

# Justice cracks down on anti-poaching deals

In the waning days of the Obama administration, the Federal Trade Commission and U.S. Department of Justice issued guidance aimed specifically at HR professionals: When employers agree not to recruit each other's employees and set compensation to make it less attractive for employees to jump ship, they'll be prosecuted for violating antitrust laws.

Now comes word that the Trump administration is doubling down on that threat. Earlier this year, the DOJ's Antitrust Division announced that it would file criminal charges against employers who engaged in such behavior.

From 2013 to 2016, the Obama DOJ went after Silicon Valley companies that established no-poaching pacts. Those cases were settled, the employers agreeing to pay relatively modest fines and promising to stop colluding.

Assistant Attorney General Makan Delrahim in January made it clear the DOJ will be watching those Silicon Valley firms and any violation of the civil settlements will result in criminal charges being filed.

The HR guidance—“**Antitrust Guidance for Human Resource Professionals**,” issued in 2016—states that “naked” agreements to not poach employees or otherwise limit wages violate antitrust laws. The DOJ's latest shift moves criminal prosecution from tool of last resort to favored approach for handling antitrust violations.

Employers tempted to challenge the DOJ's interpretation may find that door closing as well. In March, Sens. Elizabeth Warren (D-Mass.) and Cory Booker (D-N.J.) introduced legislation that would clearly criminalize no-poaching agreements.

**Advice:** To comply with antitrust laws, employers should not:

- Refuse to recruit or hire competitors' employees
- Agree to share documentation or internal data with competitors about employee salaries
- Receive company-specific information about employee compensation
- Participate in meetings or even social events where any of these topics are discussed.

**Final note:** Consult your attorney for additional guidance on employee poaching and antitrust law.