The antitrust laws establish the rules of a competitive employment marketplace.

Free and open markets are the foundation of a vibrant economy. Just as
competition among sellers in an open marketplace gives consumers the
benefits of lower prices, higher quality products and services, more choices,
and greater innovation, competition among employers helps actual and
potential employees through higher wages, better benefits, or other terms of
employment. Consumers can also gain from competition among employers
because a more competitive workforce may create more or better goods and
services.

From an antitrust perspective, firms that compete to hire or retain employees
are competitors in the employment marketplace, regardless of whether the
firms make the same products or compete to provide the same services. It is
unlawful for competitors to expressl y or implicitly agree not to compete with
one another, even if they are motivated by a desire to r educe costs. Therefore,
HR professionals should take steps to ensure that interactions with other
employers co mpeting wit h the m for e mplo yee
agreement not to compete on terms of employment. Any co mpany, acting o n
its o wn, may typically make decisions regarding hiring, soliciting, -16.6676
re cruiting e mplo yee loyees. But HR should take care co n
not to communicate the company's policies to other companies competing to
hire the same types of employees, nor ask another company to go along.

The federal antitrust agencies have taken enforcement actions against
employers that h ave agreed not to compete for employees. Based on those
cases, here are some general principles to help HR professionals and the
co mpanie s the y repre se nt avo id runnin
relate to agreements and communications among employers. Note that thi s
guidance does not address the legality of specific terms contained in contracts
be twee n an e mp lo yer and an e mplo

Violations of the antitrust laws can have severe consequences. Depending on
the facts of the case, DOJ could bring a criminal prosecution against
individuals, the co mpany, o r bo th. And bo th fede
bring civil enforcement actions. In addition, an employee or another private
party we re injured by an illegal agreement

information in an industry with few employers could establish an antitrust violation because, for example, the data exchange has decreased or is likely to decrease compensation. For example, the DOJ sued the Utah Society for Healthcare Human Resources Administration, a society of HR professionals at Utah hospitals, for conspiring to exchange nonpublic prospective and current wage information about registered nurses. The exchange caused defendant hospitals to match each other's wages, keeping the pay of registered nurses in Salt Lake County and elsewhere in Utah artificially low. The case ended in a consent judgment so that registered nurses could benefit from competition for their services.

Even if participants in an agreement are parties to a proposed merger or acquisition, or are otherwise involved in a joint venture or other collaborative activity, there is antitrust risk if they share information about terms and conditions of employment.

However, not all information exchanges are illegal. It is possible to design and carry out information exchanges in ways that conform with the antitrust laws. For example, an information exchange may be lawful if:

- a neutral third party manages the exchange,
- the exchange involves information that is relatively old,

employment, and you have questions regarding the legality of the activity, the federal antitrust agencies are available to offer further guidance. The Division has a business review process that enables businesses to determine how the Division may respond to proposed joint ventures or other business conduct. The FTC has a similar process for obtaining an advisory opinion for future conduct. When the federal antitrust agencies are able to analyze and comment on the possible competitive impact of proposed business conduct *before* that conduct is implemented, companies are more likely to avoid enforcement [illegible]