

Insights



Benjamin Sirota Shares Insights with Law360 on DOJ's Criminal Antitrust Prosecutions Against No-Poach Agreements

July 20, 2021

Publication: **Law360**

The U.S. Department of Justice's (DOJ) focus on pursuing criminal antitrust prosecutions against employers agreeing not to recruit from one another is expected to intensify. Kobre & Kim's Benjamin Sirota, a former DOJ Antitrust Division prosecutor, shared what to expect from prosecutors when he recently spoke with *Law360*.

One of the first such indictments was against kidney dialysis center operator DaVita, marking the DOJ's increasing scrutiny of labor markets. "I expect there to be more investigations in this space. I expect there to be more indictments in this space," said Mr. Sirota. Still, there is uncertainty over whether the DOJ will focus on one-on-one deals over industrywide conspiracies: "That is the big question mark, whether the government will be able to find agreements like that and will be able to prosecute them criminally."

The DOJ's attempt to prosecute no-poach agreements under criminal antitrust law is rooted in its initial warning released in October 2016, which may complicate matters for the government. It is unclear how courts will react to the DOJ prosecuting conduct that started before the warning, Mr. Sirota said, adding, "I could see that being a litigatable issue."

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