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Workplace Wagering a Big Gamble

By Cynthia Kincaid, contributing writer

For those who think that making a wager in an office pool or placing an online bet from a cubicle computer is harmless, be advised that California Penal Code section 337a makes it illegal for individuals or employers to participate in workplace gambling.

The Impact of Workplace Gambling

Engaging in workplace gambling and office pools may not only expose employers to legal penalties, but also create an environment of lessened productivity, which can impact the bottom line. "It starts with the use of company property, and it trickles down to productivity and professionalism," said Jessica Hawthorne, employment law counsel for the California Chamber of Commerce. "Are people actually getting their job done? Are people wasting time? Are they distracting other employees?"

To be safe, Hawthorne recommends a simple solution: "The hard and fast rule is: don't have office pools. In California, it is a misdemeanor to gamble in the workplace, and office pools are considered gambling."

It might be surprising to find out that the FBI reports more than \$2.5 billion is wagered on the NCAA men's basketball tournament, with only \$80 million of that bet legally through Nevada sports books. The remaining \$2.4 billion is gambled illegally through other means. According to research conducted by employee management company Websense, only 47 percent of employers block Internet access to online gambling sites.

While workplace gambling takes place year around, certain times of the year seem to bring on much more gambling activity, most notably in late-January/early February for the NFL playoffs and Super Bowl, March for college basketball's "March Madness" tournament and October for the MLB playoffs and World Series.

Prohibiting office pools can be especially tricky because they may seem harmless, but they still fall under the banner of wagering. "Let's say you have an office pool and someone wins a gift certificate or vacation days," Hawthorne said. "That's money," which

makes it illegal. This holds true for any kind of office pool, baby pool or any other office wager where the winner receives monetary value.

Developing Policies and Procedures

Some employers, especially those with large numbers of employees, may find it difficult to completely eradicate gambling from the workplace, but Hawthorne said employers of every stripe can protect themselves by developing and disseminating a specifically written, consistently applied policy that clearly defines the prohibition of workplace gambling and the implications, if violated.

"Employers need a general counsel who can talk to criminal attorneys and the district attorney to make a determination of what exposure the company actually has, and then write the policy that would address that exposure to make sure it doesn't happen," Hawthorne said.

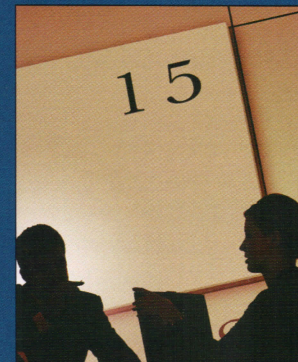
With a specific policy in place, Hawthorne advises employers to disseminate it on paper and electronically, so that every employee has been notified. Having a conversation with supervisors about enforcement expectations is also recommended. "Sometimes it comes down to a supervisor hearing what is going on and not being sure how to address it," Hawthorne said.

She recommends telling supervisors who are uncomfortable approaching employees themselves to go to their boss or to human resources. "Have someone else take over for them because sometimes a supervisor doesn't want to have that conversation with their staff," Hawthorne said.

Employers who find employees gambling at work after they have been notified of its illegality will need to decide on appropriate action. Penalties for violating policy can range from reprimands to counseling, and, in some cases, termination. "You can tell employees not to do this and you can still have people that will engage in it," Hawthorne said. "You need to decide how you are going to discipline those employees."

Because, ultimately, when employees gamble in the workplace, nobody wins. □

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