



Duke University

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Duke University
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Dear Duke Employee:

With this letter I am sending you Duke University's Antitrust Policy and Implementation Guidelines. The Policy and Implementation Guidelines outline your responsibilities as a Duke employee to identify potential antitrust issues and report them as quickly as possible.

Antitrust violations are serious matters that could subject both Duke and you to investigations, lawsuits, fines, and even criminal charges. Duke recognizes that all employees – whether administrative leadership, faculty members, business officers or staff – can discharge their responsibilities to comply with antitrust laws only if they understand how to identify potential problems and know where to seek advice when issues are spotted. It is my hope that the Implementation Guidelines will serve as a “toolbox” to help you and Duke work vigilantly to prevent antitrust violations by early detection of potential violations and reporting when necessary.

In addition to the Policy, Duke has agreed to comply with specific measures designed to protect competition in the recruitment and hiring of faculty and staff. These measures are being taken as part of a resolution of a lawsuit against Duke that alleged antitrust violations in faculty recruiting. In the near future, certain Duke employees such as business managers will receive a separate communication from my office to provide specific direction on training and other steps we will take. I appreciate your cooperation with those efforts.

If you have any questions concerning this Policy, or how you can comply, please contact me or my colleague Chris Lott, who serves as Duke's Antitrust Compliance Officer, at (919) 684-3955. If you suspect that Duke or an employee is violating this Policy, please report it immediately. You will not face reprisals for reporting such violations.

Sincerely,

Pamela J. Bernard
Vice President and General Counsel

Duke University Antitrust Policy

Duke University is committed to excellence in all of its operations. It conducts its affairs ethically, honestly, and in compliance with applicable laws and regulations. This includes U.S. and international antitrust laws.

Duke University expects its employees to comply with these laws, to observe the Implementation Guidelines that immediately follow this Policy, and to consult the Antitrust Compliance Officer (Chris Lott at 919-684-3955 or chris.lott@duke.edu) whenever there is a question about the legality of a practice. It is the responsibility of each Duke employee to make sure that their actions are consistent with the antitrust laws.

Violations of this Policy may result in disciplinary action up to and including termination of employment. Violations of the law may also result in legal liability for Duke and individual employees involved in the misconduct, and could lead to significant fines or penalties, including criminal penalties.

Duke University Antitrust Implementation Guidelines

What are the antitrust laws?

The antitrust laws promote fair competition for the benefit of consumers and regulate the way businesses can operate. Antitrust issues are not always intuitive, particularly in the highly collaborative environment of higher education. They do apply, however, to colleges and universities. The following sections describe situations where antitrust concerns or issues might arise.

What are the general rules for agreements with competitors?

Agreements with competitors are subject to rigorous scrutiny under the antitrust laws. It is important to remember that Duke's competitors may include other universities and research institutions, other employers, and other companies that serve Duke's students, faculty, staff, visitors, and patients.

Antitrust law defines "agreements" very broadly. Agreements may be oral or written and may even be inferred from casual conversations.

While the antitrust laws generally do not prohibit faculty from collaborating on scholarly or research work, they do prohibit universities—just like any business—from restraining competition in other, more commercial contexts. A non-exclusive list of examples of potentially problematic areas are: tuition, financial aid, hiring, salaries, housing, licensing, intellectual property, budgets, purchasing/procurement, bids, aspects of our athletics programs, and other commercial dealings with third parties.

Are there any types of agreements or conduct that the antitrust laws strictly prohibit?

This Policy and the law strictly prohibit certain types of agreements between competitors:

- *Price Fixing.* Agreements between Duke and competitors to raise, fix, or otherwise maintain prices violate the law. Price fixing may include, for example, an agreement on tuition rates, financial aid, faculty or staff salaries, or housing costs. You must avoid any direct or indirect conversations with competitors involving price, price setting, or bidding.
- *Market Allocation Agreements.* Duke may not agree with its competitors to divide territories or assign students, faculty, or customers, absent the approval of the Antitrust Compliance Officer. For example, an arrangement that "I won't recruit employees or students in your market if you don't recruit in mine" would raise significant concerns under the antitrust laws.

- *Group Boycotts.* Duke generally may decide on its own not to do business with another company. However, an agreement between Duke and a competitor not to do business with certain individuals or businesses (a “boycott”) is problematic under the antitrust laws. You should avoid discussions with competitors (including other universities) about not doing business with particular vendors, companies, students, faculty or staff, or customers without prior approval from the Antitrust Compliance Officer.
- *Bid-rigging.* Duke and its employees generally may not coordinate with another party in responding to bid requests. You should also be careful about sharing competitively sensitive information with competing bidders that could make it easier for those bidders to coordinate with Duke or others. With prior approval from the Antitrust Compliance Officer, Duke may engage in joint bidding activities in some limited circumstances.

Information Sharing: What should I avoid sharing?

There are significant risks in talking with competitors about topics such as tuition, financial aid, hiring, salaries, budgets, housing, licensing, intellectual property, purchasing/procurement, bids, and other commercial activities. Sharing non-public information with a competitor in one of these areas can give rise to significant antitrust risk.

You should *avoid any and all discussions with competitors* that:

- Concern prices of products, services or inputs (e.g., tuition, financial aid, faculty, coaching, staff salaries or budget assumptions);
- Could be perceived as an attempt to allocate markets or customers and reduce competition;
- Relate to restrictions on conducting business with specific companies or customers, or hiring certain faculty or staff; or
- Involve plans to bid or refrain from bidding on any prospective business, or the content of any bid to be submitted.

If you are attending a meeting or on a telephone conference where one of these subjects is addressed, you should excuse yourself from the conversation and notify the Antitrust Compliance Officer.

Information Sharing: What type of sharing is acceptable?

Not all information sharing is problematic under the antitrust laws. The following provides some general guidance; please reach out to the Antitrust Compliance Officer with any questions.

- It is not a problem to share publicly-available information, even with competitors.
- As a necessary part of your employment, you may attend meetings and conferences and participate in other groups where best practices or standards are discussed. Many Duke employees attend meetings and seminars of professional associations and groups. These meetings have significant value, and we do not mean in any way to limit your participation or attendance at them unless a purpose for such an event is to engage in any of the conduct prohibited under this Policy.

It is important, however, whether at meetings, seminars, by telephone, or otherwise, to avoid discussions of the University's current or future plans, projections or assumptions, with respect to such sensitive areas as tuition, employee salaries, costs, budgetary figures, and financial aid formulas or awards. Participants must also avoid any conduct which might be construed as agreeing with any employee of any other institution with respect to any of the prohibited conduct defined above, or with respect to the methods or formulas to be used for making such determinations.

- You should not share salary information with a competitor. In some circumstances, it may be permissible to participate in compensation surveys, where the data is aggregated and historical. Compensation surveys are managed by the appropriate administrative offices at Duke; individual employees may **not** participate in such surveys. Any questions about compensation surveys should be directed to Kyle Cavanaugh, Vice President for Administration, and the Antitrust Compliance Officer.

What are the rules when I am recruiting or hiring employees?

The antitrust laws cover agreements that restrain competition in labor markets. It is important to remember that Duke competes with other institutions for faculty and staff, and that the antitrust laws prohibit most restraints on this competition. Accordingly, Duke ***will not agree with another employer to refrain from cold-calling, poaching, recruiting, or hiring faculty or staff. That includes formal or informal understandings that Duke and another institution will recruit only at certain times or in only certain ways, that the institutions will seek permission or give a "heads-up" before recruiting, or that certain faculty or staff may not be recruited.***

Antitrust law recognizes that some types of employment-related restrictions may be acceptable, but only under narrow circumstances, and only after a careful legal analysis is conducted. Consult the Antitrust Compliance Officer if you are considering agreements that relate to solicitation or hiring of employees.

Do the antitrust laws apply to admissions and financial aid?

You *should not agree with another college or university on how Duke will compete for students*, including how Duke will admit and recruit students, or the amount of financial aid that will be offered to a student. Likewise, you should not collaborate with another college or university, without consulting first with the Antitrust Compliance Officer, on the formula or inputs for determining financial aid. This includes, for example, agreements regarding how family or parental contribution will be calculated and needs analysis. Federal law includes an exemption that permits certain schools that offer need-based financial aid to discuss the common formulas for determining aid. This is a complicated area of law, and you should consult with the Antitrust Compliance Officer if you participate in conversations subject to this exemption.

What advice can you give for dealing with suppliers, licensees and customers?

In some cases, requiring a supplier, licensee, or customer to deal exclusively with Duke—or to refrain from dealing with one or more of Duke’s competitors—may raise antitrust concerns. Duke employees should consult with the Antitrust Compliance Officer before imposing such exclusivity requirements in a supplier, license, or customer agreement.

How can I report a potential or actual violation of the Policy?

You should consult with the Antitrust Compliance Officer whenever there is a question as to the appropriateness of a particular business decision or course of action. Directors, officers, faculty, or employees who learn of misconduct that raises potential antitrust risks, including violations of this Policy and the law, must immediately report such misconduct either to the Antitrust Compliance Officer (Chris Lott at 919-684-3955 or chris.lott@duke.edu) or to Duke’s Compliance and Fraud Reporting Hotline (800-826-8109 or oarc@duke.edu).

Will I be protected from retaliation if I report a violation of the Policy?

It is Duke policy that reporting antitrust violations or potential violations is required, and that reprisals or retaliation for such reporting is strictly prohibited. Duke will not tolerate retaliation against any individual filing a good-faith complaint with management, HR, Legal, Finance or the Compliance and Fraud-Reporting Helpline (800-826-8109 or oarc@duke.edu), or for participating in the investigation of any such complaint.

What if I have questions about Antitrust and Competition Law?

Antitrust and competition law can be a difficult subject, and the law is not always clear. When in doubt, you should seek advice from the Office of Counsel. Chris Lott, Deputy General Counsel, serves as Duke’s Antitrust Compliance Officer (919-684-3955 or chris.lott@duke.edu). You may also contact Vice President and General Counsel, Pamela Bernard, with any questions.