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BLOG

Recent Cases Preview Continued Antitrust Scrutiny of Labor Markets During the Second Trump Administration

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Antitrust scrutiny of labor markets is far from dead. Despite the FTC and DOJ Antitrust Division suffering several prominent defeats of major labor antitrust initiatives in recent years—including courts blocking the FTC's rule banning non-competes and juries rejecting DOJ no-poach prosecutions—the agencies continue to pursue a variety of labor-focused actions. Further, incoming Trump administration antitrust leaders have indicated that they will continue to scrutinize labor restrictions, although they may be more discriminating in deciding when to bring cases.

Recent developments in three antitrust matters—*In the Matter of Guardian Service Industries, Inc.*, *In the Matter of Planned Building Services, Inc.*, and *St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse, P.C.*—illustrate that public and private antitrust enforcement targeted at labor restrictions is likely to continue during the second Trump administration. Together, these developments suggest that:

- Competition in labor markets will remain an area for FTC scrutiny in the second Trump administration, although new agency leadership will likely have a higher threshold for bringing enforcement actions;
- State antitrust enforcement of labor market issues—including in cooperation with federal enforcers—will continue; and
- Private enforcement of antitrust issues impacting labor markets will continue.

In the Matter of Guardian Service Industries, Inc. and *In the Matter of Planned Building Services, Inc.*

In the past five weeks, the FTC has filed complaints and simultaneous consent orders against two separate building service providers for violating antitrust laws with "No-Hire Agreements." On December 4, 2024, the FTC filed a complaint and simultaneous consent order against Guardian Services Industries, Inc. ("Guardian") alleging Guardian's "No-Hire Agreements" in its contracts with customers constitute unreasonable restraints of trade under Section 1 of the Sherman Act and Section 5 of the FTC Act. Guardian contracts with building owners and managers to supply them workers to perform concierge, security, custodial, maintenance, and related services. The FTC alleged that Guardian entered "No-Hire Agreements" that banned Guardian's customers (and competitors for hiring employees) from hiring Guardian's employees. According to the complaint, these agreements "ha[ve] the tendency or likely

effect" of harming competition by "impeding the entry and expansion of Guardian's competitors in the building services industry" and "causing lower wages and salaries, reduced benefits, less favorable working conditions, and, among other things, personal hardship to employees." Under the consent order, Guardian must stop enforcing these agreements or communicating to any customers that a Guardian employee is subject to such noncompete.

On January 6, 2025, the FTC filed a second complaint and proposed consent order against a building servicers provider—this time, Planned Building Services, Inc. ("Planned"), a competitor of Guardian—alleging Planned also unfairly restrained trade with its "No-Hire Agreements." Similarly to *Guardian*, the complaint argues that Planned's "No-Hire Agreements are anticompetitive because they eliminate direct, horizontal, and significant forms of competition to attract labor in the U.S. building services industry" and "limit workers' ability to negotiate for higher wages and better benefits and working conditions from building owners." Under the *Planned* consent order, Planned must also stop enforcing these agreements or communicating to any customers that a Planned employee is subject to such noncompete.

The *Guardian* and *Planned* complaints show that labor enforcement is likely to continue in the new Trump administration, albeit at a lower level with greater evidence of unfair competition required to file a complaint. The FTC's vote to issue the *Guardian* complaint was 3-2 along party lines, with both Republican Commissioners criticizing the complaint for not plausibly alleging that Guardian's agreements' anticompetitive effects outweigh their procompetitive justifications. Notably, however, in his dissent, Commissioner Andrew N. Ferguson—President-elect Trump's pick to chair the Commission—emphasized that "[t]he Commission is wise to focus its resources on protecting competition in labor markets" as "the antitrust laws protect employees from unlawful restraints of the labor markets as much as they protect any output market."

By contrast, the Republican Commissioners joined the 5-0 vote to issue the *Planned* complaint, stating that the Commission had enough evidence in *Planned*—but not in *Guardian*—to have "'reason to believe'" that the "anticompetitive effects of the no-hire provisions at issue outweigh[] the procompetitive justifications." The additional evidence the Republican Commissioners relied upon in *Planned*, however, was not included in the complaint—which the Republican Commissioners characterized as a "mistake"—and is thus non-public, depriving the public of the ability to learn what facts are likely to support employee non-compete enforcement in the second Trump administration's FTC. Commissioner Ferguson reiterated that "the Commission should devote resources to protecting competition in labor markets" and that "[t]oday's action rightly deploys the antitrust laws to do just that."

State antitrust enforcement in labor markets is likely to continue in Democrat-led states as well. The New York and New Jersey Attorneys General announced in a joint press release shortly after the FTC filed the *Guardian* and *Planned* complaints and consent orders that that their offices initiated and substantially assisted in the FTC's investigation of the companies and entered into their own settlement agreements with both Guardian and Planned. This shows that state enforcers are also actively policing competition issues impacting labor markets, particularly no-hire agreements.

St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse, P.C.

In addition to government enforcement, private enforcement of antitrust laws against certain labor agreements continues as shown by a recent ruling in *St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse, P.C.*, 5:24-cv-276 (BKS/ML) (N.D.N.Y. Mar. 19, 2024). Earlier this year, St. Joseph's Hospital Health Center ("St. Joseph's"), a hospital in Syracuse, sued North American Partners in Anesthesia, LLP (NAPA), its exclusive provider of anesthesia care. St. Joseph's alleged that NAPA, a competitor of St. Joseph's in the market for anesthesiologists, unfairly restrained competition by prohibiting its clinicians from choosing to work as employees of St. Joseph's or any other provider other than NAPA, violating Sections 1 and 2 of the Sherman Act and state antitrust law. St. Joseph's also argued that NAPA unreasonably restrained trade by using its monopoly power in anesthesia services to "force [the hospital]…. to accept the unreasonable [non-compete and non-solicitation] terms demanded by" NAPA, and because there are "no adequate substitutes" for anesthesiologists, "to effectively shut off anesthesia services at St. Joseph's" if the hospital did not abide by NAPA's demands.

In its motion to dismiss, NAPA asserted, among other arguments, that the non-solicitation and non-compete clauses were supported by "readily apparent" legitimate business interests, including: (i) without the non-solicitation clause,

hospitals could directly hire NAPA's clinicians and bypass NAPA's fee for locating and placing them, which would put NAPA out of business, and (ii) the non-solicitation clauses are necessary to protect the goodwill of NAPA's investments and training of the anesthesiologists. The court recognized that whether these are legitimate business justifications or reasonable restraints on trade will depend "on the particular facts and circumstances giving context to the agreement," inappropriate for a motion to dismiss. The case will continue to further develop the factual record.

TAKEAWAYS

These recent developments illustrate that the FTC in the incoming administration will continue to prioritize and devote resources to enforcement of antitrust laws in labor markets. Nonetheless, the threshold for bringing cases in the Trump administration will likely be higher than under the Biden administration. To the extent that there is any reduction in antitrust enforcement in labor markets, state Attorneys General and private parties may partially fill the gap, in particular with respect to worker non-compete and non-solicitation agreements.

Given these recent developments from both public and private actors, businesses should monitor this space, including for updates on further action from the FTC that provide guidance on the evidence the FTC will rely on to have reason to believe employee non-competes are illegal, and continue to assess non-competes, non-solicitation, and similar provisions of their current employee contracts. It is a good time for businesses to consider how best to protect their employee agreements against changing laws and government priorities. Winston attorneys are carefully monitoring the developments and regularly advising clients on ways to navigate the shifting landscape. Reach out to the authors of this post or your regular Winston contacts with any questions.

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