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Justice Department and Federal Trade Commission Release Guidance for Human Resource Professionals on How Antitrust Law Applies to Employee Hiring and Compensation

Guidance Helps Protect Workers Against Anticompetitive Conduct and Puts Firms on Notice that DOJ Will Proceed Criminally Against Naked Wage Fixing and No-Poaching Agreements

Today, the Justice Department's Antitrust Division and the Federal Trade Commission issued guidance for human resource (HR) professionals and others who are involved in hiring and compensation decisions. HR professionals are often in the best position to ensure their companies' hiring practices comply with the law and this guidance will help educate and inform them about how the antitrust laws apply to the employment arena.

Workers are entitled to the benefits of a competitive market for their services. They are harmed if companies that would ordinarily compete against each other to recruit and retain employees agree to fix wages or other terms of employment or enter into so-called "no-poaching" agreements by agreeing not to recruit each other's employees.

Going forward, the Justice Department intends to criminally investigate naked no-poaching or wage-fixing agreements that are unrelated or unnecessary to a larger legitimate collaboration between the employers. These types of agreements eliminate competition in the same irredeemable way as agreements to fix the prices of goods or allocate customers, which have traditionally been criminally investigated and prosecuted as hardcore cartel conduct. Agreements that do not constitute criminal violations may still lead to civil liability under statutes enforced by both agencies.

"Antitrust violations in the employment arena can greatly harm employees and impact earnings over the course of their entire careers," said Acting Assistant Attorney General Renata Hesse of the Justice Department's Antitrust Division. "HR professionals need to understand that these violations can lead to severe consequences, including criminal prosecution. The newly released joint guidance provides HR professionals with information to prevent violations and report potentially unlawful activity, furthering the Justice Department's commitment to protect workers from harmful conduct that stifles competition."

"Competition is essential to well-functioning markets, and job markets are no exception," said Chairwoman Edith Ramirez of the Federal Trade Commission. "These guidelines will help ensure that employers understand how to comply with the antitrust laws and will help employees reap the benefits of a competitive market for their services."

The guidance also discusses how the antitrust laws apply to firms' decisions to share sensitive information, such as compensation information, with competing employers, either directly or through third party entities. Information sharing may violate antitrust law unless the information exchange is carefully designed to prevent harm to competition.

The agencies' joint guidance includes a Q&A section that explains how antitrust law applies to various scenarios that HR professionals might encounter in their daily work lives. The agencies also urge HR professionals and others who have information about possible antitrust violations to contact the Justice Department Antitrust Division's Citizen Complaint Center or the Federal Trade Commission's Bureau of Competition.

The agencies have also issued a [quick reference card](#) that encapsulates some of this information in a convenient, index-card-sized format. The card provides a list of antitrust red flags that HR professionals should look out for during their day-to-day work. The listed situations are not exhaustive, and the existence of a red flag does not necessarily imply an antitrust violation. Still, HR professionals should proceed with particular caution if they are confronted with any of the scenarios listed on the card. By doing so, HR professionals can play an important role in protecting employees and consumers and ensuring the competitiveness of the employment marketplace.

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