

## DOJ Gets Its First Criminal Indictment for Wage Fixing

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The Department of Justice (DOJ) recorded its first criminal indictment for wage fixing on December 9, 2020. The two-count indictment was filed in the Eastern District of Texas against Neeraj Jindal for his alleged participation in a conspiracy to fix the wages of physical therapists and physical-therapy assistants providing at-home care in mid to late 2017.<sup>[1]</sup> According to the indictment, Jindal—the former owner of a therapist-staffing company—was charged with a *per se* violation of Section 1 of the Sherman Act for knowingly entering into a conspiracy with owners of competing therapist-staffing companies to suppress competition by sharing nonpublic pay rates, discussing pay decreases, and subsequently implementing agreed-to wages to avoid paying competitive rates for physical therapists and physical-therapy assistants. Jindal had previously agreed to settle charges related to this matter with the Federal Trade Commission (FTC) in 2018,<sup>[2]</sup> and he is also charged with obstruction for allegedly making false statements and withholding information from the FTC during its investigation.

The DOJ and FTC have been focused on protecting employees from anticompetitive behavior since at least 2016, when the agencies jointly issued Antitrust Guidance for Human Resource Professionals (Guidance), alerting employers to the antitrust risks associated with wage-fixing and no-poach agreements.<sup>[3]</sup> The Guidance specifically warns competing employers against entering into anticompetitive agreements that will limit or fix individual-firm decision-making with regard to wages, salaries, or benefits as well as terms of employment or job opportunities. The Guidance also makes clear the DOJ's intention to criminally investigate and prosecute wage-fixing and no-poach violations that either began or continued after the Guidance was issued.

While state attorneys general and private plaintiffs have been actively pursuing wage-fixing and no-poach agreements since 2016, Jindal's indictment is the first of its kind for the DOJ. His ongoing criminal prosecution also confirms that the COVID-19 pandemic will not deter the DOJ from prosecuting criminal antitrust matters, which—to the contrary—seem likely to increase with pandemic-related situations coming to light. Indeed, the DOJ and FTC have already announced that they are on high alert for employer collusion limiting competition for healthcare workers on the front lines. (See [here](#) for our prior Competition Corner blog post on the joint statement by the DOJ and FTC emphasizing the agencies' continued commitment to protecting labor-market competition during the pandemic.)

Companies and individuals charged in any criminal wage-fixing or no-poach investigations could face significant penalties and fines. A violation of the Sherman Act carries a statutory maximum penalty of ten years in prison and a

\$1 million fine for individuals. Additionally, for Jindal, the charged offense of obstructing the FTC investigation carries a statutory maximum penalty of five years' imprisonment and an added \$250,000 fine. Jindal will now have an opportunity to enter a plea. A guilty plea could result in the imposition of a plea bargain reached with the government. If Jindal pleads not guilty, the case will proceed with discovery and other pretrial processes.

For more information on no-poach considerations, see [here](#) for our prior Competition Corner blog post on the FTC's focus on no-poach and noncompete provisions in evaluating mergers or acquisitions and [here](#) for our blog post on the standard of review being applied by courts to no-poach agreements, specifically in the franchise context.

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<sup>[1]</sup> See Dep't of Justice, Press Release, Former Owner of Health Care Staffing Company Indicted for Wage Fixing (Dec. 10, 2020), *available at* <https://www.justice.gov/opa/pr/former-owner-health-care-staffing-company-indicted-wage-fixing>.

<sup>[2]</sup> See Fed. Trade Comm'n, Press Release, Therapist Staffing Company and Two Owners Settle Charges that They Colluded on Rates Paid to Physical Therapists in Dallas/Fort Worth Area (July 31, 2018), *available at* <https://www.ftc.gov/news-events/press-releases/2018/07/therapist-staffing-company-two-owners-settle-charges-they>.

<sup>[3]</sup> Dep't of Justice, Antitrust Div. & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals, *available at* <https://www.justice.gov/atr/file/903511/download>.

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