

Employers Beware: Recent Developments in Employee No-Poaching Agreements

by Michael A. Lindsay, Nathan Alexander, Jonathan M. Herman, Jaime Stilson, Anthony P. Badaracco, and Nathan J. Ebnet

No poaching agreements among employers continue to make antitrust news, and employers and their HR professionals need to take note. Whether or not a particular agreement has a valid purpose (such as protecting an employer's investment in employee training), no-poaching agreements limit competition for workers and (according to critics) suppress wages. Where the agreement is not reasonably related to any legitimate business relationship between the parties, courts have condemned the agreements as per se illegal—and the U.S. Department of Justice has stated that it will prosecute them as criminal violations in appropriate cases. State attorneys general and private plaintiffs have challenged agreements between franchisors and franchisees as per se antitrust violations or “quick look” violations, although recent statements of interest filed by the Justice Department in private litigation cast doubt on those theories. The topic will only get hotter: the New York legislature is considering a bill to make all no-poaching agreements (including in franchise agreements) between employers illegal, and several presidential candidates (including Joe Biden, Corey Booker, and Elizabeth Warren) have called for similar federal legislation.

Click [here](#) for the most recent article from Dorsey's No-Poaching Agreements Task Group on the latest developments in no-poaching litigation. The task group includes attorneys in New York, Seattle, and Minneapolis: Nathan Alexander, Rebecca Bernhard, Jonathan Herman, Anthony Badaracco, Nathan Ebnet, Michael Lindsay, James Nichols, Erik Ruda, and Jaime Stilson.

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