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Antitrust Insights for HR Practices:
When Sharing & Discussing Employment Terms Can Land You in the Sights of the Federal Government

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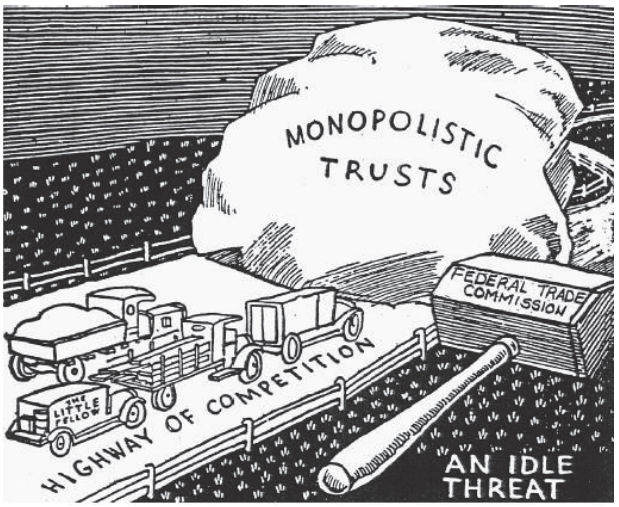
What is this high school?

- Antitrust law is alive and well
- Antitrust law does not just applicable to large, national companies
- Antitrust law applies to **private employers of all sizes**



Antitrust Basics

- Antitrust laws are concerned with practices that diminish competition in the marketplace
- They prohibit agreements "in restraint of trade" or that reflect "anti-competitive" practices

What "marketplace" are we talking about?

Antitrust Basics

- Companies compete in the **consumer** marketplace for goods, services, and ideas
  - Illegal to fix the prices of goods or services, or other otherwise prevent the law of supply and demand to work
- But companies also compete in the **employee** marketplace.
  - Companies often compete to hire and retain same pool of workers
  - This "market" is also subject to antitrust laws

DOJ/FTC Antitrust Guidance

ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

FEDERAL TRADE COMMISSION

OCTOBER 2016

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to

Potential Antitrust Penalties

- Criminal
  - Up to $100 million fine for company
  - Up to $1 million fine or 10 years in jail for individuals
- Civil Litigation (Government)
  - Injunctive or declaratory relief
  - Training or inspection
- Civil Litigation (Private)
  - Likely class action
  - Treble damages + attorneys' fees.

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2019 Labor and Employment Law eConference

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"Antitrust Insights for HR Practices"