

## LEGAL UPDATES

# DOJ Antitrust Division Secures First Win in Criminal Wage-Fixing Case

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On April 14, 2025, a federal jury in the U.S. District Court for the District of Nevada convicted the operator of a home healthcare staffing agency of a criminal violation of the federal antitrust laws. In *United States v. Lopez* (No. 2:23-cr-00055-CDS-DJA (D. Nev. 2025)), Eduardo Lopez was found guilty of conspiring with the operators of other agencies to fix the wages of home healthcare nurses. Lopez's text messages with his erstwhile competitors, in which he referenced a "mutual agreement" regarding wages, constituted the key evidence against him.

## Background

In October 2016, the Department of Justice and the Federal Trade Commission announced in their *Antitrust Guidance for Human Resource Professionals* that so-called naked wage-fixing or no-poaching agreements among labor-market competitors were *per se* illegal and could be subject to criminal prosecution under the antitrust laws. Although the Sherman Antitrust Act by its terms theoretically criminalizes all agreements that unreasonably restrain trade, only agreements of types that have previously been deemed *per se* illegal by the courts have generally been subject to criminal prosecution. Following issuance of the *Guidance*, which was reaffirmed and even strengthened in the last month of the Biden administration, the Antitrust Division followed through and brought a series of criminal wage-fixing claims around the country. The cases that went to trial, however, were rejected by juries, leading to questions as to the viability of criminal antitrust enforcement in this context.

## Business Implications

While it has always been clear as a matter of doctrine that labor markets are subject to the antitrust laws, the outcome of the recent trial demonstrates that juries will convict defendants of illegal wage-fixing when presented with sufficient evidence. The recent conviction also is important because it indicates that the Trump Justice Department will continue to pursue antitrust enforcement – including criminal enforcement – in the labor market context. Following the conviction of Lopez, Antitrust Division head Abigail Slater stated, "Wage-fixing agreements are nakedly unlawful attempts at unjustly profiting off American

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workers.” She added, “Today’s verdict highlights what should be a clear message with antitrust crimes: the agreement is the crime.”

Significantly, the most telling proof that Lopez participated in an illegal wage-fixing agreement came from his “private” text messages with competitors. Such messages present a particular danger for corporate compliance efforts, because they occur outside the monitoring capability of normal corporate IT infrastructure. Thus, for example, monitoring outgoing emails to competitors would not have caught the most incriminating evidence. Employees who engage with business competitors need to know that, as stated by Assistant Attorney General Slater, the agreement can be the crime, and that an unlawful agreement can be substantiated by private text messages in addition to more formal corporate communications.

## What You Can Do

Now is the time to reengage your business teams in antitrust training and heightened awareness of compliance issues. Some actions to consider:

- Recognize that the DOJ and FTC will vigorously enforce antitrust laws in the labor context.
- Train employees about the inherent risks of communication with competitors concerning sensitive matters, including employment, pricing, market strategies and other topics.
- Implement technical measures to monitor or preclude, where feasible, communications with competitors.
- Define acceptable uses of text messaging and other apps for business communications.
- Carefully review document retention policies.

If you have questions about how this ruling may impact your business, please contact [Michael Sturm](#), [Richard Landon](#) or your regular Lathrop GPM attorney.