

United States Senate

WASHINGTON, DC 20510

July 12, 2018

Dear [Insert CEO Name]

We write to seek information on your use of so-called “no-poach” clauses (also known as “no-hire” or “no-switching” agreements), a harmful practice in which employers agree not to hire each other’s employees. These agreements harm workers by preventing them from moving freely across the labor market and translating their value into higher wages.

A recent study by Princeton economists Alan Krueger and Orley Ashenfelter found that 58 percent of major franchisors’ franchise agreements include a no-poach provision that prohibits their franchisees from hiring each other’s workers.¹ Use of these provisions is up 20 percent from two decades ago and now covers approximately 340,000 franchise units and millions of low-wage workers.²

We are concerned that restrictions on worker mobility, including through no-poach clauses and non-compete agreements, are keeping workers stuck and wages down. The fact that wage growth remains unusually slow, despite a low official unemployment rate and a rising stock market, suggests that barriers to labor market competition may be contributing to wage stagnation.³ If employees are limited in their ability to switch jobs—say, for a better-paying position or for more reliable hours—they are unable to maximize their compensation for the value they bring to a current or prospective firm. No-poach clauses are particularly harmful because they *secretly* limit worker movement, since they are included in contracts between franchisors and franchisees, unbeknownst and inaccessible to the affected workers.

There is bipartisan interest in addressing the use of no-poach clauses. In its October 2016 *Antitrust Guidance for Human Resource Professionals*, the Department of Justice and the Federal Trade Commission explained that agreements between employers not to hire each other’s workers are likely illegal under antitrust law, and that “violations of the antitrust laws can have severe consequences,” including “criminal prosecution against individuals, the company, or both,” as well as civil enforcement actions.⁴ A recent letter from the Department of Justice affirmed that that guidance remains in effect under the current administration.⁵ Eleven state attorneys general have now launched investigations of fast-food chain contracts, requesting

¹ Princeton University & NBER, “Theory and Evidence on Employer Collusion in the Franchise Sector,” Alan Krueger and Orley Ashenfelter, July 18, 2017, http://conference.nber.org/confer/2017/SI2017/LS/Krueger_Ashenfelter.pdf.

² *Id.*

³ Vox, “More and more companies have monopoly power over workers’ wages. That’s killing the economy,” Suresh Naidu, Eric Posner, and Glen Weyl, April 6, 2018, <https://www.vox.com/the-big-idea/2018/4/6/17204808/wages-employers-workers-monopsony-growth-stagnation-inequality>.

⁴ Department of Justice Antitrust Division & Federal Trade Commission, “Antitrust Guidance for Human Resource Professionals,” October 2016, <https://www.justice.gov/atr/file/903511/download>.

⁵ Letter from Assistant Attorney General Stephen Boyd to Senators Booker and Warren, February 12, 2018.

affirmed that that guidance remains in effect under the current administration.⁶²⁸ Eleven state attorneys general have now launched investigations of fast-food chain contracts, requesting information from eight companies on their no poach agreements⁶²⁹. And earlier this year, we introduced *The End Employer Collusion Act*—legislation in the United States Senate to clarify existing statute regarding the legality of such provisions in the franchise context.⁶³⁰

A competitive labor market is essential to the success of our overall economy, and workers must be able to seek higher wages if they are to build a better future for themselves and their families. We urge you to remove from your franchise agreements any language that imposes limits on worker mobility; doing so will rectify a violation of federal antitrust law, and, most importantly, increase wages for employees and ensure that businesses can recruit and retain the best workers.

In addition, in order to understand your use of no-poach clauses in franchise agreements, we ask that you respond to the following questions by August 10, 2018.

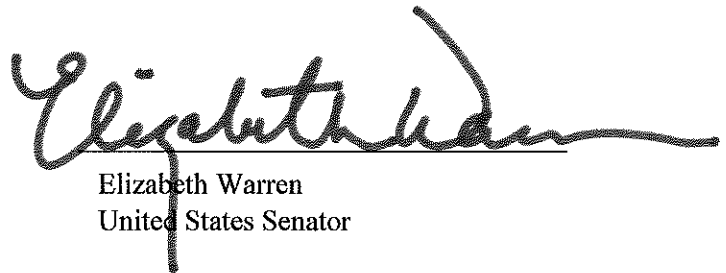
1. Do you currently include a “no-poach” clause, or any language restricting the mobility of workers between franchises or between a franchise and unaffiliated employers, in your agreement with franchise owners?
 - a. If so, which employees are covered by these agreements?
 - b. With which other franchises or other entities have you reached these agreements?
 - c. What are the precise terms and conditions of this agreement?
 - d. Are employees who are covered by these agreements notified that they are subject to their limitations? If so, when and how are they notified?
2. Do you have any plans to remove or alter this language? If so, when and how exactly do you plan to do so?
3. If you do have language in your franchise agreement restricting worker mobility, please provide an explanation of the rationale for such language.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,



Cory A. Booker
United States Senator



Elizabeth Warren
United States Senator

⁶²⁸ Letter from Assistant Attorney General Stephen Boyd to Senators Booker and Warren, February 12, 2018.

⁶²⁹ Washington Post, “11 states launch investigation targeting fast-food hiring practices,” Jeff Stein, July 9, 2018, https://www.washingtonpost.com/news/wonk/wp/2018/07/09/11-states-launch-investigation-targeting-fast-food-hiring-practices/?utm_term=.9caa0b5fb81e”

⁶³⁰ Office of Senator Cory Booker, “Booker, Warren Introduce Bill to Crack Down on Collusive “No Poach” Agreements,” press release, February 28, 2018, https://www.booker.senate.gov/?p=press_release&id=760.