

The Department of Justice Has Cooked Up Criminal Charges for No-Poach Agreements

April 20, 2022

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Here's yet another reason not to enter agreements with other companies not to hire (poach) other companies' employees: potential criminal prosecution. In the first-ever criminal trial for labor-related antitrust (Sherman Act) violations, the Department of Justice alleges that former DaVita Inc. CEO Kent Thiry conspired with other healthcare CEOs to limit employee movement to competitors. As of this writing, the federal jury is deliberating. The trial was eight days long.

Prosecutors allege that Thiry and DaVita entered "no-poach" agreements with Surgical Care Affiliates LLC, Radiology Partners, and Hazel Health Inc. not to solicit each other's executives or to ask the executives to tell their bosses before applying for a job with one of the three companies. If so, prosecutors argued that this arrangement had a "chilling effect" on commerce by keeping wages down in the companies' market. The defendants have admitted that such an agreement existed – but that it had no such effect on business.

The DOJ and workers have already brought many civil suits claiming that no-poach agreements adversely affected markets. Apple, Google, Adobe, Pixar, Intel, Intuit, Lucasfilm, McDonald's, and Jimmy John's are among those that have been sued.