

# Eye On Compliance: Workplace March Madness Pools

By **Laura Stutz** (March 8, 2024)

As March Madness rolls in and employees create office bracket pools to place bets on the NCAA college basketball tournament, employers may be wondering whether this type of gambling among colleagues is illegal. The short answer is, yes.

Even so, it is nearly impossible to find a workplace without a bracket pool. This is probably the case because they are a fun way to engage employees in friendly competition, and the chances of being prosecuted are about as good as getting down to the final four without a single upset.

In other words, slim but possible.

## Background

Sports betting and gambling in the U.S. changed on May 14, 2018, when the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act, or PASPA, in *Murphy v. National Collegiate Athletic Association*.<sup>[1]</sup>

PASPA essentially outlawed sports gambling in nearly every state by making it unlawful for a state or its subdivisions "to sponsor, operate, advertise, promote, license, or authorize by law or compact ... [a] betting, gambling, or wagering scheme based" on competitive sports events,<sup>[2]</sup> and for "a person to sponsor, operate, advertise, or promote" such gambling schemes if done "pursuant to the law or compact of a governmental entity."<sup>[3]</sup>

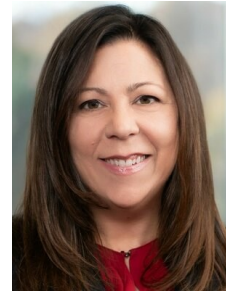
In *Murphy*, the Supreme Court declared PASPA unconstitutional, leaving it up to the states to decide whether to allow sports gambling and betting. Since the decision in *Murphy* and the repeal of PASPA, some form of sports gambling and betting, including online sports betting, is now legal in 38 states and Washington, D.C.

## Federal Prohibitions

Nevertheless, unlicensed sports gambling and betting, including workplace office pools, remains illegal under state and federal law, including the Wire Act and the Unlawful Internet Gambling Enforcement Act.

The Wire Act prohibits wagers in interstate or foreign commerce placed or received by a person located in the U.S. "on any sporting event or contest."<sup>[4]</sup> The Unlawful Internet Gambling Enforcement Act makes it illegal for those "engaged in the business of betting or wagering" to "knowingly accept" funds in connection with the participation of another person in unlawful internet gambling.<sup>[5]</sup>

Notably, the growth in the number of remote employees, as well as widespread use of digital wallet apps and services over traditional payment methods, increases the risk that office pools will cross state lines and implicate the laws of multiple states in addition to federal gambling laws.



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## **State Prohibitions**

At the state level, sports gambling and betting is subject to highly regulated licensing requirements, and betting outside of those requirements is illegal. State gambling regulations vary from state to state. The variations are amply demonstrated by the regulations that govern betting on collegiate sports.

Some states — including Alabama, Alaska, California, Georgia, Hawaii, Idaho, Minnesota, Texas and Utah — prohibit gambling on college sports. But other states — including Arkansas, Louisiana, Maryland, Michigan, Nevada and Wyoming — have no gambling restrictions on college sports betting.

And restrictions on college sports betting vary in Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Massachusetts, Nebraska, New Jersey, New Hampshire, New York, Oregon, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

For example, in Connecticut, betting on Connecticut-based teams is prohibited unless they are participating in a tournament. Further, Colorado, Florida, Illinois and Indiana permit betting on the outcomes of college sports games, but prohibit betting on player props (i.e., how an individual player performs in a game); and permit in-person, brick-and-mortar college sports betting, but prohibit online bets.

## **Risks**

The array of state and federal laws regulating sports betting makes clear it is illegal to participate in unlicensed sports gambling and betting. While the risk of prosecution may be low, it is not hypothetical.

Though few and far between, individuals have been prosecuted for office sports betting pools. For example, in 2010 in New Jersey, a former schoolteacher was arrested for running a football bracket pool that started out modestly but grew to a full-time operation with a total prize payout of more than \$800,000.[6]

Potential criminal offenses aside, an office bracket pool can lead to other workplace issues and potential liabilities. For instance, if an employer has a policy prohibiting gambling in the workplace, but permits employees to run an office pool, the inconsistency could expose the employer to claims of disparate treatment.

This situation arose several years ago in *Dent v. Federal Mogul Corp.*, where the employer maintained a policy prohibiting gambling on company property but, according to the plaintiff, Ira Dent, permitted employees to run an office pool and then terminated the Dent's employment for doing so because of his race.[7]

The plaintiff sued the employer for unlawful termination because of race and gender in violation of Title VII of the Civil Rights Act. The employer moved for summary judgment at the close of discovery because Dent failed to identify a single employee of another race or gender who was treated more favorably than, and similarly situated to, him. In 2001, the U.S. District Court for the Northern District of Alabama granted the motion, finding Dent's failure to identify by name any specific employee as being similarly situated fatal to

his Title VII claims.

Further, other issues could arise if employees object to office bracket pools on cultural or religious grounds, or if the office pool presents a trigger for those with gambling addictions.

### **Compliance**

Given the fast approach of Selection Sunday for March Madness on March 17, and the illegality and complexities of collegiate sports betting, employers should remain cognizant of the various sports gambling and betting laws to determine whether they will permit March Madness pools in the workplace.

Best practices to consider when making that determination and striving for legal compliance include:

- Employers that decide to permit March Madness bracket pools should adopt a workplace gambling policy to clearly define acceptable and unacceptable conduct, and explain that violations of the policy will lead to disciplinary action up to and including termination of employment.
- Employers that prohibit workplace gambling should not turn a blind eye to March Madness bracket pools. They should take the time to remind employees of the policy and ensure they understand that the policy applies to all types of workplace gambling — even friendly March Madness bracket pools — without regard to whether employees are working on-site or remotely.
- Employers that desire to encourage employee engagement in the friendly competition that bracket pools have grown into, without running afoul of sports betting laws or creating other gambling-related workplace issues, may consider sponsoring a completely voluntary, entry-fee-free office bracket pool that provides a nonmonetary prize to the winner.

Managing March Madness in the workplace is beneficial and possible with focused consideration. Taking the opportunity to develop and review company policies with employees can go a long way toward preventing a friendly office bracket pool from becoming a source of negative consequences.

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*This article is part of a monthly column that provides guidance on employers' top compliance concerns.*

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[1] *Murphy v. National Collegiate Athletic Association*, 1138 S. Ct. 1461 (2018).

[2] 28 U.S.C. § 3702(1).

[3] 28 U.S.C. § 3702(2).

[4] 18 U.S.C. § 1084(a).

[5] 31 U.S.C. § 5363.

[6] <https://www.npr.org/2015/03/28/395983111/the-cautionary-tale-of-a-big-time-bracket-bust>.

[7] *Dent v. Federal Mogul Corp.*, 129 F. Supp. 2d 1311 (N.D. Ala 2001).