

PUBLICATION

Breaking Brackets: Is Gambling on March Madness Illegal?

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March 25, 2014

It's March Madness, Baby! That's right, for the next three weeks you probably won't go a single day without hearing: "Hey, how is your bracket doing?" or "What?! You didn't fill out a bracket?! Are you nuts?!" The NCAA Division I men's and women's basketball tournaments are upon us. It's time for Dickie V, last-minute upsets, late-round blowouts, and of course, the Cinderella story.

March Madness generates big money. So naturally, gambling and March Madness go hand-in-hand. Fill out the perfect bracket (i.e., correctly pick the winner of all 32 games) and you can be rich—both in reputation and winnings. While most office pools and workplace contests can't match Warren Buffet's \$1 billion prize for completing the perfect bracket, almost all March Madness office pools and workplace contests involve some form of gambling. So this begs the question: Is gambling on March Madness illegal? Yes, gambling on March Madness is almost always illegal.

The most notable law at issue is the Professional Amateur Sports Protection Act of 1992 ("PASPA"). PASPA makes it unlawful for a person to gamble on "competitive games in which amateur or professional athletes participate." In other words, PASPA is the federal law that makes sports betting illegal. The only states exempted from PASPA in whole or in part are Oregon, Delaware, Montana, and Nevada. Each of those states had legalized sports betting before 1992 in one form or another. Therefore, those states were grandfathered in and are exempted in whole or in part from PASPA. So under PASPA, any sports betting that takes place outside of Oregon, Delaware, Montana, or Nevada is likely illegal. The Wire Act and the Travel Act are two other laws that come into play during March Madness. The Wire Act essentially makes it unlawful to use e-mail or other electronic forms of communication to facilitate sports betting. Likewise, the Travel Act makes it unlawful to use U.S. Mail or similar services to facilitate sports betting and/or distribute proceeds from any unlawful activity.

While these laws are typically enforced only against organized criminal enterprises, employers can't ignore March Madness and workplace gambling. To start, employers should always have a well-defined, consistently enforced policy that prohibits gambling in the workplace. Some additional guidelines for successfully navigating March Madness include:

- Use non-monetary prizes for workplace bracket competitions; for example, a plaque, a winner's parking spot, a trophy, relaxed dress codes, or even a Friday off.
- Set specific times for workplace bracket competitions and related activities. Employers don't want filling out and monitoring brackets to consume more time than necessary. To encourage this, designate certain times during the week for these activities.
- March Madness isn't for every workplace, and so it may be appropriate to post or send out a friendly reminder that March Madness activities should be reserved for outside of the workplace.
- Enforce discipline policies consistently. Policies forbidding gambling in the workplace need to be enforced against employees running their own, personal bracket pools at work, just as those policies would be enforced against employees playing poker in the break room.
- And if an employer decides that monetary prizes must be a part of the office bracket pool, an employer should forbid the organizer/office-pool administrator from taking an administrator's fee (e.g.,

a piece of the overall prize pool). By forbidding an administrator's fee, any exposure under the laws discussed above is limited.

Lastly, it is worth noting that compulsive gambling, unlike other addictions, is not a recognized disability under the Americans with Disabilities Act ("ADA"). With the ADA Amendments Act of 2008, Congress expressly excluded certain "disabilities" from the ADA. The so-called "sin exceptions" to the ADA include compulsive gambling, as well as kleptomania, pyromania, pedophilia, and exhibitionism. While an employee with a gambling addiction may present a number of challenges for an employer, the ADA should not be one of them.