



## Not so fast...franchisors facing challenges that “no poach” agreements are anticompetitive

By Alycia Ziarno

It has been a busy week for fast-food franchisors facing claims that so-called “no poach” agreements are anticompetitive.

On Monday, July 9, eleven state attorneys general, led by Massachusetts Attorney General Martha Healy, sent a letter to several large national franchisors seeking information and documents about provisions in franchise agreements that restrict franchisees in the same chain from hiring workers away from each other. These types of clauses are generally known as “no poach,” “non-solicitation,” “non-compete” or “no hire” agreements. According to the July 9 letter, the state enforcers are concerned that such agreements in franchisor contracts with their franchisees may negatively impact fast-food industry employees in their respective states.

Three days later, on July 12, Washington State Attorney General Bob Ferguson announced that the State of Washington had reached agreements with seven national franchisors requiring those corporations to end restrictions on the movement of workers. According to Ferguson, such restrictions violate Washington State antitrust laws, but the agreements he reached with the corporations go beyond Washington State and extend nationally. Specifically, the companies have agreed to no longer enforce language in their franchise agreements that stop workers from moving to other positions and to remove such language from current and future contracts. Ferguson has other similar investigations underway and has indicated that if other franchisors do not follow suit and end their no poach practices, they could face lawsuits by the State of Washington.

All of this state activity comes against the backdrop of several active investigations being conducted by the United States Department of Justice (“DOJ”) into whether no-poach agreements among employers violate federal antitrust laws. In 2016, DOJ published guidance putting businesses on notice that it would be focused on reviewing such agreements and, in appropriate cases, would consider proceeding with criminal prosecutions in addition to civil enforcement actions. In several recent speeches, key DOJ leaders from the DOJ’s Antitrust Division, have reinforced DOJ’s interest, and specifically identified no poach agreements as an area of focus and one ripe for criminal enforcement.

Stay tuned as we continue to monitor developments in this area. And, of course, please reach out to us if you would like to discuss how these developments could affect your business.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

**For Antitrust:**

- Alycia A. Ziarno, 202-585-8265, [aziarno@nixonpeabody.com](mailto:aziarno@nixonpeabody.com)
- Gordon L. Lang, 202-585-8319, [glang@nixonpeabody.com](mailto:glang@nixonpeabody.com)

**For Franchise:**

- Steven B. Feirman, 202-585-8395, [sfeirman@nixonpeabody.com](mailto:sfeirman@nixonpeabody.com)
- Kendal H. Tyre, 202-585-8080, [ktyre@nixonpeabody.com](mailto:ktyre@nixonpeabody.com)

**For Corporate:**

- David A. Martland, 617-345-6145, [dmartland@nixonpeabody.com](mailto:dmartland@nixonpeabody.com)