

CLIENT ALERT

DOJ Makes Good on Its Vow to Bring More No-Poach Prosecutions

April 2, 2021

This week, a federal grand jury in Las Vegas, Nevada returned an indictment charging a health care staffing company and one of its former managers with entering into an unlawful agreement with a competing staffing company to allocate employee nurses as well as to fix nurses' wages. This indictment comes on the heels of recent statements by Acting AAG Richard Powers and others in Antitrust Division leadership that the DOJ will continue to aggressively crack down on what it believes are unlawful no-poach agreements, and signals a continued focus both on no-poach and related issues as well as the healthcare industry more broadly.

The one-count felony indictment alleges that a former manager of VDA OC LLC (formerly Advantage On Call LLC), agreed with a co-conspirator not to recruit or hire nurses from each other at Clark County School District facilities and to refrain from raising the wages of those nurses. During the time of the alleged conspiracy (approximately October 2016 to July 2017), Advantage was one of two primary providers of contract nursing services to Clark County School District. This is the second criminal wage fixing enforcement action to target staffing companies in the healthcare industry, and the most recent in a string of prosecutions of healthcare companies.

DOJ brought its first prosecutions against wage fixing and no-poach agreements in the waning days of the Trump administration, and in the months since has continued to double down on antitrust and HR issues. Marvin Price, Jr., the Antitrust Division's Director of Criminal Enforcement, said last week at a conference that the DOJ would bring more criminal cases focused on the labor markets this year and explained that "it doesn't matter whether you're talking about agreements in the fixing of wages or agreements that allocate workers, the same result occurs which is basically taking money out of the pockets of American workers and lining the pockets of the conspirators." Acting AAG Powers also reiterated that the Division was not waiting on new leadership to make bold moves in this space, and vowed that DOJ will continue to bring cases and move investigations forward pending the appointment of a permanent AAG.

The indictment serves as yet another reminder for companies to ensure that their compliance programs are current, robust, and tailored. In particular, ensure that employees responsible for HR activities or staffing contracts are trained on the potential antitrust risks associated with recruiting and hiring of employees, as well as discussions with other companies regarding employee wages and benefits.

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