All Bets Are Off: Employer Considerations for Workplace Gambling Policies

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Did you make a wager on this year's Super Bowl with a co-worker? Did you join the office NCAA tournament pool this year? The honest answer for many people is a resounding “yes.” Sports gambling is a big, and largely illegal, enterprise. The 2015 Super Bowl saw an estimated $4 billion wagered on its outcome. Last year's NCAA tournament involved approximately $3 billion and a significant number of unproductive work hours spent on “bracketology.” Yet, most employers fail to specifically prohibit workplace gambling, and many sanction the behavior as harmless fun and good for comradery among co-workers.

There is a generally held belief that NCAA office pools and other types of gambling in the workplace do not cause a disruption or have an adverse effect on employee productivity. And, even though such gambling is against the law, the risk of criminal prosecution is considered too remote to prohibit workplace gambling. Therefore, employers tend to look the other way when it comes to friendly wagers. Nevertheless, company management should consider the potential problems with workplace gambling and, at a minimum, avoid officially sanctioning the behavior.

Although some employees may find it fun to bond over intra-office bets and money-making gambling opportunities, not all employees will have the same perspective. The non-participants may feel excluded, or perhaps even offended, by the pro-gambling atmosphere. And, although the primary focus is on having a good time, employers may unintentionally find themselves contributing to an employee's gambling problem.

Gambling addiction and disorders affect an estimated one percent to three percent of the adult population in the United States according to the National Center for Responsible Gaming. Because less than 15 percent of people with a gambling problem seek formal treatment for their condition, the estimates of individuals who suffer from a gambling disorder may be low.

When the Americans with Disabilities Act (ADA) became law in 1990, it specifically excluded compulsive gambling from the definition of a disability. Accordingly, employers are not liable under the ADA for discriminating against or failing to accommodate a compulsive gambler. Yet, an individual who suffers from a gambling disorder may suffer from another impairment that is covered by the ADA. A 2008 study found that 96 percent of people with gambling disorders also suffered from other psychiatric or addictive disorders. Related complications that have been linked to compulsive gambling include alcohol and drug abuse problems, anxiety and depression — all conditions that employers routinely assess in connection with their ADA compliance obligations.

Although scientific research on gambling compulsions lags behind drug and alcohol addictions, the American Psychiatric Association revised its definition of “pathological gambling” in the 2013 edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the key reference book for mental-health professionals. What was formerly referred to as “pathological gambling” is now known as a “gambling disorder” and is classified similarly to drug and alcohol disorders in the current DSM.
Office pools and hallway bets on football games are historical means of workplace gambling, but online gaming presents a new option and a new concern for employers. Nevada, New Jersey and Delaware permit online gambling, and other states, including Pennsylvania, have introduced legislation to legalize online gaming. Computer and Internet policies generally prohibit using company equipment for nonbusiness-related purposes, but it is commonplace for most employers to allow some nonbusiness use of their computer networks. Allowing, or not prohibiting, online gambling during work hours or with company resources creates an unnecessary risk for employers. Employers should consider having a written policy regarding workplace gambling, which defines the prohibited conduct and what disciplinary steps may be taken against employees who violate the policy. Even if online gaming is legal in a given state, an employer has the right to circumscribe the conduct in the workplace, like it would do for alcohol in the workplace. Employees with drug or alcohol problems are routinely provided guidance and resources under an employer’s employee assistance plan, and a workplace gambling policy should also recognize that employees who suffer from a gambling disorder and may need professional help.

As the scientific community continues to draw parallels between alcohol/drug addictions and gambling addictions, it is inevitable that these issues will arise in employment litigation. Employers will be prepared to address these issues during litigation if they have considered the issues in advance, have adopted and communicated a workplace policy on gambling, and understand that other impairments may be affecting an employee with a gambling problem.

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