Updates
September 20, 2022

Recent Large Government Settlements Reflect Unique Risks to Employers for Antitrust Violations

Employers who share information with competitor employers about employee compensation, including wages and benefits, face greater risks of government investigations into violations of antitrust laws. The U.S. Department of Justice (DOJ) has recently pursued both criminal and civil investigations looking for anti-competitive agreements and discussions among employers regarding employee compensation that can be construed as wage-fixing agreements. The DOJ's recent investigation and subsequent settlement with three poultry processing plants further illustrate the agency's mission to curb anti-competitive conduct by employers that is detrimental to employees.

On July 25, 2022, the DOJ filed a complaint in the U.S. District Court for the District of Maryland against defendants Cargill Inc., Cargill Meat Solutions Corporation, Sanderson Farms, Inc., and Wayne Farms, LLC (collectively, the processing plants), as well as the consulting firm Webber, Meng, Sahl and Company, Inc. (WMS) and its president, G. Jonathan Meng. The complaint alleged that the processing plants and WMS engaged in a two-decades-long conspiracy to exchange information about the wages and benefits of poultry processing plant workers in violation of Section One of the Sherman Antitrust Act.

The complaint alleges that the processing plants conspired to collaborate with and assist their competitors in making decisions about employee compensation, including wages and benefits, and exchanged information about current and future compensation plans. Specifically, the processing plants shared compensation for hourly and salaried poultry plant jobs and base wages for a variety of other poultry processing jobs. They also shared information on health benefits and vacation and sick pay. After exchanging such information, the processing plants collaborated to make future compensation decisions that directly affected these workers' wages and benefits.

The complaint also alleges that the processing plants used data consultants to facilitate the exchange of the information, including the wages and benefits their competitors pay for specific positions at specific plants across the country. According to the DOJ, the defendants' actions resulted in an artificial suppression of the poultry processing plant workers' compensation to levels below what would have prevailed in a free market.

To resolve the DOJ's allegations of wage fixing, the defendants entered into a proposed consent decree that would prohibit the processing plants from sharing competitive sensitive information about their employees' compensation, which is broadly defined to include "salaried pay, hourly pay, regular or ad hoc bonuses, overtime pay, and benefits, including healthcare coverage, vacation or personal leave, sick leave, and life insurance or disability insurance policies." Similarly, WMS is prohibited from providing surveys or other services that facilitate the sharing of competitively sensitive information in any industry. Additionally, the processing plants will collectively pay $84.8 million as restitution for the workers harmed by this compensation information exchange conspiracy.

The consent decree also permits the DOJ to inspect the processing plant's facilities and interview its employees to ensure compliance with the terms of the consent decree. A court-appointed monitor also has broad authority under the consent decree to ensure compliance with all federal antitrust laws as they relate to these poultry processing facilities and their workers. If approved by the court, the consent decree's terms will be in effect for

10 years.

Takeaway for Employers

The DOJ's legal action against the processing plants and WMS is a warning to employers that the DOJ will use its authority to address anti-competitive conduct that harms workers, and any subsequent settlement will be costly. Employers should avoid entering into verbal or written agreements with competing employers regarding employee compensation, including wages and benefits, that can be construed as wage-fixing agreements. Employers also need to be mindful that discussions with competing employers regarding such information could still be viewed as an implied illicit agreement warranting the DOJ to take legal action, as demonstrated by the above-referenced case. Moreover, employers should be aware that using third-party consulting firms to facilitate the exchange of competitors' employee compensation information through surveys, market studies, or meetings will not insulate them from liability.

Although not at play in the instant case, the DOJ and the U.S. Department of Labor (DOL) recently signed a memorandum of understanding in which the agencies memorialized their commitment to work together to protect workers who have been harmed or may be at risk of being harmed as a result of anti-competitive conduct, such as collusive behavior among employers. Given the DOJ and DOL's recent partnership, employers should expect increased scrutiny by both agencies of employers' wage and hour practices that may be viewed as anti-competitive, such as conspiring to fix the wages and benefits provided to workers through the sharing of information.

In sum, employers should ensure that all discussions with competing employers regarding compensation information or the use of third-party consulting firms to disseminate compensation information complies with the DOJ and Federal Trade Commission's (FTC) Antitrust Guidance for Human Resource Professionals. Additionally, employers should contact counsel regarding any questions regarding potential discussions or agreements with competing employers and third-party entities to ensure compliance with all applicable laws, regulations, and guidance.

Authors

Christopher Wilkinson

Senior Counsel
CWilkinson@perkinscoie.com 202.661.5890

Explore more in

Labor & Employment Antitrust & Unfair Competition

Related insights

Update

The New Administration’s Impact on Retailers

Update

Securities Enforcement Forum DC 2024: Priorities in the Election’s Wake