
DOJ Obtains First Wage-Fixing Trial Conviction

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In April 2025, a Nevada federal jury convicted Eduardo Lopez, a home healthcare staffing executive, for fixing the wages of home health nurses. The conviction marks the Department of Justice Antitrust Division's (DOJ) first successful criminal conviction at trial for wage-fixing and may reinvigorate DOJ's efforts to criminally prosecute antitrust violations in labor markets.

Background on Criminal Antitrust Enforcement in Labor Markets

In the months leading up to the first Trump Administration, the FTC and DOJ issued Antitrust Guidance for Human Resource Professionals ("2016 HR Guidance").¹ The 2016 HR Guidance clarified the FTC and DOJ's position that certain agreements between employers (e.g., no-poach, wage-fixing) constitute *per se* violations of antitrust laws, and it announced the agencies' intent to criminally prosecute such agreements.² It took DOJ approximately four years after the release of the 2016 HR Guidance to secure its first wage-fixing indictment in December 2020. Five additional labor-related indictments followed in 2021 and early 2022,³ but DOJ failed to obtain convictions in most of these.⁴ Many of these cases involved allegations of no-poach agreements only (i.e., where two or more employers agree not to recruit or hire from one another), which DOJ argued was a form of market allocation agreement subject to the strict *per se* standard that allows criminal liability. But DOJ saw losses in its wage-fixing cases as well. The defendant in *United States v. Jindal* was acquitted of all wage-fixing charges and served probation only for allegedly obstructing an FTC investigation.⁵ DOJ's only no-poach win came in *United States v. Hee*, where the corporate defendant entered a plea agreement and the individual defendant entered a pretrial diversion agreement that allowed him to avoid a criminal conviction.⁶ DOJ has not brought any new criminal antitrust cases involving wage-fixing or no-poach agreements since this initial tranche of cases. DOJ's win in the *Lopez* case may change that.

United States v. Lopez

In 2023, Eduardo Lopez was indicted for allegedly participating in a conspiracy to fix wages for nursing services in Nevada from March 2016 until May 2019.⁷ Prosecutors alleged that Lopez, a home healthcare staffing executive, had worked with others in the industry to fix the wages of home healthcare nurses in Las Vegas. They further alleged separate counts related to Lopez's concealing of the existence of the criminal investigation during the sale of his staffing company.

After a roughly two-week trial, DOJ's losing streak in labor market cases ended when a jury found Lopez guilty of entering into a conspiracy to fix wages.⁸ The jury concluded the evidence showed that Lopez entered an agreement "to fix, control, raise, lower, maintain, or stabilize the wage paid, or to be paid, for services"; did so knowing the "essential nature of the conspiracy"; and "joined the conspiracy knowing of its goal and intending to help accomplish it."⁹ In a statement following the conviction, DOJ Assistant Attorney General Abigail Slater stated, "Today's verdict highlights what should be a clear message with antitrust crimes: the agreement is the crime. The Antitrust Division will zealously prosecute those who seek to unjustly profit off their employees."¹⁰

What's Next

Notwithstanding DOJ's win, the strength of any individual criminal labor case depends on the specific facts and theory of harm. In some ways, wage-fixing cases are more straightforward to prosecute than no-poach agreements because the conduct is more analogous to price-fixing in the sale of products and the harm to the employees is readily apparent. By contrast, juries and judges alike have struggled with the notion that agreements not to poach another company's employees are analogous to a traditional market or customer allocation agreement. Moreover, in some cases defendants have made plausible arguments that the no-poach agreement was not "naked" and illegal *per se* because it facilitated a broader collaboration involving the defendant and was therefore an "ancillary" agreement that is assessed under the rule of reason. The win in *Lopez* may lead DOJ to focus its efforts on criminally prosecuting wage-fixing while reserving criminal prosecution of no-poach cases to only the most egregious circumstances.

Whether they proceed criminally or civilly, one thing is clear: the US antitrust agencies will continue to investigate potential antitrust violations in labor markets and bring enforcement actions accordingly. Although there can be important differences in enforcement philosophy among different agency leadership regimes, pursuing potential antitrust violations in labor markets is a consistently popular objective. Companies should ensure that their antitrust compliance programs include guidance for HR professionals and other relevant employees on these issues to reduce risks to the business and individual employees.

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1. U.S. Dep't of Just. & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals (Oct. 2016), <https://www.justice.gov/atr/file/903511/download>; U.S. Dep't of Just. & Fed. Trade Comm'n, Antitrust Red Flags for Employment Practices (Oct. 2016), <https://www.justice.gov/atr/file/903506/dl?inline>.
 2. At the time, the idea that a horizontal no-poaching agreement could be a *per se* violation was not entirely new, the decision to criminally prosecute these agreements marked a notable shift in DOJ's enforcement strategy.
 3. Indictment, *United States v. Surgical Care Affiliates, LLC*, No. 3:21-cr-0011-L (N.D. Tex. Jan. 5, 2021); Indictment, *United States v. DaVita Inc.*, No. 1:21-cr-00229-RBJ (D. Colo. July 14, 2021); Indictment, *United States v. Hee*, No. 2:21-cr-00098-RFB-BNW (D. Nev. Mar. 30, 2021); Indictment, *United States v. Patel*, No. 3:21-cr-00220-VAB (D. Conn. Dec. 15, 2021); Indictment, *United States v. Manahe*, No. 2:22-cr-00013-JAW (D. Me. Jan. 27, 2022).

4. For example, in 2022, WilmerHale achieved a landmark and precedent-setting victory on behalf of DaVita in one of the first of these trials brought by DOJ. U.S. Dep’t of Just., Antitrust Div., FY 2025 Performance Budget Congressional Justification (CJ) Submission (“The Division ... has brought six indictments for conspiracies affecting workers since December 2020.”).
5. Minute Entry, *United States v. Jindal*, No. 20-cv-00358-ALM-KPJ (E.D. Tex. Dec. 8, 2022), ECF No. 155.
6. Pretrial Diversion Agreement, *Hee*, No. 21-cr-00098-RFB-BNW (D. Nev. Jan. 23, 2023), ECF No. 115; Plea Agreement, *Hee*, No. 21-cr-00098-RFB-BNW (D. Nev. Oct. 27, 2022), ECF No. 106.
7. Indictment, *United States v. Lopez*, No. 23-cr-00055-CDS-DJA (D. Nev. Mar. 15, 2023).
8. Verdict, *Lopez*, No. 23-cr-00055-CDS-DJA (D. Nev. Apr. 14, 2025), ECF No. 662. It should be noted that on the same day the jury convicted, Lopez’s attorneys filed a motion for a mistrial, in which they also promised to appeal the decision. Def. Lopez’s Third Mot. for Mistrial, *Lopez*, No. 23-cr-00055-CDS-DJA (D. Nev. Apr. 14, 2025), ECF No. 654.
9. Jury Instr. No. 1, *Lopez*, No. 23-cr-00055-CDS-DJA (D. Nev. Apr. 14, 2025), ECF No. 661.
10. Press Release, U.S. Dep’t of Just., Jury Convicts Home Health Agency Executive of Fixing Wages and Fraudulently Concealing Criminal Investigation (Apr. 14, 2025), <https://www.justice.gov/opa/pr/jury-convicts-home-health-agency-executive-fixing-wages-and-fraudulently-concealing-criminal>.

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