

Hee Pretrial Diversion Agreement Signals Small Victory for Antitrust Division in Wage Fixing and Staffing Allocation Case

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Almost two years after indicting Ryan Hee for allegedly conspiring to allocate staffing and fix the wages of nurses, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), the government and Mr. Hee have entered into a deferred prosecution agreement. This is the government's second win in the antitrust labor markets arena and completes the prosecution of Mr. Hee, regional manager of the Las Vegas office of VDA OC LLC, formerly known as Advantage on Call LLC, and his employer. Since announcing changes to its policy in 2016 that employment-related agreements restricting competition would be prosecuted criminally, the Antitrust Division has repeatedly faced setbacks and failures when trying to prosecute alleged antitrust labor violations. But Mr. Hee's pretrial diversion agreement and the related guilty plea from his employer constitute two recent success stories for the division.

The government filed the [pretrial diversion agreement](#) on January 23, which defers Mr. Hee's prosecution for six months if he complies with the stated conditions, including completing 180 hours of community service and maintaining good behavior. If Mr. Hee satisfies the terms of the agreement, the charge against him will be dismissed at the end of the six-month period. In the agreement, Mr. Hee admits he participated in a conspiracy with another contract health care staffing firm to suppress and eliminate competition for the services of nurses. Mr. Hee confirms that "an agreement was reached to (1) allocate nurses between [Advantage on Call] and the competitor by not recruiting or hiring each other's nurses, and (2) fix the wages of those nurses by refraining from raising wages of those nurses."

The agreement with Mr. Hee comes on the heels of the government's resolution with Mr. Hee's co-defendant VDA last year. In fall 2022, VDA [pled guilty](#) to conspiring to violate Section 1 of the Sherman Act for allegedly conspiring to suppress wages and allocate nurses. The court accepted the parties' sentencing recommendation and ordered VDA to pay a \$62,000 fine and \$72,000 in restitution. At the time of the guilty plea and sentence, Assistant Attorney General Jonathan Kanter, head of the Antitrust Division said, "Today's guilty plea demonstrates our commitment to ensuring that workers receive competitive wages and a fair chance to pursue better work and that criminals who conspire to deprive them of those rights are held accountable." "The Court's sentence will compensate the hardworking health care workers who were victims of this crime."

While the division suffered some early losses in its criminal enforcement efforts in the labor space (with back-to-back acquittals in the *Jindal*, *DaVita*, and *Thiry* cases in spring and summer 2022), with the VDA guilty plea and Hee deferred prosecution agreement, the government has now obtained two small victories. However, the government has uphill challenges to overcome in its still-to-come antitrust labor markets prosecutions in *United*

States v. Patel (D. Conn.; no poach; trial set for March 2023), *United States v. Manahe* (D. Maine; no poach and wage fixing; trial set for March 2023), and *United States v. Surgical Care Affiliates, LLC* (N.D. Tex.; no poach; January 2023 trial date has been pushed). As demonstrated in *Jindal*, *DaVita*, and *Thiry*, juries remain skeptical of these cases.

Eliminating perceived unfair and illegal competition in labor markets continues to be a top priority for the Biden administration, as reflected by the Antitrust Division's prosecutions and the FTC's recent proposed rule banning noncompete clauses. Businesses should be wary and not underestimate the enforcement agencies' zeal to enforce the antitrust laws in labor markets.

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