

CHECKLIST OF QUESTIONS TO ASK ABOUT PROPOSED EXCHANGES OF EMPLOYEE COMPENSATION/BENEFITS INFORMATION

- ✓ **What is the business rationale for exchanging compensation information?**
 - ◆ Do the participants realistically expect to achieve legitimate, potentially procompetitive benefits? How does the company envision using the information that is gathered?
 - ◆ Distinguish true efficiency benefits from cost savings achieved by reducing upward competitive pressures on wages/salaries, benefits and other employment terms.
 - ◆ Does every aspect of the proposed arrangement advance the proffered rationale in a common-sense way?

- ✓ **Who will participate in the proposed exchange?**
 - ◆ Are the participants close competitors for employing the services of particular types of employees?
 - ◆ How narrow is the market? Do the pertinent groups of employees develop industry-specific skills that make them more valuable within the industry than in similar jobs outside the industry? Are employees unlikely to take jobs with employers in other cities or regions?
 - ◆ How concentrated is the market? Will a high percentage of the firms in the “market” be involved in the exchange?

- ✓ **What kind of information will be exchanged?**
 - ◆ Does the information concern wages, salaries and benefits, or does it relate solely to matters that are less competitively sensitive?
 - ◆ Will the information be sufficiently dated that it does not necessarily reflect or suggest current or future market behavior? Or will the exchange involve current decisions or future plans and budgets?
 - ◆ Will information be aggregated so that data pertaining to specific firms cannot be discerned? Do a very small number of firms account for a large share of the data being compiled?
 - ◆ Is the information involved in the exchange already public? If not, will the results of the exchange be made public or provided to employees?

- ✓ **How will the information be exchanged?**
 - ◆ Who will gather the information? Will a third party (such as a trade association or auditing firm) conduct a confidential survey, or will the participants exchange information directly with one another?
 - ◆ How will the participants agree on what should be exchanged and in what form? Be sensitive to the potential pitfalls associated with agreeing on precise metrics that facilitate uniform comparisons but also might suggest an anticompetitive intent or effect.
 - ◆ How will the information be distributed to participants? Will there be any occasion for discussion of the results and their implications? Will the exchange take place within the context of a formal group of HR executives who periodically meet off site to discuss various topical HR matters? If so, will such meetings be attended by experienced antitrust counsel? Will such meetings be conducted pursuant to written antitrust guidelines that require agendas and minutes, as well as prohibiting discussions among competing employers of the reported data’s practical implications?
 - ◆ Will the wage/salary/benefit exchange process otherwise be generally subject to legal supervision.



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