

Blog Post

DOJ/FTC Issue Warning to Healthcare Industry Regarding Anticompetitive Conduct Against Employees During the COVID-19 Crisis

April 15, 2020

While this period of crisis due to the pandemic has led competitors to cooperate, the crisis does not serve as an excuse for anticompetitive conduct. The Department of Justice Antitrust Division (the Antitrust Division) and the Federal Trade Commission (the FTC and with the Antitrust Division, the Agencies) have issued a warning to the healthcare industry that, while combatting the COVID-19 crisis may require unprecedented cooperation among competitors, the crisis cannot excuse conduct that causes anticompetitive harm to workers, including doctors, nurses and other first responders.

As set forth in an April 13 announcement, the Antitrust Division and the FTC recognize that many individuals and businesses “have demonstrated extraordinary compassion and flexibility in responding to COVID-19.” However, they cautioned that others “may use it as an opportunity to prey on American workers by subverting competition in labor markets.” Accordingly, the Agencies stated that they intend to be “on alert” for practices that cause harm in employment markets, including agreements to lower wages or reduce salaries or hours worked by healthcare industry employees. In addition, the Agencies also explained that “naked” wage-fixing

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and “no-poach” agreements will be prosecuted criminally, and that even mere “invitations to collude” on these subjects may be pursued civilly. To assist the Agencies in identifying potentially unlawful conduct, they have requested that anyone with information about any efforts to cause harm to competition in labor markets email the Antitrust Division’s Citizen Complaint Center at antitrust.complaints@usdoj.gov and the FTC’s complaint center at antitrust@ftg.gov.

A copy of the Agencies’ announcement can be found [here](#).

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.