

BELL NUNNALLY OF COUNSEL TOM CASE AUTHORS QSR ARTICLE EXPLORING CHANGES TO DOJ'S POSITION ON LEGALITY OF "NO POACH AGREEMENTS"

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Thomas L. Case, Of Counsel at Bell Nunnally, authored the *QSR* article "Franchise 'No Poach Agreements' Come Under Fire," exploring developments in federal stance on the legality of "no poach agreements," where a franchise contract prohibits a franchisee from hiring away employees of another franchisee without its consent.

Case breaks down the evolution in thought process by the U.S. Department of Justice (DOJ) under the last three administrations: Obama, Trump and Biden:

1. Obama DOJ Says All No Poach Agreements are Illegal
2. Trump DOJ Says Most Franchise No Poach Agreements Are Probably Enforceable
3. Biden Promises to Ban All No Poach Agreements

Regarding the Biden administration's position, Case notes:

President Biden has promised to ban all no poach agreements, and the DOL will likely commence criminal prosecutions of franchise no poach agreements. The DOJ brings criminal actions only for per se violations of the Sherman Act; and once filed, private civil class actions immediately follow in order to piggyback on the government case and the lower burden of proof required in a per se case. So the franchise industry must be in a position to prove the necessity for no poach agreements, their procompetitive effect and that they can promote employee mobility and compensation.

To read the full article, please click [here](#).

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Thomas L. Case