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BLOGS

Practice of Franchise Law

New Investigations of Franchisors' Anti-Poaching Practices Announced

On July 9, 2018, in a coordinated action, attorneys general of California, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, and Rhode Island announced that they were seeking information about the antipoaching practices of eight QSR chains. Companies receiving requests for information include Arby's, Burger King, Dunkin' Donuts, Five Guys Burgers and Fries, Little Caesar, Panera, Popeyes Louisiana Kitchen, and Wendy's. In her press release announcing the probe, Massachusetts Attorney General Maura Healey claimed, "No-poach agreements unfairly limit the freedom of fast-food and other low-wage workers to seek promotions and earn a better living." According to Healey, about 80 percent of fast-food workers are constricted by no-poaching clauses. GPM is representing several franchisors in these inquiries.

On the same day, the Internal Franchise Association's VP of Government Relations and Public Policy, Suzanne Beall, reported that U.S. Senator Corey Booker's staff had told her that he plans to send letters to all 90 franchisors identified in the September 28, 2017, working paper published by Professors Alan Krueger and Orley Ashenfelter, which first claimed that antipoaching clauses in franchise agreements may be depressing wages of franchisees' employees. Their paper, "Theory and Evidence on Employer Collusion in the Franchise Sector," identified 90 franchisors with 500 or more franchisees across 21 industry sectors that allegedly used antipoaching language in their franchise agreements. The IFA also has sent a letter to the chairmen and ranking members of the Congressional Committees with jurisdiction over anti-poaching and noncompete legislation that was introduced this spring, offering to work with the Committees to develop targeted solutions to provide employees with needed protections, without injuring the franchising sector.

The coordinated action follows on the heels of an investigation launched by the Washington State Attorney General in March 2018. That investigation is believed to be limited to QSR franchisors.

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