

# FP SUPER BOWL PREDICTIONS! (AND SOME WORKPLACE ADVICE FOR EMPLOYERS WHILE WE'RE AT IT)

Insights  
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**Matt Carpenter:** The 49ers will finally be able to shake off the curse of never winning their sixth Lombardi Trophy in a 31-24 game. Brock Purdy will go from Mr. Irrelevant to Super Bowl MVP, leading to an Academy Award-winning film in 2036. Also, Usher will start the halftime show with O.M.G. (and finish with Yeah!).

**Melody Rayl:** Chiefs take the lead on their opening drive and look back. They win: 27-24, with Patrick Mahomes scoring the game-winning touchdown in the air and on the ground to take home his third Super Bowl MVP.

**Julia Sherwood:** With the Chiefs' reputation for come-from-behind Super Bowl victories, after trailing 13-7 at halftime, the Chiefs secure their fourth Super Bowl win with a score of 27-21. Patrick Mahomes will receive Super Bowl MVP and Travis Kelce in a game interview will remind Chiefs Kingdom that: "You Gotta Have Your Right. To Paaarrtyyyy!"

**David Witkin:** After trailing 17-7 at halftime, 49ers win, 31-20. Brock Purdy will be the MVP although it arguably should go to Chris McCaffrey, who will have at least one rushing and one receiving touchdown.

This year's Super Bowl will be watched by over 100 million viewers – and you can be sure that number will include many of your employees. They'll tune in to watch the game, the commercials, the halftime show, or just a glimpse of [Taylor Swift](#). Regardless of the reason, your employees will likely be excited about the event and may participate in activities before, during, and after the big game. Will they be placing bets? Donning their team's gear? Engaging in banter? Calling out "sick" on Monday? Attending the championship parade?

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Here are four key tips to help you prepare for these scenarios so you can win Super Bowl Sunday regardless of the outcome.

## Managing Productivity

Super Bowl week is notorious for decreasing productivity. Sports fans will spend the week leading up to the game reading about the teams, texting their Mahomies with analyses and predictions, posting about the game on social media, watching videos, planning parties, and even betting on games – often on employer-owned devices. Indeed, the work slowdown in the week before the Super Bowl could cost employers **over \$6.5 billion in lost productivity**, according to estimates from consulting firm Challenger, Gray, and Christmas.

The best practice is to **enforce productivity standards** in the days leading up to the game just like any other business day. Employees inevitably spend part of every working day on personal business, such as running errands, shopping online, making personal calls, texting friends and family, or chatting with co-workers. Recognizing this reality, most companies ultimately care about whether employees are completing their work according to company standards. Generally, maintaining a happy workforce – particularly for salaried workers – is the key to maintaining a productive workforce, so micromanaging employees to make sure they are not distracted during Super Bowl week is not a Purdy good idea.

Of course, many hourly workers and employees in certain industries may need to operate without distractions and all employees are expected to continue working diligently at all times while on the clock. No matter your situation, make sure to consistently enforce your productivity standards and associated policies for the win.

## Dress Codes and Appropriate Workplace Conduct

While Las Vegas' Allegiant Stadium will be a sea of burning red jerseys on Super Bowl Sunday, you may want to **address your company's dress code** in the days leading up to the game – especially if your offices are located in the Kansas City or San Francisco areas. Employers who allow workers to show up to work rocking a Patrick Mahomes or Brock Purdy jersey, or otherwise dress in their team's apparel,



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should clearly communicate what attire is permitted in the workplace.

Employees should understand that they are still required to dress appropriately while supporting their team. While you may not physically see many of your remote workers, you should be clear in your communications that the same dress code applies to those who plan to appear virtually for internal or external meetings or will otherwise be representing your company outside of their remote conditions during work hours. It is also important that employers consider any safety concerns related to workplace attire that may arise based on the type of work being conducted.

Regarding **appropriate workplace conduct** in the days leading up to the Super Bowl and even the week following the game, it is especially important that employers maintain a professional and safe workplace. Employers and sports fanatics alike know all too well how heated discussions between die-hard fans can get. Particularly if you have employees who are rooting for opposing teams, you may want to remind them to keep their banter professional so that it does not escalate to toxic discord in the workplace. All policies on work-appropriate conduct still apply and should be enforced uniformly to avoid disparate treatment that could lead to a discrimination claim.

### **Before You Go All In, Review and Communicate Your Workplace Gambling Policy**

This year, Super Bowl LVIII is being played in Las Vegas, Nevada – the gambling capitol of the world. And while most office square pools will not have the glitz, glamour, and stakes of Sin City’s sports books, many employees look forward to office pools during Super Bowl season to bond with their fellow employees and hopefully walk away with their own prize at the end of the game. However, **betting on the big game** could be a big gamble in the workplace.

Several federal laws prohibit wagers on sporting events, and the actions become much riskier if workers place bets across state lines. On the local front, numerous states currently have exemptions to their laws that permit some form of betting pools, like your standard office squares. Most states allow “social” gambling, which includes the organizer not keeping a portion of the pool money and instead paying out all of the money in winnings, the pool

being limited to people who all the participants know, and the dollar levels remaining relatively low.

However, before employers go all in, other states still prohibit real money pools. For example, [California prohibits people](#) from participating in any kind of betting pool. The severity of the penalty [depends on the amount of the pool](#). In practice, however, these laws are rarely enforced.

Still, the possibility always remains for a disgruntled employee who did not hit the jackpot to yell “Aiyukidding Me?!” and inform the authorities. Some workers might feel pressured to join despite personal or religious objections they have to gambling, or they might not feel like they can afford to join in. Additionally, some of your workers might have some [“bad blood”](#) and not react well to losing money to a co-worker, leading to toxicity in the workplace. However, you should be more concerned about problems that can befall an office when large amounts of cash are floating through the building.

In order to address this situation, you should **develop a policy addressing gambling in the workplace** and enforce it consistently. If you already have a policy in place, now would be a good time to review it and send a reminder to your employees. And with 38 states, Puerto Rico, and Washington, D.C., legalizing online sports betting (California and Missouri, home of the AFC Champion Kansas City Chiefs, have not as of publication), you might want to consider whether your workers are permitted to use company devices to access gambling sites or apps to place that “Christian McCaffrey to score a TD” bet. By reinforcing the rules that you believe are best for your business, you reduce the likelihood of receiving any violations.

Still looking for a fun way to get your employees excited for this Super Bowl rematch? As an easy solution to many of these problems, you may want to consider starting a voluntary workplace pool that requires no entrance fee. You can buy prizes with company funds and hand them out to the winners, turning what could be a problematic event into a morale booster. You can also do this for plenty of other moments in the big game, like for people who correctly predict the first song Usher will perform during his halftime show.

## **After Time Expires: Monday Morning Hangovers and the Championship Parade**

Looking ahead to the day after the game – or perhaps a few days after the game if your city is hosting the championship parade and rally – you should prepare for some inevitable unapproved absences and workers arriving late. In recent years, surveys have shown that as many as 20 million workers can be expected to take the following Monday off, with only about half of those planning to use a pre-approved day off. Another 10 million or so employees will likely start work later than normal the day after the Super Bowl. And most employers know that unscheduled absences are far costlier to a business than planned time off.

The ones who do show up are often distracted by tales of glory, rehashing the officiating and play calling, re-watching highlights from the game (or their favorite commercials), reviewing blogs and media stories about the biggest plays on the field, or nursing their hangovers. All of this adds up to diminished productivity.

For those who manage to stumble into the office – or log in remotely – make sure to **enforce your productivity standards** just like you did in the days leading up the game, allowing some realistic forbearance on Monday morning. If you employ workers in jobs that include safety-related duties, monitor to ensure a “case of the Mondays” isn’t the continuation of a late celebration that might require further investigation. And if you happen to work in the city of the losing team, feel free to cut your workers some slack and let them wallow in misery for a few hours.

As for the absent employees or the latecomers, you will want to enforce your attendance policies consistently. At the same time, you should keep in mind any state or federal leave laws that might protect absent workers or add administrative requirements before you can take disciplinary action. Where allowed and if consistent with your policy and practice, you should consider requiring “sick” employees to provide medical certification documenting the reasons for their absence, which may dissuade workers from trying to pull one over on you. If you operate in a state with a paid sick leave law, you should consult your state’s law to ensure that it does not restrict such a request. Above all, be consistent in how you handle the winners, the losers, and those who just found a reason to celebrate.

## Conclusion

Following these steps should help you avoid employment fumbles and enjoy the Super Bowl this year instead of worrying about the impact it will have on your workplace. We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Sports Industry Practice Group](#).