

Competing for talent: do your HR practices risk breaching competition law?

In September, the Competition and Markets Authority (the CMA) published guidance for employers on how competition law impacts staff recruitment and the setting of pay and other working conditions. In this briefing, we digest the key messages and outline the “dos” and don’ts” for employers.

Does competition law apply in the workplace and what are the consequences of getting it wrong?

The Competition Act 1988 is the main piece of law governing competition in the UK. It prohibits anti-competitive arrangements between businesses, covering formal or informal agreements and practices such as information sharing. In the workplace context, where organisations collude on matters such as hiring workers or setting pay or benefits this can have harmful consequences for workers, for example, by reducing their job mobility and/or reducing their ability to negotiate pay. It may also limit a business’s ability to grow.

The consequences of breaching competition law in the workplace are severe:

- Businesses that break competition law can be fined up to

10% of their annual worldwide turnover and prevented from bidding for public contracts. They may also be exposed to civil claims for damages.

- Individuals can be prosecuted and sentenced to up to five years in prison and/or a fine. If the individual is also a director of the company, they may also be disqualified from being a director for up to 15 years.

What are “anti-competitive practices” in the labour market?

The guidance states that there are three main forms of anti-competitive behaviour within the labour market (all of which amount to “business cartels”): non-poaching, wage-fixing and sharing “competitively sensitive” information.

Non-poaching

Non-poaching covers agreements, understandings or practices whereby two or more employers agree not to poach or hire the other’s staff. This covers agreements not to hire or solicit staff, or not to do so without the other business’s consent. Importantly, the guidance highlights that such arrangements do not necessarily have to be mutual to be anti-competitive.

The guidance is careful to draw the distinction between unlawful non-poaching agreements and lawful non-solicitation of employees clauses of the kind seen in secondment or consultancy agreements or other types of commercial agreement. Such non-solicitation provisions might not break competition law if they are necessary to enable the agreement to be carried out and are otherwise proportionate.

Wage-fixing

Wage-fixing is when businesses competing for the same type of worker agree to fix pay and/or benefits and/or other terms and conditions of employment.

This could capture informal agreements between employers to cap pay or pay increases for the year. It might also capture a trade body's circulation of a list of "recommended pay rates" for roles within their particular sector.

Sharing "competitively sensitive" information

Information exchange and benchmarking are common and often beneficial business practices. Such practices can help firms enhance efficiency and improve HR management through insights into market standards. However, when competitively sensitive information is exchanged between actual or potential competitors in the labour market this *may* breach competition law.

Information exchange becomes problematic when it is "competitively sensitive". This means information which

reduces market uncertainty, or influences competitors' strategic decisions on pay, benefits, or hiring practices. The guidance says the following "high level principles" provide a steer on when information exchange is likely to raise competition law concerns:

- *Public vs confidential:* Publicly available data is rarely sensitive, whereas sharing confidential or restricted information is more likely to raise concerns.
- *Aggregated vs individualised:* Anonymised, aggregated data that cannot be linked to a specific business strategy is generally permissible. In contrast, the more easily information can be attributed to a particular business the more competitively sensitive that information is likely to be.
- *Past vs current and future:* Historic data will usually be less competitively sensitive than current or forward-looking information.

Even unilateral disclosures of competitively sensitive

information can breach competition law (i.e. where information only flows one way). And it will be presumed that recipients of information have acted on the information *unless* they have clearly distanced themselves or reported the matter to the CMA. In March 2025, the CMA fined four companies more than £4 million for unlawfully exchanging pay information in the sports broadcasting sector. The businesses coordinated freelance pay rates to avoid a bidding competition. However, a fifth company involved in the information exchange obtained immunity from a fine by reporting the matter to the CMA.

The guidance goes on to give some examples of risky and less risky information-sharing activities:

Risky	Less risky
<ul style="list-style-type: none"> • Sharing current pay rates with competitors. • Bilateral or unilateral disclosure of future pay intentions between competing employers. • Multilateral exchange (directly or through third parties) that provide insight into competitors' pay structures. • Informal or social conversations where competitively sensitive information is disclosed. 	<ul style="list-style-type: none"> • Benchmarking via independent third parties using anonymised and aggregated data. • Relying on publicly available sources, such as ONS data or job advertisements. • Industry discussions limited to non-sensitive HR topics, such as workforce development or education partnerships.

Are collective bargaining negotiations between workers and employers covered?

Collective bargaining is a process through which employers and workers (usually represented by trade unions) negotiate terms such as pay, benefits and working conditions. Successful negotiations typically result in a collective agreement setting out agreed terms and obligations for both sides.

While competition law can, in principle, apply to such discussions and agreements, the CMA guidance confirms that it will **not** seek to enforce competition law where workers and employers reach a genuine collective agreement.

The CMA also recognises that coordination between different employers may be a legitimate and necessary part of preparing for the collective bargaining process. Nevertheless, employers must not exchange competitively sensitive information with each other unless strictly necessary. Further, any coordination among employers *outside* the collective bargaining process may still be unlawful.

What does this mean for employers?

There are some important “dos” and “don’ts” for employers to stay on the right side of the line:

- Do make sure that HR and line managers involved in recruitment and/or setting pay and benefits understand how competition law affects those areas.

- Don't agree with other businesses not to approach or hire each other's employees – and remember this covers informal agreements or practices as well.
- Don't agree with other businesses to align salary, benefits or salary increases.
- Do treat all non-public pay, benefits, and recruitment data as competitively sensitive.
- Don't share or discuss competitively sensitive information about your business or employees with competing employers, either directly or through a third party.
- Do ensure solid internal reporting processes are in place, and that staff are aware of these and how they can use them.

- Do seek legal advice before sharing pay or employment information with competitors or where a competitor or industry contact discloses such information to you.

[Competing for talent – CMA guidance \(9 September 2025\)](#)

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.