

DOJ Antitrust Targets (Again) No-Poach Hiring Agreements

Last week, the U.S. Department of Justice reiterated its strong message to the business community: Be very careful with no-poach hiring agreements.

DOJ unsealed criminal charges on Thursday against a former director of global engineering services at Pratt & Whitney (Mahesh Patel). According to DOJ, Patel and executives of Pratt & Whitney's suppliers allegedly agreed not to recruit each other's engineers and skilled workers. DOJ has warned companies that these types of agreements may unlawfully limit employee wages and constitute an illegal restraint of trade under Section 1 of the Sherman Act.

DOJ's recent acceleration in **criminal** prosecution of no-poach agreements has considerably raised the stakes. This year alone, the DOJ has brought three criminal cases against (i) Surgical Care Affiliates, (ii) Ryan Hee and Advantage On Call, as well as (iii) DaVita, Inc. and its former CEO Kent Thiry for no-poach agreements, and, in the latter two cases, corresponding wage fixing agreements. In-house counsel would serve their companies well by investigating whether any of their personnel have participated in any such agreement.

Moreover, Patel's arrest demonstrates DOJ's desire to reach deeper within companies — beyond just the C-suite executives who often negotiate these agreements — to police anticompetitive misconduct. Specifically, these charges signal DOJ's interest in prosecuting criminally employees who operated within large companies to *enforce* these agreements. Although not part of the C-suite within Pratt & Whitney, Patel served as an intermediary between the company's suppliers and ensured that each member of the conspiracy abided by the no-poach agreement.

The criminal charge against Patel can be found [here](#), and DOJ's press release is [here](#).

The Patel charges are another powerful demonstration of DOJ's commitment to prosecuting illegal restraints of trade in the labor market. These agreements are squarely in the cross-hairs of criminal prosecutors at DOJ. Counsel can protect themselves and their companies' interests by determining, before a DOJ subpoena, whether any of its employees participated in an anti-competitive no-poach agreement.

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