WINSTON & STRAWN LLP

CLIENT ALERT

DOJ Antitrust Division Confirms Criminal "No Poach" Cases Expected Soon

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The head of the U.S. Department of Justice's (DOJ) Antitrust Division, Assistant Attorney General Makan Delrahim, announced on January 19th that the Antitrust Division is currently working on criminal cases concerning so-called "no-poach" agreements in which companies agree not to hire each other's employees. As Winston previously reported, the Antitrust Division announced a new policy in October 2016 putting companies on notice that it intended to proceed criminally against naked wage-fixing and no-poach agreements among employers. Specifically, the guidance informed HR personnel that "agreements among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision making with regard to wages, salaries, or benefits, terms of employment, or even job opportunities."

Delrahim's Friday announcement dispelled speculation that this policy shift would not be pursued under the Trump administration. Delrahim further confirmed that conduct predating the 2016 policy announcement would still be pursued criminally if the activity continued since the time the new policy was announced. Delrahim noted that announcements concerning criminal no-poach cases could be coming within just a couple of months, adding that he has "been shocked about how many of these there are."

Additional information pertaining the Antitrust Division's October 2016 policy and potential criminal enforcement in this area can be found here. Should you have any questions concerning potential liability for wage-fixing of no-poach agreements or receive a subpoena, please contact one of the Winston attorneys list below.

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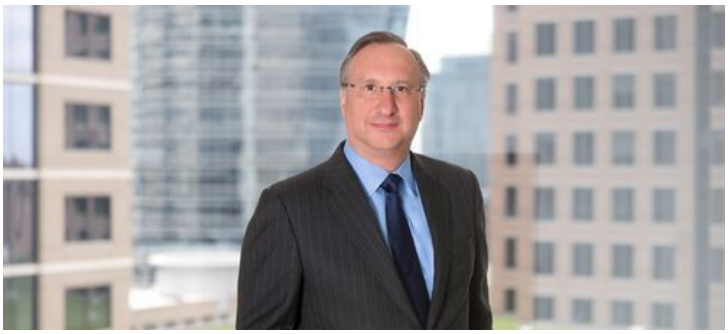

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