambling laws.

Putting legality aside, it is well-established that employee productivity takes a hit during March Madness, particularly since it is now possible to watch games online through work computers or personal mobile devices, and permitting an office pool could encourage distraction.

To accommodate employee interest in the tournaments while reducing productivity loss employers should consider airing the games in a breakroom or lunchroom. At the same time, add sports broadcasts and websites to blocked sites on company systems that monitor and limit Internet use on company-owned computers, systems and devices (certainly, gambling and unlawful activity websites should be blocked year-round). And if productivity becomes a problem, communicate policies addressing these concerns to employees, including policies restricting viewing to non-break times or reminding employees (including those tempted to duck out early to catch a game) of applicable attendance and punctuality policies.

As March Madness begins, we wish you the home court advantage.

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