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Employers should caution against sharing worker salaries

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When it comes to the wages you pay your employees, mum's the word. Don't discuss your employee pay rates with the competition — or even other firms that hire similarly skilled workers.

That is the key lesson from a legal settlement in April, which required Apple, Google, Intel and Adobe Systems to pay $324 million to settle an antitrust class action.

The federal lawsuit was brought by software engineers on behalf of approximately 64,000 present and former salaried technical, creative or research and development employees of the four companies.

This case is an important reminder for both employers and employees of several important facts:

1. Federal and state antitrust laws do not apply just to the conduct of sellers of goods and services, but also apply to the purchasers of services.
2. Federal and state antitrust laws can, except in the context of collective bargaining, apply to the overall marketplace for employees.
3. Violation of these antitrust laws carry potentially significant financial penalties.

The former employees alleged that the tech companies engaged in a conspiracy to eliminate inter-company competition for high-tech employees by secretly agreeing to refrain from soliciting each other's employees. The alleged intent — and effect — was to suppress the compensation of the tech companies' employees.

The employees claimed that the alleged conspiracy went on for years until it was discovered by a U.S. Department of Justice investigation, culminating in complaints filed in 2011. The government,

however, obtained only injunctive relief from the tech companies and did not obtain any compensation for the employees.

Had the case gone to trial, it was reported the employees were seeking $3 billion in damages, which could have risen to $9 billion under the treble damages provision of the federal antitrust law.

This case is not the first time the Justice Department and classes of employees have used antitrust laws to investigate or attack alleged employer conspiracies against employees. A number of investigations (including one in Connecticut) and class actions have involved claims by registered nurses, for example, who alleged that hospitals conspired to suppress their wages.

These actions typically involved allegations that the hospitals shared wage information to make it easier to form and maintain a wage-fixing agreement.

In another case, nonunion managerial, professional and technical employees and former employees of oil and petrochemical companies sued a number of companies in a class action alleging the companies shared compensation information and used it to set artificially low salaries.

These cases make it clear: An agreement to share wage data can be unlawful even without proof of an express arrangement to set wages at a particular level, depending on the nature of the information shared.

In 1996, the Justice Department and Federal Trade Commission published a statement of their enforcement policy on healthcare provider participation in exchanges of price and cost information.

This statement contains a useful description of an antitrust "safety zone." So long as certain conditions are met, actions within this "zone" would not become actionable.

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