

SEPTEMBER 8, 2016 | STATE & LOCAL TRENDS

# NFL, Employers, and the Office Fantasy Pool – Gambling in the Workplace

✘ With the start of a new NFL football season around the corner, many employers are likely hearing chatter around the workplace about the upcoming season, predictions, and office football leagues. Office betting pools can have both a positive and negative impact on the workplace. While most employees view betting pools as typical office fun, employers often suffer the consequences, such as a drain on productivity and resources as well as the legal issues that go with employees gambling at work. However, employers can take certain steps to ensure that gambling in the workplace does not violate state law, impact productivity, or result in multiple HR complaints while maintaining high employee morale.

## Fantasy Football and Office Betting Pools

Office betting pools and online gambling have become commonplace in everyday society and many employers themselves probably participate in fantasy leagues. Both the fall and spring bring new excitement to the office as employees get to revel in what seems to have become somewhat of a sacred tradition – NFL Fantasy Football and NCAA March Madness.

The amount of money that Americans spend during these two times of the year is shocking. According to the [Fantasy Sports Trade Association](#), roughly 57.4 million people will participate in fantasy sports leagues this year, with an estimated spending of \$556 per user. That amounts to about \$31.9 billion in gambling on fantasy sports. The fantasy sports fever that continues to sweep the country cannot be understated. Within the past decade, the number of people gambling on fantasy sports and their spending habits have more than tripled. During March Madness alone, NCAA tournament bracket pools cause Americans to pour approximately \$3 billion into online bracket pools, and that doesn't even count the numerous contests put on by employers that do not require an entry fee or contests among friends and co-workers. Ultimately, sports betting is a multi-billion-dollar industry, and it is everywhere. But what does this mean for employers?

## Productivity and the Workplace Environment

Office betting pools and the aura of fantasy football can boost employee morale but employers need to make sure that productivity is not significantly impacted as a result. In a [2011 Vault survey](#), 71.5% of respondents said that they participated in a betting pool in the workplace, and 56% of respondents said they spent 30 minutes or less discussing, researching, or making picks for an office betting pool. However, approximately 22% of

respondents admitted to spending considerably more time on office gambling — 4% spent 1-2 hours, 2% spent 2-4 hours, and 1% spent more than 6 hours.

With a majority of your employees participating in some type of betting pool in the workplace at some point throughout the year and spending what could amount to a sizeable amount of loss of productivity, employers need to weigh the costs and benefits of allowing betting pools and time for employees to play fantasy sports. According to consulting firm Challenger, Gray & Christmas, Inc., fantasy sports will cost employers approximately \$16.8 billion this year. In coming up with this figure, Challenger estimated that fantasy players spend approximately one hour of work time per week over the course of 17 weeks during football season updating their rosters, researching players, or discussing fantasy football with colleagues at work.

While this number may seem high, Challenger states that the loss of productivity is negligible compared to the comradery and team building that can stem from the office fantasy league. Although an employer's loss in productivity may seem like a large amount of money, "it is really just a drop in the bucket" that does not have a major impact on an employer's bottom line. If done in moderation, the time employees spend participating in office pools or playing fantasy football at work can foster a more enjoyable workplace. Approximately 64% of respondents to the 2011 Vault survey stated that office betting pools have a positive influence on the work environment. In contrast, only 8% claimed that it had a negative impact on the work environment. Challenger also reported that fantasy football can help keep employee morale high and limit employee turnover – both of which have a significant impact on an employer's annual profits.

### **Office Pools and the Law**

Productivity and morale concerns aside, employers need to consider whether office betting pools are legal.

There are several laws restricting gambling, such as the Interstate Wire Act of 1961, the Professional and Amateur Sports Protection Act ("PASPA"), and the Unlawful Internet Gambling Enforcement Act ("UIGEA"). While these laws prohibit or limit sport gambling to some degree, when read together, they have only complicated questions regarding online sports gambling and small-time office betting pools.

The Interstate Wire Act of 1961 prohibits any telecommunicated wagers in interstate or foreign commerce placed or received by a person located in the United States on "any sporting event or contest." 18 U.S.C. § 1804. While this may not seem to apply at first glance, employers with offices and employees in different states should refrain from sponsoring pay-to-play fantasy football leagues. Congress further complicated the gambling laws in 1992 when it enacted PASPA –making it illegal for any private person to operate, advertise, or promote a wagering scheme based on a competitive game in which "professional or amateur athletes participate." This broadly worded statute, however, grandfathered previously authorized sports gambling in Nevada, Delaware, Oregon and Montana.

Finally, the UIGEA states that "no person engaged in the business of betting or wagering may knowingly accept" funds "in connection with the participation of another person in unlawful Internet gambling." However, the UIGEA has an exception that permit fantasy sports if: (1) the value of the prizes is not determined by the number of participants or the amount of fees paid and the prize is made known to participants before the contest begins; (2) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world

sporting or other events; and, (3) the fantasy game's result is not based on final scores or point-spread of any single real-world game and not solely on any single athletes' performance in a single event. Office pools where points are accumulated based on an athlete's individual performance and the total points accumulated by an individual's fantasy team would not satisfy this exception if employers host a league in which the reward is based on employee's entry fees.

In addition to the federal laws regulating sports gambling, there are a number of different state laws that restrict, hinder, or prohibit workplace gambling to some degree. Determining if workplace gambling is illegal on the state level typically depends on the nature of the gambling – i.e. the specific format of the game and whether it is based on skill or chance – and the specific state in question. In many states, gambling in the workplace between colleagues is illegal. For example, in Wisconsin and South Carolina, gambling is considered a crime. Section 945.02 of the Wisconsin statutes states that gambling includes, but is not limited to, making a bet. A "bet" is defined as a "bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement."

In contrast, in other states, gambling at work resides in very gray legal area. In Colorado, for example, most gambling is illegal but betting pools in the office are an exception to the definition of illegal gambling so long as the pool is "incidental to a bona fide social relationship." Other states such as Virginia have similar social gambling exceptions but it is unclear whether this would apply to the office betting pool. Employers would be wise to look into their respective state gambling laws before blessing any office betting pool.

## Conclusion

Ultimately, the proliferation of online betting and illegal gambling dwarfs the small office betting pools, and it is unlikely that employers or employees would face any trouble with the law. While it is not categorically illegal for employers to host a fantasy sports contest in the office, they should be very careful in doing so especially when money is involved. Employers shouldn't host a fantasy football league in which employees must pay-to-play. Employers can, however, host office leagues at no cost to employees and provide their own prizes for the winners to help promote friendly competition in the workplace.

If employees independently run office pools, the employer should consider implementing a company gambling policy that:

1. Describes what type of gambling is allowed in the office if it is not strictly prohibited.
2. Prohibits gambling amongst employees in offices or work sites located in different states.
3. Defines parameters for using company property, such as email, computers, and printers, to engage in gambling activities.
4. Reminds employees that they must comply with both federal and state laws.
5. Requires the approval of Human Resources if employees wish to host their own office betting pool to ensure that it complies with the employer's gambling policy and state and federal law.
6. Clearly tells employees that the activities cannot interfere with productive work time or disrupt other employees in the workplace.
7. Explains the discipline that applies to violations of the gambling policy.

The legality of fantasy sports betting is quickly changing as it becomes more and more common, and it is a

rather gray area for employers at the moment. However, employers should promote an environment where both the employer and employees strive to satisfy the law’s requirements while enjoying the NFL season with colleagues.