What New Web Content Accessibility Guidelines Mean for Your Web Page

By **Richard Hunt**
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The latest iteration of the Web Content Accessibility Guidelines became effective with the publication of version 2.1. on June 5, 2018. The newest version adds an additional 17 success criteria for compliance with WCAG, 12 of which are part of success level 2, the level that has become a de facto standard for the ADA. I've shared my thoughts on how this may change the ADA litigation landscape elsewhere. In this blog I'd like to consider the deeper questions posed by this revision: Who gets to decide what discrimination means?

It is worthwhile to start with a look at the stated purpose of the ADA itself. The declaration of policy in 42 U.S.C. §12101 never uses the word "accessible" and refers to "access" only with respect to public services. The focus of the ADA is discrimination, and standards for accessibility are only part of Congress' intent to "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." (42 U.S.C. §12101(b)(2)).

The first of these standards concerned physical accessibility and took the form of the ADAAG, a set of construction requirements that are "as precise as they are thorough" according to the Ninth Circuit Court of Appeals. The original standards were replaced and expanded by the 2010 Standards now in effect, but a facility built when the old ADAAG were in effect still meets the requirements of the ADA. If you do it right the first time, you don't have to keep re-doing it as standards for accessibility change.

This is notable because it is an example of the kind of compromise built into the ADA. Not making a facility accessible according to statutory standards is "discrimination" as defined in the ADA, but the statute was not intended to require that businesses perpetually update their physical premises as standards change. There are other compromises as well. The required door widths, slopes, and so forth are all based on what is accessible to most disabled individuals; not all. Those compromises were worked out over many years through the regulatory process with input from disability rights advocates, technical experts and the affected businesses. More recently adopted standards for ATM's, movie theaters and the like were worked out the same way, balancing the degree of access with the cost of existing technology. In every case businesses were allowed lead times of many years to adapt to the new standards. No one was expected to become accessible overnight.

Until, that is, the Department of Justice decided that the internet should be accessible and that the ADA was the means to enforce that accessibility. DOJ prosecuted internet access cases long before it had begun work on accessibility standards for the internet, and then deep sixed regulations that were almost complete for political reasons. The business community, usually not anxious to be regulated, is now trying to persuade Congress to force DOJ to publish regulations in order to end the chaos brought on by a lack of standards.

In the meantime, we have the Web Content Accessibility Guidelines, now in version 2.1. They are published by the World Wide Web Consortium, a private organization made up of tech companies and academics from around the world. The Guidelines were developed with input from experts in accessibility, but not, it appears, members of the business community most affected by the Guidelines; that is, people who sell things on the internet or use web sites in support of ordinary physical businesses. The Guidelines were intended to

be private and non-binding, so naturally they do not take into directly into account either the time or cost of implementation; after all, if there were no ADA a business could take as long as it needed to implement them, and could limit its implementation if cost were an issue. They are being used as government regulations without the process and compromises that such regulations ordinarily require.

This is not the fault of W3C of course. It is merely fulfilling its mission of providing web standards, with accessibility standards being just one such standard. It is disturbing though that an international NGO with no political or financial accountability has been delegated the job of regulating American business by the political paralysis of DOJ and the Congress and the willingness of the Courts to entertain website accessibility lawsuits. For businesses the only effective response is to assume that WCAG 2.1 will be the basis of a new round of lawsuits claiming that the definition of "discrimination" under the ADA was changed overnight by the publication of WCAG 2.1, and to begin updating their websites accordingly.

You can learn more at accessdefense.com or by contacting the author.

Citigroup Agrees to Pay Fine

Over State Libor Probes

Image by Mike Mozart

Bloomberg is **reporting** that Citigroup Inc. agreed to pay a combined $100 million to 42 U.S. states to resolve a probe into fraudulent conduct tied to interest-rate manipulation that affected financial instruments worth trillions of dollars.

The states had alleged Citigroup misrepresented the integrity of the Libor benchmark to state and local governments, not-for-profit organizations and institutional trading counterparties, sometimes to protect the bank's own reputation, reports **Erik Larson**.

"The accord is the latest development in probes by governments around the globe into manipulation of benchmark interest rates, one of the key scandals that led to a cultural overhaul of the industry over the past decade," Larson writes. "Global fines have topped $9 billion. In October, Deutsche Bank paid 45 states $220 million in penalties and disgorgements to resolve U.S. and U.K. probes."

Read the Bloomberg article.

VA Nurses' Class-Action Overtime Lawsuit Could Open Door to More Plaintiffs

A lawsuit accusing the U.S. Department of Veterans Affairs of failing to pay overtime to nurse practitioners and physician assistants since December of 2006 has been certified as a class action, according to a web post by **Androvett Legal Media & Marketing**. The certification is listed as an opt-in class, opening the door for more plaintiffs.

Class representatives Stephanie Mercier, Audricia Brooks, Deborah Plageman, Jennifer Allred and Michele Gavin brought the lawsuit on behalf of nurse practitioners and physician assistants from VA facilities across the country. Attorneys estimate as many as 10,000 VA employees nationwide ultimately could be represented in the class action.

According to the lawsuit, nurse practitioners and physician assistants were required to process electronic and computer patient records after work hours using VA facility computers, laptops and sometimes their own personal home computers without compensation. The work is vital to the treatment of patients and is considered mandatory by VA supervisors.

Provost Umphrey attorneys **Michael Hamilton** of the firm's Nashville office and **Guy Fisher** in the Beaumont, Texas, office are among the attorneys working on the lawsuit along with counsel David Cook and Clement Tsao of Cincinnati's Cook & Logothetis, LLC, Douglas Richards of Lexington, Kentucky and Robert Stropp of Mooney Green, P.C. in Washington, D.C.

"These are medical professionals who are taking care of our

veterans," said Hamilton. "If we aren't paying them properly, what sort of statement does that make about the importance of caring for those who watched over us and our rights?"

"Ultimately, it's about patient care," said Cook. "We need to do our utmost for those who have put on the uniform and defended our rights. And, we can start by properly paying the medical professionals who care for them when they need it."

Defrauded Students of For-Profit Schools Will Stay Indebted, Judge Rules

Courthouse News Service **reports** that Education Secretary Betsy Devos need not provide full debt relief to more than 60,000 defrauded students, but she must stop collecting on their loans, a federal judge said in court Monday.

A proposed class of borrowers had asked U.S. Magistrate Judge Sallie Kim to revive an Obama-era policy that promised full debt forgiveness to students defrauded by the now-defunct, for profit Corinthian Colleges, according to reporter **Nicholas Iovino**.

Kim sided with the federal government's position that returning to the "status quo" means delaying processing claims for debt relief, not going back to the Obama-era policy of forgiving all loan debt. She acknowledged that borrowers will still suffer harm to their credit and interest growing on

their loans, even though she has ordered the government to stop collecting.

Read the CNS article.

Wells Fargo Not the Only Bank to Have Created Unauthorized Accounts – But Regulator Won't Identify Others

A federal bank regulator that has fined Wells Fargo more than $500 million over its creation of unauthorized accounts and other consumer abuses has found evidence of sales practice problems at other large and midsize banks – but is refusing to name those institutions, reports the ***Los Angeles Times***.

The Office of the Comptroller of the Currency found "bank-specific instances of accounts being opened without proof of customer consent" as part of a review of more than 40 banks spurred by the Wells Fargo scandal, according to reporter **James Rufus Koren**.

But an agency spokesman said the agency will not be naming the banks where it found potentially unauthorized accounts or providing details on banks' specific conduct.

Read the *LA Times* article.

Resigned Pruitt EPA Aide Lands GC Job in Oklahoma

A former aide to embattled EPA director Scott Pruitt who has come under scrutiny for getting a significant pay bump has been hired to a position with the Oklahoma Workers' Compensation Commission, reports **KFOR-TV**.

The commission voted unanimously to hire Sarah Greenwalt as the agency's new general counsel.

"Greenwalt made headlines after she received a 52 percent raise, bringing her salary to $164,200 while at the Environmental Protection Agency before Pruitt reversed it amid public outcry," according to the report.

Read the KFOR article.

Blockbuster Term: Justices Could Determine Limits of Courts' Ability to Check Trump Administration

The Washington Times **is reporting** that the Supreme Court over the next month is poised to upend the way the country picks representatives to Congress, decide whether the First Amendment protects people who refuse to do business with same-sex couples and rule on whether President Trump's tweets can be used in court to derail his agenda.

Reporter **Alex Swoyer** sees the case for some blockbuster rulings that will signal to lower courts how they should treat the unorthodox Trump.

"The biggest test comes on the president's travel ban. His opponents have begged the justices to hold Mr. Trump's campaign-era tweets against him, saying his comments about Muslims taint the travel policy he announced once he took office," writes Swoyer.

Read the *Washington Times* article.

Government Disclosures Shed Light on Big Law Salaries

Law firm partnerships fiercely guard against disclosing what they pay their principals, points out **Bloomberg Law**. But partners must disclose compensation when opting for a government appointment.

"Top partners at major law firms can earn between $3 million to $10 million, according to compensation experts, while even career government lawyers with long service records rarely make more than $250,000," writes reporter **Elizabeth Olson**.

As an example, the article reports that Dan M. Berkovitz, a partner at Wilmer Cutler Pickering Hale and Door, listed $1.18 million in partnership income for 2017 and a few months of 2018. Berkovitz was recently appointed one of the Commodity Futures Trading Commission's commissioners.

And Robert Khuzami created waves a few months ago when he disclosed $11.1 million in partnership income over about a year's period as a partner in Kirkland & Ellis's white-collar practice. He is a deputy attorney general in the Southern District of New York.

Read the Bloomberg article.

A Lawyer for Payday Lenders Is Confirmed for FTC Job

The new director of the Federal Trade Commission's consumer protection unit, a watchdog with broad investigative powers over private companies, stands out even in an administration prone to turning over regulatory authority to pro-industry players, reports ***The New York Times***.

Andrew M. Smith was part of the legal team that in 2012 defended AMG Services, the payday lender founded by the convicted racketeer Scott Tucker, whose predatory practices against impoverished borrowers eventually led to a $1.3 billion court-ordered settlement, the biggest in the commission's history, , according to reporters **Glenn Thrush** and **Jack Nicas**.

Because of his representation of companies like Facebook, Uber and Equifax, banks, lenders and credit-reporting agencies – all companies with matters before the commission – he will have to recuse himself from dozens of cases.

Read the *Times* article.

Deciphering the State Bar of Texas Advertising Rules

A lack of familiarity with advertising rules can lead to a firm or an individual lawyer having their ad, website, etc., labeled as "noncompliant" by the State Bar of Texas Advertising Review Department, warns Bruce Vincent of **Muse Communications**.

That department reviews lawyer advertising for violations under the Texas Disciplinary Rules of Professional Conduct. Those who fail to remedy noncompliant communications may be the subject of an official complaint filed with the Bar's Chief Disciplinary Counsel.

Vincent interviewed Gene Major, director of the State Bar Advertising Review Department and director of the Bar's Attorney Compliance Division, about the state's lawyer advertising landscape and the common mistakes that can lead to violations.

Major discussed some of the most common mistakes and violations he sees, possible penalties, and the use of mailing lists for marketing.

Read the article.

Littler Survey: Employers Reeling from Regulatory Shifts, New Forces Impacting Workplace

Employment and labor law firm **Littler** has released the results of its seventh annual survey, completed by 1,111 in-house counsel, human resources professionals and C-suite executives. The Littler Annual Employer Survey, 2018 analyzes the impact that sweeping regulatory changes and other factors, including the #MeToo movement, are having on employers.

The firm summarized its findings:

Following a year that brought several changes to workplace policy, the survey shows employers feeling some regulatory relief with the change in administration, while cautiously anticipating less of an impact from key regulatory issues over the next year. The portion of respondents expecting a significant impact from the Affordable Care Act dropped from 33 percent in the 2017 survey to 15 percent in 2018, with similar drops in significant concern around enforcement by the U.S. Department of Labor (25 percent to 16 percent) and the National Labor Relations Board (13 percent to 8 percent).

At the same time, employers feel buffeted by the burdens created by abrupt and dramatic regulatory changes, slow-moving confirmations to key government agency positions and the growing patchwork of state and local labor and employment requirements. The majority of respondents (64 percent) said that reversals of workplace policies and regulations between presidential administrations put a strain on their businesses

and 75 percent said they faced challenges as states and localities work to fill perceived policy vacuums at the federal level.

“Companies want certainty more than anything,” said Michael Lotito, co-chair of Littler’s Workplace Policy Institute. “The vast majority of employers want to comply with the law and the continuous reversals of federal workplace policy, as well as the increasingly fragmented and sometimes contradictory rules at the state and local level, is an enormous distraction for them. Uncertainty means inability to plan, budget and anticipate, and it requires constantly retraining employees and reformulating employment policies.”

Of the changes that occurred during the first year of the Trump administration, respondents identified the rollback of wage-and-hour policies (62 percent) and the new tax bill (62 percent) as the areas that have most significantly impacted their businesses.

Immigration Reform Focuses on Visas and Enforcement

Amid tightening regulation and enforcement of both legal and illegal immigration, employers expect a range of immigration-related changes to significantly impact their workplaces over the next year.

Tighter restrictions on visa adjudications, such as those for employees with specialized skills and temporary workers, was the top concern selected by 48 percent of respondents. More than a third (36 percent) expressed concern with increased workplace immigration enforcement by U.S. Immigration and Customs Enforcement and associated agencies.

“It’s not surprising that the visa process and immigration enforcement emerged as employers’ top concerns,” said Jorge Lopez, chair of Littler’s Global Mobility and Immigration Practice Group. “The increased scrutiny being applied to employment visas and rule changes impacting visa programs,

which often come mid-stream and without prior warning, make it difficult for employers to plan ahead and manage their workforces. In addition, the increase in worksite enforcement and raids have naturally heightened employers' focus on worksite compliance issues and properly addressing those concerns."

Continued Workplace Discrimination Enforcement Expected Amid Focus on Harassment

The survey showed virtually no change in the impact employers anticipate from enforcement by the Equal Employment Opportunity Commission (EEOC) over the next year, with 76 percent anticipating an impact in the 2017 survey and 77 percent in 2018. This aligns with a key finding from Littler's Annual Report on EEOC Developments – that the Commission actually filed more lawsuits in fiscal year 2017 than it has since 2011.

Employers surveyed expect the EEOC's top enforcement priorities in the near-term to be harassment claims (64 percent), hiring practices (53 percent) and retaliation against employees who file discrimination or harassment claims (48 percent).

"Employers are right to expect the EEOC to continue to vigorously investigate workplace discrimination claims, particularly harassment claims and other EEOC priorities, regardless of upcoming changes at the Commission with an expected new chair, commissioner and general counsel," said Barry Hartstein, co-chair of Littler's EEO & Diversity Practice Group. "With the #MeToo movement and the EEOC's focus on stemming the tide of harassment in the workplace, taking steps to minimize the risk of harassment claims should be a top priority for employers. We also should expect an active plaintiffs' bar threatening and initiating private lawsuits during the coming year based on these developments."

Sexual Harassment and Pay Equity Rank as Top Concerns for Employers

Among the many headline-grabbing issues swirling through the workplace, the majority of survey respondents (66 percent) ranked sexual harassment as the most or second-most concerning issue on their radar.

In the wake of the cultural shift sparked by the #MeToo movement, 55 percent of respondents have added training for supervisors and employees, and 38 percent have updated human resource policies or handbooks. However, only 13 percent have implemented new tools or investigation procedures to manage employee complaints and 24 percent have not made any changes over the past year.

“No company can afford to ignore this issue, and while many already have a good foundation, the past several months have shown the importance of reevaluating and reinforcing policies and procedures,” said Helene Wasserman, co-chair of Littler’s Litigation and Trials Practice Group. “While the law governing harassment in the workplace hasn’t changed much, employee expectations have. In addition to providing training and updating policies, it’s critical that companies have effective complaint procedures in place and that employees feel confident that reports of potential misconduct will be taken seriously and acted upon.”

Gender pay equity followed sexual harassment as the second-most concerning issue in the headlines for employers, with 41 percent placing it among their top two concerns. Companies reported taking action as a result, including conducting audits of current pay practices and salary data (61 percent) and revising hiring practices, such as updating job applications and ceasing the practice of asking candidates about prior salaries (34 percent). However, only 14 percent have modified compensation policies or taken steps to facilitate advancement of female and minority employees.

“Conducting audits is a critical first step to identifying pay disparities among employees, but with continued attention to this issue and an evolving legal landscape, an audit is just the beginning of addressing pay equity in the workplace,” said Denise Visconti, a shareholder heading the Littler Pay Equity Assessment. “As time goes on, pay disparities only become more intractable, so proactively addressing this issue helps companies mitigate risk and reinforce their commitments to treating employees equally and fairly.”

Employers Start to Embrace Data Analytics and Artificial Intelligence

Recruiting and hiring is the most common use of advanced data analytics and artificial intelligence, adopted by 49 percent of survey respondents. Employers also said they were using big data to guide HR strategy and employee management decisions (31 percent), analyze workplace policies (24 percent) and automate tasks previously performed by humans (22 percent). The smallest group of participants (5 percent) are using advanced analytics to guide litigation strategy.

“It is encouraging to see employers starting to embrace the many benefits provided by big data in helping manage their most important asset, their people,” said Aaron Crews, Littler’s Chief Data Analytics Officer. “However, it appears that many employers are not aware of the significant potential to use advanced data techniques to guide litigation strategy. The ability to leverage data early in a case, to tease out insights before you ever take a deposition or begin evaluating the credibility of witnesses, is revolutionary.”

The survey results are being released at Littler’s 35th annual Executive Employer Conference taking place May 2-4, 2018, in Phoenix, Arizona.

What Does the NRA Want With One of America's Top Drug Lawyers?

The NRA called on a self-described "aging Jewish hippie" who doesn't own a gun and who frequently defends drug defendants to speak at the organization's recent annual convention – because he's a drug attorney who understands how the nation's Byzantine drug laws could threaten gun owners.

Gerry Goldstein said he was as surprised as anyone to receive the invitation, reports ***The Dallas Morning News***.

Reporter **David Tarrant** writes that federal law could cause pot users to lose their right to carry firearms, even in states where marijuana possession is legal. And the NRA could see a natural alliance between gun rights activists and people like Goldstein.

The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives recently sent a letter to all federally licensed gun dealers, stating: "Any person who uses or is addicted to marijuana, regardless of whether his or her state has passed legislation authorizing marijuana use for medical purposes … is prohibited by federal law from possessing firearms or ammunition."

Read the *Dallas News* article.

GC and CEO of Bank That Hid Drug Cash Face U.S. Criminal Probe

Bloomberg **is reporting** that the Justice Department is considering whether to accuse Rabobank NA's ex-Chief Executive Officer John Ryan, former general counsel Dan Weiss and its past compliance chief of obstructing U.S. bank examiners' efforts to dig into the firm's failures to prevent money laundering.

Reporters **Jesse Hamilton** and **Tom Schoenberg** based their report on information from two people with knowledge of the probe who asked not to be named because the investigation is ongoing.

"The potential charges could close a dark chapter for Rabobank Groep, a Netherlands banking titan with $723 billion of assets," they write. "Thousands of miles away from its Dutch headquarters, California bank branches near the Mexican border became a pipeline for the profits of organized crime starting in 2009, according to the Justice Department. In February, the U.S. unit admitted guilt to felony conspiracy allegations and agreed to pay $369 million, including a $50 million OCC fine."

Read the Bloomberg article.

20 Dismissed Colorado Royalty Cases: Is There a Good-Faith Basis for Filing in District Court?

Colorado state district courts recently solidified judicial recognition of the Colorado General Assembly's delegation of primary jurisdiction to the Colorado Oil and Gas Conservation Commission over royalty underpayment disputes, according to **an alert** by BakerHostetler.

Two judges of the District Court for the City and County of Denver dismissed royalty underpayment lawsuits for failure to exhaust administrative remedies before the Commission.

The firm said these decisions are significant because one judge vacated his prior ruling in the same case that had denied a substantively similar motion to dismiss, and the other judge had previously denied a similar motion to dismiss in a different case.

Read the article.

Biglaw Firm, Former U.S. Attorney Accused of Hacking Cover-Up

Bloomberg Law **is reporting** that a little-noticed lawsuit filed in New York federal court accuses a former federal prosecutor of unethically preventing a whistleblower from telling the FTC that he hacked an embattled company's files using "FBI surveillance software" that the prosecutor gave him.

The allegations are in a suit against former U.S. Attorney Mary Beth Buchanan and Bryan Cave Leighton Paisner LLP, the global megafirm where she is now a partner, according to reporter **Samson Habte**.

Plaintiff LabMD Inc., a cancer-screening firm, says it went out of business after falling victim to a "shakedown scheme" by a cybersecurity firm that hacked the lab's files—and then reported it to the FTC when it refused to pay for "remediation" services.

LabMD's complaint alleges Buchanan gave FBI surveillance tools to Tiversa Inc., which then allegedly used the tool to hack LabMD. It also alleges Buchanan unethically represented the whistleblower in FTC proceedings to keep him from divulging how Tiversa received the hacking tool.

Read the Bloomberg article.

‘Not Looking for Old White Guys’: Restaurant Chain Must Pay in Age Bias Suit

The restaurant company that owns Seasons 52, Olive Garden, LongHorn Steakhouse, the Capital Grille and other well-known brands, agreed to pay almost $3 million to settle a lawsuit brought by job applicants who claimed they were denied employment because of their age, the EEOC said Wednesday.

The *Miami Herald* **reports**” “A complaint filed in Miami federal court in 2015 said it was ‘standard operating procedure’ for Darden [Restaurants] to disproportionately deny jobs to Seasons 52 applicants aged 40 and older, Reuters reported. That’s a violation of the federal Age Discrimination in Employment Act.”

Reporter Crystal Hill writes that the EEOC said applicants who were turned away were told they were “too experienced,” as well as, “we are not looking for old white guys.”

Read the *Miami Herald* article.

No-Poach, No-Solicit

Provisions of Corporate Agreements Now Face Criminal Prosecution

The Antitrust Division of the U.S. Department of Justice recently announced a settlement of criminal charges against Knorr-Bremse AG and Westinghouse Air Brake Technologies Corp. for having maintained agreements not to compete for each other's employees, according to **Locke Lord**.

Authors **Stephen P. Murphy** and **Joseph A. Farside Jr.** write that one executive went so far as to state in an email that no-soliciting was a "prudent cause for both companies" and that the companies would "compete in the market."

In announcing the settlement, an assistant AG noted that the criminal complaint was part of a broader Antitrust Division investigation into agreements not to compete for employees, typically known as no-solicit or no-poach agreements.

Read the article.

With Its 2018 Tax Cut, Wells

Fargo Could Pay Its $1 Billion Fine 3 Times and Still Have Cash to Spare

The $1 billion fine levied by federal regulators against Wells Fargo is unlikely to hobble or even slow down the bank, thanks to the massive corporate tax cut passed by Congress last year, reports ***The Washington Post***.

Reporter **Renae Merle** explains: "Just in the first quarter, Wells Fargo's effective tax rate fell from about 28 percent to 18 percent, saving it more than $600 million. For the entire year, the tax cut is expected to boost the company's profits by $3.7 billion, according to the Goldman Sachs report."

"Despite its regulatory headaches, Wells Fargo remains massively profitable. The bank reported Friday that although the fine drove down its first-quarter profits by $800 million, it still netted $4.7 billion," Merle writes.

Read the *Post* article.

'Tax Case of the Millennium'

Hits High Court: A Primer

Oral arguments in the biggest U.S. Supreme Court tax case in years are just days away, reports **Bloomberg Law**.

Oral arguments in *South Dakota v. Wayfair* are scheduled for Tuesday, April 17.

Reporter **Ryan Prete** writes that the case directly challenges the 1992 decision in *Quill Corp. v. North Dakota*, prohibiting states from imposing sales tax collection obligations on vendors lacking an in-state physical presence.

"The case has set off perhaps the largest amount of state and local tax-related activity in the past decade as states have tried to 'kill Quill' as online commerce has replaced traditional brick-and-mortar markets," according to Prete.

He quotes Max Behlke, director of budget and tax at the National Conference of State Legislatures, as saying the South Dakota case is the "tax case of the millennium."

Read the Bloomberg article.

No-Poach Agreements Targeted by Plaintiffs, Enforcement Agencies and Senators

Agreements among companies to not hire each other's workers are more risky than ever, warns **Pepper Hamilton LLP** in a post on its website.

"The DOJ's Assistant Attorney General for the Antitrust Division, Makan Delrahim, stated on January 19 that the division has criminal cases targeting these agreements in the works," the post says. "Meanwhile, lawsuits challenging no-poach agreements in technology, entertainment, health care and other industries have settled, sometimes for hundreds of millions of dollars. The DOJ announced its latest settlement, a civil settlement with two rail equipment suppliers, on April 3, underscoring that it did not bring criminal charges only because the suppliers ended their agreements before the FTC and DOJ issued guidance on 'no-poach' agreements in October 2016."

The article concludes with some actions that firms should take to identify and limit their exposure.

Read the article.