

JUSTICE NEWS

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Justice Department Comments on Settlement in Private "No-Poach" Class Action That Allows Government to Enforce Injunction Against Duke University

Court's Final Judgment Allows Antitrust Division to Enforce Injunction Barring University from Maintaining or Entering into Unlawful Agreements not to Compete for Employees

On Sept. 25, 2019, a federal district court in North Carolina entered a unique final judgment in a private no-poach class action that approves the parties' settlement agreement and allows the United States to enforce the injunctive relief and compliance provisions of the settlement agreement. The settlement followed the Justice Department's successful intervention in the case, which challenged alleged agreements between Duke University (Duke) and the University of North Carolina (UNC) not to compete for each other's medical faculty.

Under the terms of the settlement, the university is prohibited from entering, maintaining, or enforcing unlawful no-poach agreements for five years. The settlement also requires Duke to implement rigorous notification and compliance measures to preclude its entry into these types of anticompetitive agreements in the future. The court's order gives the United States the right to enforce the injunctive relief provisions of the settlement.

In the hearing to consider approving the settlement, the presiding federal judge said of the Antitrust Division's intervention and contribution to the injunctive relief portion of the settlement: "I appreciated [your] arguments at summary judgment and the role that you all played in the injunctive relief. We hadn't really talked about that very much, but it is a substantial benefit here in not just to the Class members, but [also] in making sure that employers are aware of the risks and are likely to communicate that to folks who might not know any antitrust law, but who are making decisions as employers. So it is a pretty important part of the settlement."

Assistant Attorney General Makan Delrahim applauded the entry of the final judgment. "This settlement is part of a larger effort by the Division to be active in enforcing the antitrust laws against practices that harm the hard-working American worker and educating the public about unlawful no-poach agreements in order to deter such agreements in the first place," said Assistant Attorney General Delrahim. On Sept. 23, 2019, the Antitrust Division held a public workshop on competition in labor markets to discuss the role of antitrust enforcement in labor markets and promoting robust competition for American workers. The workshop covered a variety of labor competition issues, including, among other things, anticompetitive no-poach agreements.

The case is *Seaman v. Duke University and Duke University Health System*, Case No. 1:15-cv-000462-CCE-JLW (M.D.N.C.). On June 9, 2015, Dr. Danielle Seaman, an assistant professor at Duke University School of Medicine, filed a class action alleging that Duke and UNC agreed not to permit lateral hiring of faculty between the universities. Her complaint further alleged that the universities' agreement violates Section 1 of the Sherman Act by eliminating competition for faculty, restricting their mobility, and suppressing their compensation. In 2018, the court certified a class comprised of faculty members with an academic appointment at the Duke or UNC Schools of Medicine.

In March 2019, the Department's Antitrust Division filed a Statement of Interest in the lawsuit addressing the proper

application of the antitrust laws, including the standard for judging the legality of alleged no-poach agreements under the Sherman Act. In April 2019, the litigants announced an agreement to settle the case. In May 2019, the Division took the unprecedented step of intervening successfully in the litigation for the limited purpose of joining the proposed settlement and thereby obtaining the right to enforce any injunctive relief entered by the court against Duke.

Duke is a private research university located in Durham, North Carolina. It has several schools and institutes, including the Duke University School of Medicine.

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