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Client Alert

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Federal Judge Throws Out DOJ's No-Poach Case

Last week, U.S. District Judge Victor A. Bolden dismissed a case brought by the U.S. Department of Justice ("DOJ") against several aerospace engineering bosses for alleged anticompetitive use of no-poach agreements. This case marks an important milestone in the DOJ's recent push to contest recruitment and hiring restrictions through criminal prosecution. In March, Assistant Attorney General Jonathan Kanter remarked that no-poach prosecutions are "righteous cases" that should be brought to protect vulnerable workers.[1] The DOJ argued that the defendants formed a criminal no-poach agreement by which they allocated employees between them.[2]

Judge Bolden found that the DOJ did not submit sufficient evidence of worker market allocation. On the contrary, the court found that workers were able to switch between companies during the time of the alleged conspiracy.[3] While the court found evidence of some sporadic restrictions, any such restrictions were so inconsistent that a claim of market allocation was unfeasible. As such, "meaningful competition" existed throughout.[4] "Restrictions shifted constantly throughout the course of the conspiracy," the court found, and "[h]iring among the relevant companies was commonplace," therefore no reasonable jury could find market allocation.[5]

Judge Bolden held that even had an agreement existed, the DOJ failed to show that such an agreement would amount to market allocation and therefore constitute a per se violation of the antitrust laws. The Judge noted that any engineers subject to the purported restrictions had plenty of opportunities to move. Indeed, the court dismissed the DOJ's claim of market allocation as an attempt to "expand the common and accepted definition of market allocation in a way not clearly used before."[6] As such, the court found, "it is not a market allocation agreement as a matter of law."[7]

This case is one of many recent efforts by the DOJ to combat alleged antitrust violations affecting labor markets. Despite the DOJ's prioritization of labor markets, however, it has not found success in the

courtroom when bringing these cases.[8] These losses, along with Judge Bolden's decision not to submit the case to the jury, should provide beneficial precedent to defendants in cases where the facts evidence behavior contrary to an illegal agreement (e.g., employees moving between employers). Nevertheless, the DOJ remains committed to pursuing no-poach cases, and therefore companies should consult with antitrust counsel when contemplating labor restrictions.

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[1] Bryan Koenig, *DOJ Antitrust Head Calls No-Poach Prosecutions 'Righteous,'* Law360 (Mar. 31, 2023), https://www.law360.com/articles/1592488.
[2] *See generally* Ruling and Order on Defendants' Motions for Judgment of Acquittal, *United States v. Patel*, No. 3:21-cr-220, LAW360 (D. Conn. Apr. 28, 2023).
[3] *See generally id.*
[4] *Id.* at 12, *citing United States v. DaVita Inc.*, No. 1:21-cr-00229, 2022 WL 1288585, at *3 (D. Colo. Mar. 25, 2022).
[5] *United States v. Patel*, No. 3:21-cr-220 at 14, 18.
[6] *Id.* at 18 n. 7.
[7] *Id.* at 18.
[8] *See, e.g.*, Norman Armstrong et. al., DOJ's Recent Loss in Antitrust Labor Case Highlights Ongoing Focus on Alleged Healthcare Labor Market Restrictions, KING & SPALDING LLP (Mar. 27, 2023), https://www.kslaw.com/news-and-insights/dojs-recent-loss-in-antitrust-labor-case-highlights-ongoing-focus-on-alleged-healthcare-labor-market-restrictions.