

FTC and DOJ on Alert for Anticompetitive Employer Agreements Regarding COVID-19 Frontline Workers

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On April 13, 2020, the Department of Justice's (DOJ) Antitrust Division and the Federal Trade Commission's (FTC) Bureau of Competition jointly released a [statement](#) emphasizing the agencies' continued commitment to protect labor market competition including during the COVID-19 pandemic and warning employers against entering agreements limiting the wages of, and free market for, employees.

The DOJ and FTC have in recent years made pursuing illegal agreements in labor markets an enforcement priority, including targeting wage-fixing and no-poach agreements. The April 13, 2020 DOJ and FTC statement highlights the special attention that the agencies are paying to the labor markets for doctors, nurses, first responders, and those who work in grocery stores, pharmacies, and warehouses. The agencies expressly warn that COVID-19 does not provide a reason to tolerate anticompetitive conduct against these essential workers and service providers on the front lines of the coronavirus crisis.

The agencies are on alert for employers, staffing companies (including medical travel and locum agencies), and recruiters, among others, who engage in collusion or other anticompetitive labor market behavior such as unlawful wage-fixing and no-poach agreements. This anticompetitive behavior need not actually be successful; the agencies note that they may pursue enforcement against any companies and individuals that so much as invite others to collude in responding to COVID-19.

For corporations and in-house compliance teams, this new announcement is another clear warning to conduct business carefully and within the bounds of antitrust law. Although certain agreements concerning employees may be permitted related to legitimate collaboration between employers, any agreements involving the hiring, recruiting, retention, or placement of workers is likely to receive heightened attention at this time. Winston lawyers regularly counsel clients on these issues and are available to advise concerning how to avoid the risk of civil and/or criminal antitrust liability.

In sum, as discussed in recent Winston [posts](#) and [podcasts](#), the COVID-19 pandemic provides no excuse for cartels or other anticompetitive behavior.

If you have further questions, contact your Winston relationship attorney for more information. View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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