

# PUBLICATION

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## Stay Vigilant! Labor Antitrust and Enforcement Remain a Trump Administration Priority

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Newly appointed FTC Chairman, Andrew Ferguson, has made it clear that "the Trump-Vance FTC is going to be on the lookout for non-competes that violate the antitrust laws and we are going to do something about them." Following this comment, the Federal Trade Commission announced on February 26, 2025, the creation of a joint labor task force to prioritize investigations and prosecutions of deceptive, unfair, or anticompetitive labor market conduct.

In the announcement, Ferguson stated that the task force will focus on non-compete, no-hire, non-solicitation, wage-fixing, and no-poach agreements. In an accompanying memorandum of the same date, the Chairman emphasized that a healthy labor market is "critical to the country's success" and that these anticompetitive practices are "widespread" and "as varied as they are unscrupulous," further noting that these practices drive down what workers can earn for their labor. The Chairman has also referenced that these enforcement efforts will help to combat inflation by "making sure that wages stay up," and that he wants to enforce antitrust laws "vigorously and aggressively."

Despite last year's ruling that the FTC exceeded its authority in implementing a nationwide ban on non-compete agreements, it's clear that antitrust labor issues remain an area of significant risk for antitrust enforcement, both criminal and civil.

Recent evidence of enforcement activity out of the DOJ includes prosecuting a criminal case against a home health care staffing executive who allegedly fixed wages paid to nurses. *U.S. v. Lopez*, CA 2:23-cr-00055 (D. Nev.) and instances of pursuing claims based on wage information being shared and/or exchanged through third parties that have historically relied on anonymization and other protections. Additionally, in the closing days of the Biden administration, the DOJ and FTC jointly issued new "[Antitrust Guidelines for Business Activities Affecting Workers](#)" which describe a number of anticompetitive activities in labor markets, including non-competes, no-poach agreements, wage-fixing, and information sharing, some of which may constitute per se or criminal violations of the antitrust laws.

In addition to exposure to federal agency enforcement, the threat of private treble damage class actions also remains a very real and extremely costly risk. These multidefendant class action cases have also relied upon information sharing through third parties to support their claims and generally allege that the defendants agreed to exchange competitively sensitive information on wages and compensation. For example, the settlements paid to farmers and workers in the poultry and red meat industries have reached into the hundreds of millions, and in one case almost \$400 million. In a more novel approach, an employer of medical professionals has recently sued a competing employer for damages arising from lost revenues due to understaffing allegedly caused by the non-compete agreements and inflated bills the other employer was able to charge.

While the FTC and DOJ appear to be clear in their enforcement priorities, multistate employers also need to be aware of varying state laws related to non-compete and employee mobility provisions, as there may be instances where state and federal guidance do not align.

Given this state of the industry, employers need to revisit their approach to protecting their legitimate interests while complying with the strong enforcement priorities of the Trump administration, state regulators, and the potential litigation threat from private plaintiffs. We suggest three immediate actions:

1. **Information Sharing Review**. Review agreements to share competitively sensitive information through independent third parties or other means, as regulators, law enforcement, and private plaintiffs may allege that any such sharing is a violation of the antitrust laws. This includes even exchanges conducted by an independent third-party service reporting anonymized data.
2. **Consider Labor Anticompetitive Effects**. Review all agreements that could restrain labor mobility through a lens of the skill level of the worker involved, an agreement's potential to decrease legitimate competition around wage rates, and how restrictive it needs to be to protect any legitimate interest. Also, be sure to consider all applicable state legal frameworks.
3. **Review Antitrust Compliance Policies**. Given this emphasis on labor competition enforcement, consider expanding your antitrust compliance policies to include your human resources and supervisory workers responsible for hiring, enforcement of non-competes, and those who attend industry trade shows or participate in surveys.

If you have any questions, please contact [John G. Calender](#), [Clinton P. Sanko](#), or any member of Baker Donelson's [Antitrust and Competition Law](#) team.