

FTC and DOJ Issue Statement Regarding COVID-19 and Competition in Labor Markets

April 14, 2020

As part of continued action to address the economic upheaval caused by the coronavirus pandemic, the U.S. antitrust agencies **issued further guidance** yesterday regarding competitor collaboration in regards to labor markets. While acknowledging that the COVID-19 pandemic has generated opportunities for procompetitive collaboration, the Department of Justice Antitrust Division and Federal Trade Commission Bureau of Competition (collectively, “the agencies”) made clear that the pandemic does not justify anticompetitive collusion in labor markets.

The agency guidance reminds businesses that, as was the case before the pandemic, certain wage-fixing, no-poach, and non-compete agreements remain illegal, along with anticompetitive exchanges of employee information. The guidance also alerts businesses that the agencies remain on the lookout for these and other forms of anticompetitive behavior during the COVID-19 pandemic, and that extraordinary actions in response to the virus are not an excuse to subvert labor competition to the detriment of essential workers.

This guidance follows **a joint statement** from the agencies last month recognizing the need for competitor collaboration but not specifically addressing labor markets. The agencies’ new guidance indicates that the agencies still prioritize traditional and robust labor market competition, and the guidance’s focus on frontline workers suggests that the agencies view competitor discussions over whether—or how much—hazard pay to award to essential employees as anticompetitive.

Accordingly, firms should continue to be sensitive to the opportunities for, and limits of, procompetitive collaboration during this unprecedented time. We anticipate that the agencies will issue further guidance as the COVID-19 situation evolves, and will continue to provide updates as they become available.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

Arthur J. Burke	212 450 4352	arthur.burke@davispolk.com
Ronan P. Harty	212 450 4870	ronan.harty@davispolk.com
Jon Leibowitz	202 962 7050	jon.leibowitz@davispolk.com
Christopher Lynch	212 450 4034	christopher.lynch@davispolk.com
Mary K. Marks	212 450 4016	mary.marks@davispolk.com
Suzanne Munck af Rosenschold*	202 962 7146	suzanne.munck@davispolk.com
Howard Shelanski	202 962 7060	howard.shelanski@davispolk.com
Jesse Solomon	202 962 7138	jesse.solomon@davispolk.com

*Ms. Munck is admitted to practice in California, and is practicing in DC under the supervision of partners of the firm.

© 2020 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm’s [privacy notice](#) for further details.