axinn

Axinn Antitrust Insight: DOJ Continues Criminal Enforcement in Labor Markets

PUBLICATIONS | 2 MIN READ

April 6, 2021
Axinn Update

The U.S. Department of Justice Antitrust Division continued its crackdown on employer wage fixing and no-poach agreements on March 30 with a new set of criminal indictments in Nevada, three months after the first such criminal prosecutions in December 2020 and January 2021. These prosecutions follow a warning in DOJ and FTC's October 2016 Antitrust Guidance for Human Resources Professionals that DOJ would begin bringing criminal charges for such agreements.

No-poach agreements, in which employers agree not to recruit or solicit one another's employees, have been a growing enforcement priority for the past decade. During that time, the concern with and focus on labor-facing agreements has ramped up considerably.

In the latest case, DOJ indicted a health care staffing company, then known as Advantage On Call LLC, and a former manager who allegedly agreed with a competitor not to recruit or hire school nurses from one another's ranks for Las Vegas public schools. The first two criminal cases in labor markets also involved relatively small companies in the health care industry, focusing on a physical therapist staffing company and senior employees at outpatient medical care centers.

As the scope of DOJ's efforts in labor markets expands, it is critical that employer compliance and training programs reflect this growing focus. While most business people understand that

there are laws against price fixing and collusion in sales and marketing activities, awareness of antitrust risks among human resources activities can be less intuitive. If employers learn of past or existing no-poach or wage-fixing agreements, they should consult antitrust counsel immediately and discuss the best approach for coming into compliance and mitigating their exposure for past conduct.

Companies responding to compulsory process from the government, such as Second Requests, subpoenas, and civil investigative demands, also should be aware that evidence of agreements restricting labor competition may lead to a follow-on investigation. DOJ recently added language to its forms making clear that documents produced to it may be used in other civil or criminal proceedings, as has been its longstanding practice.

But no industry is immune from scrutiny or criminal prosecution in this area, and the cases to date make clear that there is no market power or size threshold for investigations and prosecutions. Employers of all types and sizes should thus take care to ensure widespread understanding of the consequences for such agreements, especially among HR personnel. Other recent FTC and DOJ developments:

- Axinn Antitrust Insight: FTC Challenges Illumina's Acquisition of Grail
- Axinn Antitrust Insight: FTC Launches Multinational Group to Tackle Pharmaceutical Deals

Related Services

Antitrust

To subscribe to our publications, click here.

Featured Insights

- American Bar Association 2025 Asia-Pacific Conference
  SPEAKING ENGAGEMENT **ANTITRUST**
- NBA Commercial Law Section 38th Annual Corporate Counsel Conference
  SPONSORSHIP **ANTITRUST**
- GCR Live: Law Leaders Global 2025
  SPEAKING ENGAGEMENT **ANTITRUST**

- The 32nd Annual Marketing Partner Forum
  EVENT

- SABA North America Corporate Counsel Retreat 2025
  SPONSORSHIP **ANTITRUST**

- Axinn Antitrust Insight: FTC Announces Revised HSR Thresholds for 2025
  CLIENT ALERTS **ANTITRUST**

- Four Axinn Thought Leadership Pieces Nominated for the Antitrust Writing Awards
  AWARDS & RECOGNITIONS **ANTITRUST**

- Merger Remedies Back in Vogue Under Trump
  MEDIA MENTIONS **ANTITRUST**

- Three Takeaways from the Initial Determination at the ITC Regarding Standard Essential Patents in the 1380 Investigation
  AXINN VIEWPOINTS **INTELLECTUAL PROPERTY**

- A POSA's Motivation Is Not Required To Be the Same as the Inventor's in Evaluating Obviousness
  AXINN VIEWPOINTS **INTELLECTUAL PROPERTY**