

Workplace Anti-Trust Liability

*The intersection of competition
and employment law*

Presented by David Fish
Workplace Law Partners, P.C.
www.fishlawfirm.com



Introduction

Antitrust laws establish the rules of a competitive employment marketplace.

Employers are being sued.

Employees may have claims.

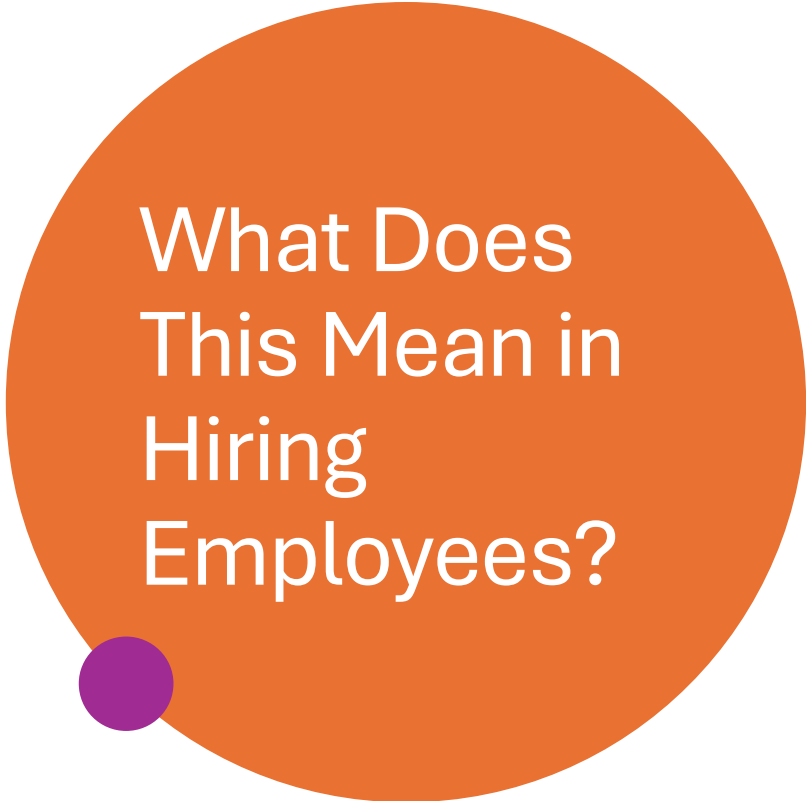


Relevant Laws (Federal)

*Agreements to restrict trade or
competition are illegal.*

- Sherman Anti-Trust Act – 15 U.S.C. §3
 - (a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States [. . .] is hereby declared illegal.





What Does This Mean in Hiring Employees?



No Poach Agreements are Illegal

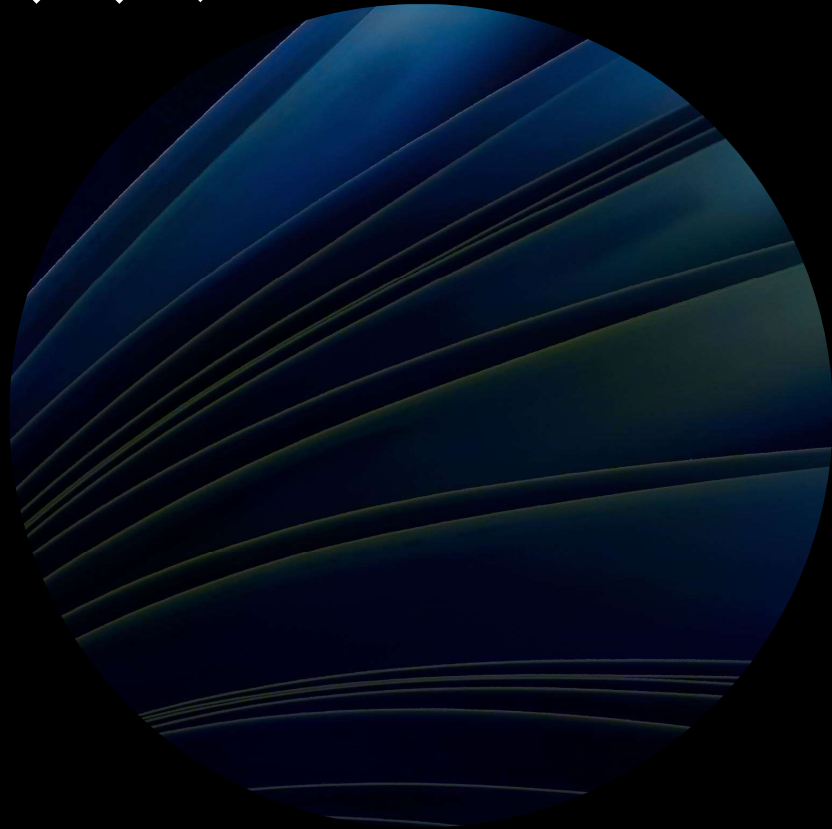
- Agreements among employers not to recruit certain employees or not to compete on terms of compensation are illegal.
- You cannot agree not to steal/hire/recruit a competitor's workers. The workers are free to work wherever they want.
- Even informal agreements (e.g., a handshake deal) are illegal.



Examples of Illegal Non-Poaching Agreements

- Verbal or written agreements between agencies to avoid hiring each other's employees.
- Writing or saying, "We won't hire each other's employees."
- Informal promises not to recruit another agency's workers.
- Important Notes:
 - Even casual, verbal agreements can be considered illegal.
 - Shared employee databases or communications should not involve agreements about limiting hiring or solicitation.






\$435 Million Settlement

Adobe, Apple, Google, Intel,
Intuit, Lucasfilm and Pixar

Accused of having a secret
agreement not to poach each
other's employees.

An agreement not to “cold call” the
employees of competitors.





What Does This Mean For Wage Fixing?



Companies Cannot Price Fix

You cannot agree with competitors to determine what the price/rate will be for the services you provide.

Avoid sharing sensitive information with competitors.

Example: DOJ sued the Utah Society for Healthcare Human Resources Administration, a society of HR professionals at Utah hospitals, for conspiring to exchange nonpublic prospective and current wage information about registered nurses. The exchange caused defendant hospitals to match each other's wages, keeping the pay of registered nurses artificially low.



Examples of Illegal Wage Fixing

- Aligning pay rates with competitors to avoid wage competition.
- *Example:* DOJ filed a civil enforcement action against the Arizona Hospital & Healthcare Association for acting on behalf of hospitals in Arizona to set a uniform bill rate schedule that the hospitals would pay for nurses.



DOJ's Antitrust Red Flags for Employment Practices

- Agree with another company about employee salary or other terms of compensation, either at a specific level or within a range.
- Agree with another company to refuse to solicit or hire that other company's employees.
- Agree with another company about employee benefits.
- Agree with another company on other terms of employment.
- Express to competitors that you should not compete too aggressively for employees.
- Exchange company-specific information about employee compensation or terms of employment with another company.
- Participate in a meeting, such as a trade association meeting, where the above topics are discussed.
- Discuss the above topics with colleagues at other companies, including during social or in other non-professional settings.
- Receive documents that contain another company's internal data about employee compensation.



Where to Report

Resources:

- **Federal Trade Commission (FTC):**
<https://www.ftc.gov>
- **U.S. Department of Justice Antitrust Division:**
<https://www.justice.gov/atr>

Reporting Concerns:

- **Internal Reporting:** Employees are encouraged to report any potential violations to their HR or compliance team.
- **Anonymous Reporting:** Use the company's confidential reporting hotline to raise concerns without fear of retaliation.
- **External Reporting:** Concerns can also be reported directly to the FTC or DOJ.

