

## On the Board: DOJ Gets First Win in Criminal No-Poach Prosecution

Article By:

Bruce D. Sokler

Tinny T. Song

---

Last week, the Department of Justice Antitrust Division (“DOJ”) announced that health care staffing company VDA OC LLC pleaded guilty to criminal antitrust charges for engaging in a “no-poach” conspiracy relating to hiring arrangements for school nurses. The U.S. District Court for the District of Nevada sentenced the company to pay a fine of \$62,000 and restitution to the affected workers of \$72,000. This represents the first successful criminal prosecution amidst the DOJ’s recent increased focus on bringing criminal antitrust charges relating to labor markets.

In 2021, [the DOJ brought criminal charges](#) against VDA and its-then regional manager Ryan Hee for violations of Section 1 of the Sherman Act. Specifically, the company has said the agreement involved one email and one telephone conversation and was “extremely limited” in nature. The agreement lasted for a total of nine months—beginning just a day after the DOJ first announced its intention to start bringing criminal Sherman Act charges in October 2016 and ending when the company came under new ownership. The charges involved an agreement between VDA and an unnamed coconspirator to refrain from recruiting or hiring each other’s nurses and to refrain from raising the wages of their nurses. The companies were the two primary providers of contract school nurses in Clark County, Nevada.

Notably, this is the first win for the DOJ from its recent string of criminal indictments against so-called “no poach” arrangements, where competitors agree to refrain from hiring each other’s employees. In the past two years, the DOJ has brought its first criminal cases against labor market collusion and has promised to vigorously enforce labor market antitrust violations. Earlier this year, the Division was [unsuccessful](#) in both a criminal wage-fixing trial and a no poach trial when two juries acquitted executives of criminal antitrust labor violations.

In April 2022, the DOJ lost a no poach case against a former executive of a kidney dialysis company, when a jury acquitted the executive of conspiring with competitors to suppress competition in the market for employees. The defense successfully argued that there was a lack of evidence that the agreements were made with an intent to end labor competition.

The DOJ will likely look to build momentum from this guilty plea in continuing its focus on

investigating and prosecuting criminal antitrust violations. The Assistant Attorney General for Antitrust, Jonathan Kanter, said, “Today’s guilty plea demonstrates our commitment to ensuring that workers receive competitive wages and a fair chance to pursue better work and that criminals who conspire to deprive them of those rights are held accountable. The court’s sentence will compensate the hardworking health care workers who were victims of this crime.”

Since the Biden administration announced its “Whole of Government” [approach to competition](#) in the July 2021 Executive Order on Promoting Competition in the American Economy, both antitrust enforcement agencies have made labor markets a priority. Agreements to set prices with competitors for labor and to refrain from hiring a competitor’s employees may violate the antitrust laws and can have criminal implications. As seen in this case, the antitrust laws apply to conduct as minimal as a single phone conversation and email. Despite DOJ’s mixed success to date at trials of these cases, the DOJ, now buoyed by this plea, will continue to seek out and prosecute such conduct.

*Payton Thornton also contributed to this article.*

©1994-2025 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

---

National Law Review, Volume XII, Number 304

Source URL: <https://natlawreview.com/article/board-doj-gets-first-win-criminal-no-poach-prosecution>