

4 Slam-Dunk Tips For Employers To Swish March Madness

By **Vin Gurrieri**

Law360 (March 15, 2018, 10:52 PM EDT) -- With the NCAA basketball tournament tipping off this week, millions of workers will be tracking their office pool brackets and sneaking peeks at games during work hours. But lawyers say businesses should generally avoid calling flagrant fouls on employees and instead treat March Madness as an easy layup for fostering companywide camaraderie.

Over the next few weeks, college basketball's top 64 teams will compete to be crowned national champion in April, with many of the games starting during normal work hours.

Michael Arnold, leader of Mintz Levin Cohn Ferris Glovsky and Popeo PC's employment, labor and benefits practice, said employers "should consider capitalizing on the potential employee engagement opportunities March Madness presents while effectively positioning themselves to comply with applicable law."

Joseph Greenwald & Laake PA principal Brian Markovitz, whose practice focuses primarily on representing workers, said employers have wide latitude for how to handle NCAA tournament-related issues, but agreed that they ultimately stand to gain more by giving employees some leeway to indulge in the spectacle.

"The NCAA tournament, maybe with the exception of the Super Bowl, is about as American as it gets, and I think that a smart employer participates in that," Markovitz said, noting that the tournament's first two days, which often feature dramatic upsets, are often when workers pay the most attention.

"We're talking two days out of the year and only for a few hours. It's just not worth it to fight it ... unless there is something due," he said. "I think you'll get more in return from being cool about it than from being Draconian."

Here, employment attorneys share four tips for employers' March Madness playbooks.

Set Clear Guidelines

While March Madness policies are generally at the discretion of individual employers, attorneys said it is important for those policies, whatever they may be, to be communicated clearly to workers.

For starters, employers should be sure to remind workers about existing policies regarding both attendance and the acceptable use of office equipment, according to Arnold, who said workers should be cautioned about the consequences associated with unauthorized absences and misuse of policies like sick leave during the tournament.

However, attorneys said it would be nearly impossible for employers nowadays to enforce an outright ban on watching tournament games.

Tucker Ellis LLP partner Daniel Messeloff pointed out that the circumstances surrounding March Madness are vastly different than they were years ago when technology wasn't as widespread and workers would actually have to find a radio or sneak out for long periods of time to a nearby restaurant or bar to catch a game.

"There were different risks because employees had to spend more time out of the office," Messeloff said. "Today, with the availability of technology, employers couldn't even stop employees from watching games on their smartphones or even on their work computers, even if they wanted to do so. Since that's the case, the best legal and general advice in this circumstance is to make sure no one gets carried away."

Arnold similarly said that it's "not practical" from an employee productivity perspective for employers to implement a ban against watching the games during business hours, and that employers should instead "consider whether the time spent watching the tournament will be a net positive or negative for their businesses."

If employers take a relaxed attitude toward their workers' March Madness indulgences, management-side lawyer Joshua Davis of Goulston & Storrs PC said businesses should still be sure to gently remind employees that they are expected to keep focusing on work while games are taking place.

"If phrased appropriately, [the reminder] can be delivered lightly enough so as not to negatively impact morale," Davis said.

Be Careful With Office Pools

One aspect of March Madness that can potentially lead to the most issues for employers is the office pool that often accompanies the tournament. Since filling out a bracket requires not even a rudimentary knowledge of college basketball, office pools can generate plenty of interest, and friendly competition that boost morale.

Although betting pools are illegal in most states, law enforcement rarely crackdown on small office contests.

"Informal office betting pools that are organized by employees, even if they are strictly illegal, do not present much risk to the employer," Messeloff said.

While employers might not want to encourage the activity by having their own pools, Messeloff said they can use the workers' interest in the games as a basis for doing things like bringing pizza for employees or encouraging employees to decorate offices or dress in team colors — actions that can boost workplace morale.

Arnold said employers should at least consider putting certain safeguards in place when it comes to office bracket pools to ensure they don't run afoul of any applicable gambling laws.

Such precautions may include conveying to their employees that participation in any office pools is entirely voluntary and limited to co-workers in the same office. Businesses can also take care to make sure that entry fees into such pools aren't excessive and that all prizes go to the winners, meaning the organizer of the pool doesn't take a cut.

"While prohibiting your employees from participating in bracket pools or watching games may be the most conservative approach, it's also probably not realistic or desirable," Arnold said. "Employers should aim to set employee expectations properly so that they simultaneously maximize their employees' enjoyment of the tournament and compliance with applicable law and their own policies."

Markovitz said that an employer sponsoring a tournament pool "is not necessarily a bad thing as long as you keep it reasonable," noting that reputable sites like Yahoo and others have platforms for bracket contests.

"If you want to look like a cool employer and a good place to work, send out an email with a link. Or let the person that wants to [organize] it do it, and they explain the rules and then people can participate," Markovitz said.

Consider Giving Workers Some Free Time

Although some people in any given company will inevitably not care about the tournament, other employees will surely be fascinated by its twists and turns.

If employees are genuine about their interest in a game, attorneys said it may behoove employers to be a bit flexible in allowing them to watch part of it or potentially even consider setting up a common area where the game is on.

"If someone's a die-hard fan of some team and [they're] going to play at a certain time, you should give them some leave and let them do it," Markovitz said, adding that it leads to more goodwill from employees, whereas being told they can't watch can be "a real downer [for] them."

Arnold noted, however, that a flexible approach shouldn't supersede business needs, noting that circumstances could arise in which employers have to limit March Madness distractions if, for example, a game interferes with important project deadlines.

"Thus, from a best practice standpoint, this is where the exercise of good business judgment comes into play," Arnold said.

Remind Workers to Keep Emotions in Check

Particularly if there are any superfans of a particular school are involved, March Madness, like sports in general, can arouse extreme passion among those with an emotional investment in a team's fortune.

The real concern with March Madness is that employees, unlike on normal work days, become much looser with trash talk, according to Davis.

While some good-natured ribbing among colleagues "can enhance a sense of community," Davis said that such teasing can easily go bad.

"Played wrong, it can create dissension and lead to uncomfortable and perhaps worrisome interactions," Davis said. "Like so much, the culture of the office community determines whether or not it's problematic."

--Editing by Philip Shea and Jill Coffey.