

Government Cracking Down on Agreements Between Competitors Not to Solicit Each Other's Employees

Hinshaw Alert

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Many companies include anti-pirating provisions in their employment agreements, whereby the employee agrees that upon leaving the company, he or she will not solicit for employment or hire the former employer's employees on behalf of any other entity. A variation is an agreement between competing companies to refrain from soliciting or hiring each other's employees. These agreements recently have attracted the attention of U.S. antitrust regulators.

The U.S. Department of Justice's (DOJ's) Antitrust Division charged Lucasfilm with conspiring to violate Section 1 of the Sherman Act by agreeing with Pixar that neither would "cold call" the employees of the other and that each would notify the other when making an offer to the other's employee. The DOJ charged that the agreement reduced competition by limiting recruitment and movement of highly specialized digital animation workers and preventing employees from achieving higher compensation.

Lucasfilm has agreed to a consent decree which prohibits it from entering into, maintaining or enforcing any agreement that prevents it from soliciting, cold calling, recruiting or otherwise competing for employees. An earlier consent decree imposed similar restrictions on Pixar and other high-tech companies, including Adobe, Apple, Google, Intel and Intuit.

Employers should be aware that the DOJ and the U.S. Federal Trade Commission, which also enforces federal antitrust laws, are looking to prevent agreements between competitors which limit competition for employees. These agencies also continue to engage in traditional enforcement efforts against agreements which limit competition for customers or otherwise tend to increase prices.

For further information, please contact your regular Hinshaw attorney.

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