

[Daily Document Update: HR Compliance Library, ¶35,475, Expert provides tips for keeping the workplace on course during upcoming March Madness basketball tournament — PRACTICE TIP, \(Mar. 13, 2017\)](#)

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As the next NCAA basketball tournament season is approaching—the first game tips off on March 14—employers may wonder if they can monitor closely their employee's activity and check their effective productivity. With new technologies, there are more methods of monitoring the plethora of March Madness games than ever before. Nevertheless, each of them has different limitations under the law. John Snyder, Principal in the New York City office of Jackson Lewis, provides the following do's and don't for employers to consider during the games.

DO have appropriate policies in place and enforce them. A policy on gambling in the workplace should address issues relating to illegal gambling and solicitation. Except in certain states, such as Nevada, Delaware, Oregon, and Montana, sports betting is generally illegal under state law. Remind employees that company policy prohibits gambling in the workplace and solicitation during working time. Consider sponsoring a company contest, perhaps for a non-monetary prize, to discourage employees from operating their own pools and soliciting each other to join during working time. Because gambling is illegal in many states, employers should have a procedure that includes a non-retaliation policy for employees making complaints of unlawful behavior. Attendance and tardiness policies should also be enforced. Employees should be reminded of the company's attendance and lateness policy. Reminding employees of the policies can hopefully reduce unplanned and unscheduled absences that can leave employers short-staffed.

In addition, if there is a pool, it should be made completely voluntary, with no buy-in and with a non-cash prize, such as a prize basket, movie or theatre tickets, a gift card, a contribution to a charity of the winner's choice, or a complimentary dinner. Employers should avoid a workplace pool with a monetary buy-in, administrative fees for running it and cash prizes. Each organization must consider also if it needs to remind employees (gently, if possible) that working time is for work and reiterate any general limitations on non-working activities during working time, consistent with applicable law.

Companies may also encourage employees to wear their college colors and engage in positive team spirit when their team plays. Of course, if temporary dress code modifications are permitted, ensure the rules are clear. Additionally, any cheering in the workplace must be respectful.

DO consider a breakroom with the television on so that employees can watch the games during breaks. This can cut down on employees watching on their computers and possibly slowing down the network as well as create a meeting place to foster the potential benefits of boosting morale and camaraderie. If a breakroom is not provided, they should also be prepared for and ensure that they either block game access to the extent practical or have sufficient bandwidth to handle the game streaming and increased internet traffic typically associated with game day watching by employees.

DON'T let the workplace become unprofessional. Employers who permit or conduct workplace pools or contests, however, need to avoid making employees uncomfortable. No one should be prevented from doing his or her job or be mistreated for not being interested in the tournaments. This also can ensure those with histories of gambling are not forced into an unwanted environment. This may also help avoid potential claims of disability discrimination. Gambling is not covered by the federal Americans with Disabilities Act (ADA). However, an employee with a gambling addiction may suffer from other disabilities that are covered by federal, state or local

law, including anxiety, depression or other mental conditions. Employers that allow brackets and office pools need to be sensitive to these issues as well.