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FTC and DOL Memorandum of Understanding Increases Agency Tools for Aggressive Enforcement

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The Federal Trade Commission (FTC) and Department of Labor (DOL, together “the Agencies”) signed a Memorandum of Understanding (MOU) to join forces to combat anticompetitive practices in the labor market. Under the MOU, the Agencies will work closely together to share information, refer “potential violations” to each other, coordinate on investigations and conduct joint staff training. FTC Chair Lina M. Khan promised to use the MOU to “work collectively to tackle illegal conduct that suppresses wages, reduces access to good benefits and working conditions, and stifles economic liberty for workers across the economy.”¹

Under the MOU, the Agencies will coordinate on investigative and enforcement actions, potentially including joint consultation on complaints. The Agencies will work together to educate their employees about cases and conduct that could fall into each Agency’s jurisdiction, and potentially develop joint policy statements and technical assistance documents.

The Agencies will meet regularly to discuss a variety of topics, including approaches to address anticompetitive conduct or unfair practices and approaches to address employment violations.²

The MOU identifies several areas of mutual interest between the Agencies, such as labor concentration and the effect of algorithmic decision-making on employees.³ In addition, the MOU lists several practices that concern both Agencies, including “collusive behavior,” business models “designed to evade legal accountability” and “the imposition of one-sided and restrictive” contractual provisions such as training repayment and non-compete clauses.⁴ Companies engaging in these practices therefore face a heightened risk of investigation and legal action, potentially by the Agencies working in tandem.

The MOU builds on already aggressive enforcement in the areas of antitrust and labor. The FTC has proposed a rule “effectively banning all



non-compete agreements, nationwide.”⁵ Furthermore, the FTC has instigated actions regarding “gig economy” workers.⁶

This MOU constitutes a step forward in the “whole-of-government” agenda that President Biden promoted in his July 2021 Executive Order, which called on all federal agencies to “cooperate fully in the exercise of their oversight authority.”⁷ FTC Chair Khan referred to the MOU as part of the “whole-of-government effort to protect workers from unlawful business practices.”⁸ It is the latest example of inter-agency collaborations, including a March 2022 MOU between the DOL and the Department of Justice Antitrust Division,⁹ and a July 2022 MOU between the FTC and the National Labor Relations Board.¹⁰

These collaborations will likely facilitate additional enforcement initiatives in the overlap between competition and labor. Indeed, perhaps most importantly, under the MOU between the FTC and the DOL, the Agencies intend to refer matters to one another, and to share relevant information. The Agencies may use the new MOU to bolster their aggressive enforcement, both by identifying additional cases for each Agency to pursue and by streamlining investigations through shared intel. As such, where a party is being investigated by the DOL, it should anticipate that its information might be shared with the FTC, and vice versa. Employers should be vigilant in their employment practices, audit restrictive covenant agreements for legal compliance and consult counsel early on when dealing with the Agencies.

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¹ https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdelivery.

² https://www.ftc.gov/system/files/ftc_gov/pdf/23-mou-146_oasp_and_ftc_mou_final_signed.pdf.

³ https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdeliveryhttps://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdelivery.

⁴ *Id.*

⁵ <https://www.kslaw.com/news-and-insights/ftc-proposes-nationwide-ban-on-non-competes>.

⁶ https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdeliveryhttps://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdelivery.

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.



⁸ https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-department-labor-partner-protect-workers-anticompetitive-unfair-deceptive-practices?utm_source=govdelivery.

⁹ <https://www.justice.gov/opa/pr/departments-justice-and-labor-strengthen-partnership-protect-workers>.

¹⁰ <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>.