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DOJ Brings First Criminal Wage Fixing Complaint

On December 10, 2020, the Antitrust Division of the U.S. Department of Justice announced the indictment of Neeraj Jindal, a former owner of a therapist staffing company, for a criminal conspiracy to fix wages paid to physical therapists and assistants in north Texas.

The two-count indictment alleges 1) a conspiracy to suppress wage competition in violation of Section 1 of the Sherman Act and 2) obstruction of the Federal Trade Commission's earlier investigation of the same conduct. This indictment is part of the DOJ's years-long initiative to prosecute anticompetitive conduct in labor markets and is the first criminal wage-fixing prosecution brought by the DOJ.

In October 2016, the DOJ and the FTC released their joint *Antitrust Guidance for Human Resource Professionals*, alerting employers of potential antitrust violations in hiring and compensation decisions. The Guidance expressly cautioned against "no poach" agreements and wage-fixing agreements between companies seeking to hire from the same pool of potential employees. In addition, DOJ announced that it would pursue such actions criminally.

In the intervening years, the DOJ has repeatedly filed statements of interest in private no-poach lawsuits, arguing that naked, horizontal no-poach agreements between rival employers should be considered per se illegal. In conjunction with these activities, the DOJ continued to note that antitrust violations in the labor market may be subject to criminal enforcement.

According to the indictment, Jindal and co-conspirators, including the owner of a competing staffing therapist company, exchanged wage information, agreed to decrease wages and implemented wage decreases in accordance with an agreement during the first half of 2017. Jindal and others were the subject of an FTC unfair competition investigation as set out in a administrative complaint filed in July 2018 and ultimately resolved in an October 2019 consent agreement. Commissioner Chopra dissented in the settlement, criticizing the settlement as "weak" and recommending monetary penalties and a formal admission of liability along with other penalties.

The DOJ indictment alleges that Jindal made statements and provided documents that were false and misleading during the FTC investigation. The indictment alleges that Jindal testified falsely and misleadingly during FTC investigational hearings.

Commissioner Slaughter, who voted in favor of the settlement, noted in her statement that she believed that criminal sanctions were the most effective remedy in a wage-fixing case and that the FTC's authority is of course limited to civil sanctions. The DOJ has now followed through along the lines of Commissioner Slaughter's statement as well as the DOJ's repeated admonitions that criminal prosecutions would be forthcoming in labor market investigations. Employers should be aware that criminal sanctions for labor market antitrust violations are now officially on the table.

Takeaways

- Despite announcing in 2016 that it would purse wage fixing and no poach agreements criminally, it was unclear whether DOJ would ever bring a criminal indictment for such action. Now that it has brought its first criminal indictment for wage fixing, companies should beware of future indictments for such conduct.
- The DOJ's action also serves as an important reminder for companies to ensure that their compliance programs are current, comprehensive, and effective, and ensure that employees responsible for HR activities are appropriately trained on the antitrust risks associated with HR practices.