Inside Counsel Beware: Your Job Description Now Includes Antitrust Compliance

“There has been a veritable explosion of antitrust litigation in the workplace law field, putting employers and their executives at risk. Federal and state antitrust agencies and private plaintiffs have accelerated their attacks on employers who agree to coordinate wage levels (wage-fixing) or not solicit each other’s employees (no-poach),” writes Dennis Cuneo in Fisher Phillips’ ***Resources***.

“Four years ago, the Department of Justice threatened criminal prosecution of companies and individuals who engaged in such activities. A few weeks ago, the nation’s top antitrust law enforcement official reiterated that threat, announcing that he plans to bring a criminal prosecution this year challenging a no-poach agreement. Attorneys General in several states have stepped up their challenges to no-poach agreements, particularly in franchise settings. Private plaintiffs have obtained huge settlements in class action lawsuits challenging no-poach agreements and exchanges of compensation data among employers.”

“The antitrust prohibitions against price fixing or market allocation in product markets are well understood. What is not as well understood is that the antitrust laws apply equally to labor markets. Just as a price fixing agreement between two companies to fix the price of widgets may lead to antitrust sanctions, a wage-fixing or no-poach agreement between two companies that compete for the same labor may also lead to antitrust sanctions.”

Read the article.