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Lasting impact: Study finds AG Ferguson's no-poach initiative boosted income for low-wage workers nationwide



(<https://www.atg.wa.gov>)

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Salary increase of approximately \$1,000 directly attributable to AG initiative at targeted chains

SEATTLE — A recent independent economic study evaluating the impact of Attorney General Bob Ferguson's No-Poach Initiative concluded that it directly increased wages for low-income franchise workers nationwide.

The researchers controlled for other possible factors, including inflation and cost of living. Their study examined job postings from a group of 185 corporations that changed their practice as a result of Ferguson's No-Poach Initiative. The authors determined that advertised wages increased by more than 3.3% specifically as a result of the initiative — a pay raise of \$1,041.71 for workers employed by these corporations, who earn an average salary of \$31,567.

Collectively, the 185 franchisors examined in the study employ millions of employees, meaning the long-term, nationwide impact of the initiative likely totals in the billions of dollars, based on the new research.

Ferguson's No-Poach Initiative was a two-year project (<https://www.atg.wa.gov/news/news-releases/ag-report-ferguson-s-initiative-ends-no-poach-practices-nationally-237-corporate>) that ended the use of illegal no-poach clauses in franchise agreements at all chains that operate in Washington, a total of 237 companies, including McDonald's, Anytime Fitness and Jiffy Lube.

No-poach clauses appear in franchise agreements between owners of franchises and corporate headquarters. The illegal clauses prohibit employees from moving among stores in the same corporate chain, a practice that economists believe stagnates wages and limits growth opportunities. For example, the clauses would prohibit an employee at one Burger King location from accepting employment at another Burger King franchise location for higher pay. Importantly, employees had no knowledge of these agreements between franchisors and the corporate brand.

In order to avoid a lawsuit from the Attorney General's Office, hundreds of corporations entered into legally enforceable agreements to end the use of no-poach clauses nationwide. One company initially refused — Jersey Mike's. Ultimately, after the Attorney General's Office filed a lawsuit, Jersey Mike's entered into the same agreement as the other companies and paid \$150,000 (<https://www.atg.wa.gov/news/news-releases/jersey-mike-s-will-pay-150k-resolve-ag-ferguson-s-first-no-poach-lawsuit>).

"When employers fairly compete for labor, workers benefit," Ferguson said. "This research reveals the extent to which the system was rigged against workers. I'm proud my legal team put a stop to it."

Studying nationwide impact

The study, "The Effect of No-poaching Restrictions on Worker Earnings in Franchised Industries (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4155577)," was conducted and written by four economists: Brian Callaci (Chief Economist, Open Markets Institute), Sergio Pinto (PhD student, University of Maryland and Instituto Universitário de Lisboa), Marshall Steinbaum (Assistant Professor of Economics, University of Utah; Senior Fellow in Higher Education Finance, Jain Family Institute), and Matthew Walsh (Research Lead, Burning Glass Technologies).

The authors are not connected to the Attorney General's Office, and the work was not requested by the office.

The researchers looked at 1,469,581 job postings by 576 companies from across the country between 2015 and 2021. They analyzed the advertisements to compare wage offerings between companies targeted by the Attorney General's enforcement effort and those that operate outside Washington and were therefore not within the scope of the initiative, as well as those companies that did not have a no-poach provision in place beforehand.

The analysis showed that companies subject to the initiative offered an overall 3.3% salary increase in job postings, compared to companies that were not part of the initiative, controlling for time, occupation, location and franchise chain.

The authors write: "It should be noted that the methodology we employ, comparing chains that entered into [a legally binding Assurance of Discontinuance] to chains that did not, would underestimate the impact of the enforcement campaign on pay in franchising labor markets broadly if the effect was to increase competition throughout the sector, not only at chains that entered into AODs."

Although the paper does not directly examine impacts to existing workers, these workers would have the opportunity to apply for the new, higher-paying jobs, and to use these increased wages to potentially bargain for raises from existing employers.

The authors expect to submit the research for peer-reviewed publication.

Ferguson's initiative to eliminate no-poach clauses

Ferguson's no-poach initiative had a nationwide impact, but it did not involve other states.

The initiative began with a September 2017 article in the *New York Times* titled “Why Aren’t Paychecks Growing? A Burger-Joint Clause Offers a Clue” (<https://www.nytimes.com/2017/09/27/business/pay-growth-fast-food-hiring.html>.)” The article focused on the downward pressure no-poach agreements among fast-food franchises place on wages. After reading the article, Solicitor General Noah Purcell referred the subject to Ferguson. The article cited research by Princeton economists Alan Krueger and Orley Ashenfelter highlighting the harms to workers caused by the practice.

Professors Krueger and Ashenfelter examined franchise agreements for 156 of the largest franchise companies in the United States. The franchise agreements for companies with more than 500 locations operating in the U.S. were analyzed for any language “restricting the recruitment and hiring of employees from other units within the franchise company.”

The economists asserted that “no-poach” clauses reduce opportunities for low-wage workers and stagnate wages, harming workers in Washington and across the nation. For example, the clauses would prohibit an employee at one Burger King location from accepting employment at another Burger King franchise location for higher pay. Importantly, employees had no knowledge of these agreements between franchisors and the corporate brand.

In January 2018, Ferguson’s Antitrust Division launched an investigation into no-poach clauses nationwide. As a result of our initiative to eliminate no-poach clauses, 237 corporate franchisors, ranging from McDonald’s to Jiffy Lube, signed legally binding agreements to end no-poach practices nationwide, covering 4,700 Washington locations and nearly 200,000 locations around the country. Despite its national scope, this was not a multistate effort.

When Krueger and Ashenfelter’s paper was formally published in 2022 in the *Journal of Human Resources* (<http://jhr.uwpress.org/content/early/2021/10/07/jhr.monopsony.1019-10483.full.pdf+html>), it included a section addressing the office’s work, noting that it provides the basis for a study “to determine what effect, if any, these agreements may have had on worker wage rates or conditions of employment.”

Callaci, Pinto, Steinbaum and Walsh’s work was in response to that prompt.

Testimony before the U.S. House of Representatives

In October of 2019, Assistant Attorney General Rahul Rao testified before the U.S. House Judiciary Committee’s Subcommittee on Antitrust, Commercial and Administrative Law. U.S. Rep. Pramila Jayapal of Washington state is a member of the committee.

In addition to other antitrust work of the office, Rao discussed the success of the anti-no-poach initiative. Rao shared the types of clauses the office has seen in companies across the nation, the effects these no-poach clauses could have on workers’ wages and opportunities, and the wide range of industries that use these practices.

For example, the office has found that across the many industries they have investigated, approximately 65% of corporate chains include no-poach provisions in their franchise contracts.

Jayapal praised the Attorney General’s Office for its initiative.

“One of the things I have appreciated about our state AG’s Office is that you don’t wait for people to come to you, you actually identify a problem ... and then you act aggressively and pursue an enforcement strategy that has resulted in positive gains for millions of workers across the country.”

Written testimony for the Attorney General’s Office can be found here (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/WA%20AAG%20Rahul%20Rao%20-%20Written%20Testimony_0.pdf).

Attorney General’s Antitrust Division

Senior Assistant Attorney General Jonathan Mark and Assistant Attorneys General Eric Newman, Rahul Rao and Justin Wade of the Attorney General’s Antitrust Division led the no-poach initiative.

The Antitrust Division is responsible for enforcing the antitrust provisions of Washington’s Unfair Business Practices-Consumer Protection Act. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers. The division also brings actions in federal court under the federal antitrust laws. It receives no general fund support, funding its own actions through recoveries made in other cases.

The Antitrust Division investigates complaints about potential anti-competitive activity. For information about filing a complaint, visit <https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx> (<https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>).

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