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# Kluwer Competition Law Blog

## FTC Challenges Wage-Fixing Conspiracy Between Texas Staffing Companies

J. Bruce McDonald, Michael A. Gleason, Thomas D. York (Jones Day) · Thursday, August 16th, 2018

The Federal Trade Commission (FTC) and two Dallas therapist staffing companies have settled charges that they conspired to fix the wages of contract therapists in violation of the federal antitrust laws. This is the FTC's first enforcement action under its [joint guidelines](#) with the Department of Justice (DOJ) on hiring and compensation issued in 2016. This matter exemplifies the increasing antitrust enforcement in employment contexts, including challenges to wage fixing and no-poach agreements.

The staffing companies provide contract therapists to home health agencies, which in turn pay the staffing companies a "bill rate" for therapists. After the staffing companies learned that home health agencies planned to lower therapists' bill rates, executives at the competing staffing agencies agreed via text message to lower each companies' therapist compensation. They also invited other competitors to lower their respective compensation rates.

Working with the Texas Attorney General, the FTC alleged that the executives violated the antitrust laws by conspiring to fix wages, inviting competitors to join the wage-fixing conspiracy, and by exchanging competitively-sensitive wage information. Several aspects of this action are notable:

- **Growing antitrust scrutiny in employment.** FTC, DOJ, and state attorneys general have pursued a number of employment-related investigations and enforcement actions in recent months. DOJ officials have threatened to prosecute wage fixing and no-poach agreements criminally and at least one FTC commissioner supports restitution payments.
- **Exchanging compensation-related information can run afoul of antitrust laws.** Companies should not share current or future wage information with competitors, including other companies that are employer-side "competitors" in labor markets.
- **Small size or scope no defense.** FTC demonstrated once again that it will challenge anticompetitive agreements regardless of the parties' size or potential damages.

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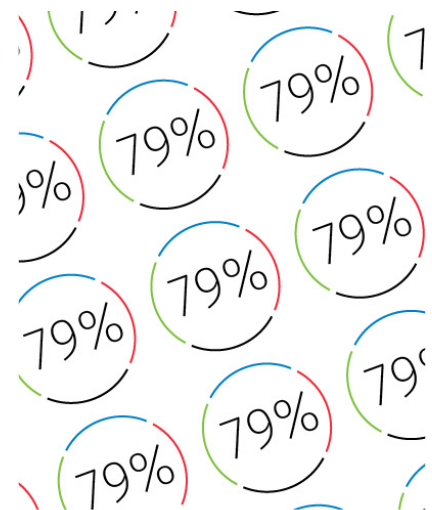
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