

DOJ Continues Crackdown on No-Poach-Agreements

The Department of Justice (DOJ) is continuing its crackdown on alleged “no poach” or “wage fixing” market collusion between competitors.

Last week, DOJ announced charges against four individuals operating home health care agencies in Maine. According to DOJ, the four defendants, whose companies are unnamed in the indictment, agreed to fix pay rates for certain types of employees and not to hire each other’s workers to avoid competition. As a result of the wage-fixing and no-poach agreements, the indictment charges each defendant with a single count of felony conspiracy in violation of Section 1 of Sherman Act.

A Colorado district court also held this week that DOJ’s theory of prosecution in a “no-poach” case passed legal muster. In *USA v. Davita, Inc., et al.*, the court held that non-solicitation agreements between competitors were a form of illegal horizontal market allocation. As to the lack of precedent on the matter, the court explained that “as violators use new methods to suppress competition by allocating the market or fixing prices, these new methods will have to be prosecuted for a first time.”

DOJ’s press release regarding the indictment of the home health care agencies can be found [here](#), and the court’s opinion and order denying the defendant’s motion to dismiss in *USA v. DaVita, Inc., et al.* can be found [here](#).

The takeaway of these recent developments for the business community is clear: Expect that DOJ will continue its efforts to prosecute agreements between different companies on competitive hiring terms (including salary, benefits, and circumstances in which hiring is permitted). Violations for conspiracy to restrain trade under the Sherman Act bring severe criminal penalties of up to 10 years imprisonment and \$1 million in fines for individuals. It is imperative for business leaders to be proactive in determining whether any employees participated in anticompetitive agreements and to implement necessary compliance programs. Experienced counsel can assist businesses in navigating this rapidly changing landscape.



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