

'March Madness' in the workplace

by Boyd A. Byers

March Madness (the NCAA basketball tournament) is just around the corner. How does this phenomenon affect your workplace in the basketball-crazy state of Kansas? Sports pools are alive and well, particularly in the office environment. Gambling on company premises, however, may cause legal concerns and affect employee productivity.

Technical fouls

Gambling is a class-B nonperson misdemeanor in Kansas. In other words, it's against the law. The penalty for gambling can range from a fine to six months in jail.

Kansas law defines gambling as making a bet. A bet is a bargain in which the parties agree that dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet doesn't include prizes paid to the contestants in any bona fide contest for the determination of skill.

Unauthorized lotteries are also specifically prohibited by the state's gambling law. A lottery is "an enterprise wherein for consideration the participants are given an opportunity to win a prize, the award of which is determined by chance." Thus, the three elements of a lottery are consideration, chance, and a prize. Consideration is the payment of money or anything of value.

The annual basketball tournament pool, in which contestants fill out a bracket by predicting the winner of each game and pay an entry fee into a pot, which is awarded to the entrant who picks the most games correctly, may violate state gambling laws. Although the winner of the office pool will boast with bravado at the water cooler that her victory was the result of skill, not chance, law enforcement officials may be unconvinced.

Why should you, as an employer, care about such legal issues? Allowing premises to be used for commercial gambling is also against the law. Therefore, if you knowingly let an employee run an office pool and the employee takes a cut of the pot for his time and effort (making it commercial gambling), you may be violating the law as well. Nevertheless, according to a survey conducted by an HR management association, nearly one-third of HR professionals know that basketball pools for the NCAA college basketball tournament exist at their organization. More than half of the respondents also said their employees have been involved in Super Bowl pools (58%) and regular season football pools (55%).

As a practical matter, law enforcement officials typically have better things to do with their time than crack down on low-stakes sports pools. So while the odds of being prosecuted for running or allowing a basketball pool in the office are probably low, it's still something to think about. In a case from another state, a management-level

employee at AT&T was arrested for operating an office football pool from which he took a 10 percent cut. The pool at issue was advertised in office e-mails, and a co-worker allegedly turned the employee in to the police. The worker was charged with promoting gambling and faced up to five years in prison.

Personal fouls

Aside from legal issues, a more practical concern for employers is the effect office pools may have on productivity. According to the survey, however, more than half of the HR professionals who reported having knowledge of such activities at their workplace said there was no effect on worker productivity as a result of workplace gambling. In fact, 13 percent found that the gambling had a positive effect on productivity. Only six percent believed it had a negative effect on productivity.

Nearly 65 percent of employers reported that they didn't have written policies to address workplace gambling. Twenty-three percent do have written policies, however, and an additional 11 percent said they have unwritten or understood gambling policies. Violations of those policies range from counseling to formal reprimands to discharge.

Call fouls both ways

If your company does have a gambling policy, it's important to enforce it in an evenhanded manner. In one well-known case, a company's handbook provided that gambling on company property was unacceptable conduct punishable by disciplinary action, including immediate termination. Following its policy, the company fired an employee after he admitted to operating a weekly football "squares" game (a pool in which employees buy a square on a board and whoever buys the square holding the last digits of the final score wins the money). The employee sued the company for race and sex discrimination, claiming that management was aware of and previously tolerated the football pools but targeted him for discharge because of his race and gender.

The court held that the employee was barred from going to trial on his discrimination claims because he couldn't "identify by name any specific employee as being similarly situated." The employee's assertion that the company "must have known" about other employees' gambling wasn't sufficient to show that similarly situated employees were treated differently. Thus his claims were ejected.

Get a 'TO,' baby!

If you choose to prohibit gambling in your workplace, adopt a strong policy and stick to it. Here are several points you might want to include in your policy:

- Define gambling or the type of behavior you want to restrict.
- Emphasize that gambling is illegal.
- Acknowledge that gambling can interfere with employee productivity and morale.

- Be prepared to discipline violators.
- Coordinate your gambling policy with your progressive discipline program, or carve out specific behavior that's subject to immediate termination.

If you believe a basketball pool enhances productivity or fosters camaraderie in your workplace, but you're concerned about its legality, consider having the company fund the contest and award a prize to the winner. Employees will be happy because they can make their picks and enter the contest without putting up their own money. And because they don't have to pay to play or risk losing anything of value (other than their pride), the game wouldn't appear to violate state gambling laws. But check with your local district attorney's office first — they're the ones who enforce the law.

One last thing. If an employee requests that you let him operate an office pool to reasonably accommodate his gambling addiction, remind him that compulsive gambling is excluded from coverage under the Americans with Disabilities Act and the Kansas Act Against Discrimination.