

# Unpacking Antitrust No-Poach Agreements: Navigating Legal and Economic Dimensions in Depth

OCTOBER 27, 2023, 1:00 PM - 2:00 PM ET

On October 27, 2023, partner Kevin Goldstein presented a CLE webcast titled “Unpacking Antitrust No-Poach Agreements: Navigating Legal and Economic Dimensions in Depth” hosted by The Knowledge Group.

This program addressed the intricacies surrounding no-poach agreements, their legal implications, and economic ramifications. It covered the perspective of U.S. antitrust enforcers on no-poach agreements and recent criminal developments, as well as the global trend toward heightened antitrust scrutiny of labor markets. The discussion also included practical tips and strategies for understanding when labor restrictions are permissible and how to draft agreements and manage teams to minimize antitrust risk.

## KEY TAKEAWAYS FROM THE PROGRAM INCLUDE:

- Antitrust claims involving restrictions on workers—such as no-poach, no-solicit, and noncompete agreements—have become a major focus of US antitrust government enforcement and private litigation in recent years, particularly since the US DOJ’s 2016 announcement that it would begin criminal prosecution of certain no-poach and wage-fixing agreements. The trend continues to grow.
- Now that several of the early no-poach cases have wound their way through the litigation process, businesses can assess their risks and adapt their compliance practices by looking to a growing body of case law, including rulings on dispositive motions and class certification, and trial outcomes. However, key questions remain unsettled and are increasingly being litigated in the appellate courts—these unsettled questions include fundamental questions such as the legal standard to evaluate when labor restrictions may be considered “ancillary” to a broader legitimate collaboration and justified as procompetitive.
- Restrictions on poaching or solicitation can be lawful in a variety of circumstances, but businesses should tread carefully and ensure that any such restraints are reasonably necessary to facilitate a broader collaboration, narrowly tailored to their purpose, and justified by procompetitive benefits that include benefits to the affected workers, such as facilitating additional employment opportunities or training.
- Businesses seeking to manage their risk should work closely with antitrust counsel to:
  - **Investigate** – Identify and end unnecessarily risky agreements. Audit existing agreements for express labor restrictions. Interview HR and key hiring executives to determine if informal no-poach agreements,

understandings, or practices exist.

- **Train** – Provide guidance specific to antitrust labor issues, especially to HR and executives involved in hiring or contracting.
- **Consider Alternatives** – Question if labor restrictions are necessary in each case. If so, explore alternatives to no-poach agreements that could accomplish the underlying goal, such as unilateral policies or agreements directly with employees, instead of agreements with competing employers.
- **Maximize Defensibility** – In those cases where you conclude a no-poach or other labor restriction is necessary as an ancillary restraint, take steps to give your company the best and cleanest defense if challenged. Consult with experienced antitrust counsel before entering any agreement.

[Watch a recording of the program here.](#)

2 Min Read

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## Speaker

[Kevin B. Goldstein](#)

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## Event Information

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## Related Capabilities

Antitrust/Competition

Labor & Employment

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## Related Professionals



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