

DOJ, FTC, DOL, NLRB Memorandum of Understanding Continues Focus on M&A Deals' Labor Consequences

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On Aug. 28, 2024, the Department of Justice Antitrust Division (DOJ), the Federal Trade Commission (FTC), the Department of Labor (DOL), and the National Labor Relations Board (NLRB) signed a [Memorandum of Understanding on Labor Issues in Merger Investigations](#) that will boost the antitrust agencies' ability to investigate the possible effects of mergers and acquisitions on labor markets. This is the fifth memorandum of understanding (MOU) on the topic since March 2022. Companies undergoing, or contemplating, mergers or acquisitions should take note that the agencies continue to signal a focus on labor impact.

The DOJ and FTC jointly enforce the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). The HSR empowers them to investigate the effects a merger or acquisition would have on competition.

Under the latest MOU, the DOL and NLRB "agree to promptly meet with the [DOJ or FTC] upon request and provide technical assistance, as well as additional information and data, as appropriate." The MOU's [Appendix A](#) points to specific reports and data sets the antitrust agencies are interested in from the labor agencies. From the DOL's Bureau of Labor Statistics and the Employment and Training Administration, the antitrust agencies are interested in:

1. Occupation Employment and Wage Statistics (wage data by geography, occupation, and industry)
2. Quarterly Census of Employment and Wages (employment counts and wage data by geography and industry)
3. O*NET (skills, knowledge, task, and work activity data by occupation)
4. State and Metro Area Employment, Hours, & Earnings (employment counts, average weekly hours, average hourly earnings, and average weekly earnings by geography and industry)
5. Job Openings and Labor Turnover Survey (job openings, hires, and separations by industry)
6. Business Employment Dynamics (job gains and losses by geography and industry)

From the NLRB, the antitrust agencies are interested in:

1. Representation case activity
2. Unfair labor practice charges and their related decisions

Previous Labor-Focused MOUs, Proposals, Guidelines

The four previous MOUs between the antitrust agencies and the labor agencies are:

- 3/10/22 (DOJ-DOL) – [Memorandum of Understanding Between the U.S. Department of Justice and U.S. Department of Labor](#)

- 7/19/22 (FTC-NLRB) – [Memorandum of Understanding Between the Federal Trade Commission \(FTC\) and the National Labor Relations Board \(NLRB\) Regarding Information Sharing, Cross-Agency Training, And Outreach in Areas of Common Regulatory Interest](#)
- 7/26/22 (DOJ-NLRB) – [Memorandum of Understanding Between the U.S. Department of Justice and the National Labor Relations Board](#)
- 8/30/23 (FTC-DOL) – [Memorandum of Understanding Between the U.S. Department of Labor and the Federal Trade Commission](#)

These MOUs generally aim to promote information sharing, consultation, coordination, training, education, and research. The MOUs between the FTC and the labor agencies identified areas of “common regulatory interests” that include:

1. Independent contractor misclassification;
2. The use of restrictive covenants;
3. The ability of workers to engage in concerted activity;
4. Concentration in the labor market;
5. The use of algorithmic decision-making in employment; and
6. “Labor developments” relating to the “gig economy’ and other alternative work arrangements.”

The MOU between the DOJ and DOL stated a particular focus on anticompetitive conduct through “collusive behavior and the use of business models designed to evade legal accountability, such as the misclassification of employees [as independent contractors].” The MOU between the DOJ and NLRB stated that those agencies share an interest in protecting workers from interference with their rights “to obtain fair market compensation and to freely exercise their legal rights under the labor laws.”

In addition, in its June 2023 Notice of Proposed Rulemaking (NPRM) [the FTC proposed](#) adding significant workforce-related disclosures to the Premerger Notification and Report Form filed by parties in connection with the antitrust review of mergers and acquisitions. That NPRM’s comment period closed in September 2023 with 752 comments. (Of course, this pales in comparison to the 26,813 comments the FTC received on the NPRM for its proposed non-compete rule.) As of this writing, there has been no material news on the status of the Premerger Notification NPRM.

Further, the FTC devoted Guideline 10 of its [Final Merger Guidelines](#), published on Dec. 18, 2023, to labor monopsony and its impact on wages and working conditions.

Implications

Companies undergoing, or contemplating, mergers or acquisitions that are subject to HSR review should be cognizant that the antitrust agencies conducting those reviews have made plain their interest in the workforce effects of such transactions.

Please contact a Jackson Lewis attorney with any questions.

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