

# Washington State Attorney General's Office No-Poach Initiative

Ending a Rigged System for Hourly Employees at Corporate Franchises

**JUNE  
2020**



**Eliminating No-Poach Clauses at More Than 190,000 Franchise Locations Nationwide**



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# Letter from the Attorney General



June 2020

Dear Washingtonians,

In September 2017, *The New York Times* published an article by Rachel Abrams entitled ‘Why Aren’t Paychecks Growing? A Burger-Joint Clause Offers a Clue.’ The article cited research by Princeton economists Alan Krueger and Orley Ashenfelter highlighting harms to workers caused by the practice of using “no-poach” provisions. No-Poach provisions are included in franchise agreements that franchise owners sign with corporate headquarters that restrict employee mobility within the same franchise system.

The economists asserted that no-poach clauses stagnate wages and reduce opportunities for low-wage workers. The use of these clauses creates a rigged system that harms workers in Washington and across the country.

In January 2018, the Antitrust Division of the Attorney General’s Office launched an investigation into no-poach clauses, beginning with the fast-food industry, and eventually expanding significantly in scope. Where my team found no-poach provisions were used, we offered the company the opportunity to sign an Assurance of Discontinuance (AOD) that committed the company to ending the use of these provisions nationwide.

Our goal at the beginning of the investigation was to eliminate the use of no-poach practices not just in Washington State, but across the country. At this time, I am pleased to report that we have met that goal. Every corporate franchise that has a significant presence in Washington and has used no-poach clauses entered into a legally-binding agreement with my office to eliminate the practice across all 50 states.

The team of people with the Attorney General’s Office working on this initiative was relentless, and as a result of this work, more than 200 companies have stopped using no-poach clauses, benefiting workers at corporations with an estimated 4,700+ locations in Washington and 197,000+ locations nationwide.

Although this initiative has concluded, I remain committed to enforcing the law to ensure workers are fully protected.

Sincerely,

  
Bob Ferguson  
Washington State Attorney General

# What are No-Poach Clauses?

No-Poach provisions prohibit employees from moving between locations of the same corporate chain, and prohibit employees from accepting employment at another franchise location. These provisions appear in lengthy franchise agreements that franchise owners (franchisees) sign with corporate headquarters (franchisor). Employees are often unaware the provisions exist, until they try to seek opportunities elsewhere.

Some no-poach provisions plainly prohibit the hiring of another location's employees, while others prohibit the recruitment of another location's employees. Similarly, some no-poach provisions only prevent the poaching of a franchisor's employees. Some protect only company-owned locations. Some only restrict franchisees from hiring or recruiting other franchisee's employees. And finally, some no-poach provisions are "all of the above."

Importantly, as these no-poach provisions exist in agreements between franchisor and franchisee— and not in the employment agreement between the employer, the franchisee, and the employee—they are often invisible to those whose mobility is restricted.

All no-poach provisions have the same effect: they artificially restrict competition for labor. By restricting franchisees' ability to hire or recruit new employees, no-poach provisions decrease competition for the labor of franchise employees, which can lead to reduced opportunities and stagnant wages, and can diminish competition for better benefits and working conditions.



The Antitrust Division of the Attorney General's Office is responsible for enforcing the antitrust prohibitions of Washington's Unfair Business Practices-Consumer Protection Act. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers.

For information about filing a complaint, visit:

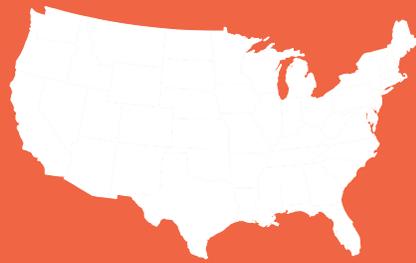
<https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>

# Impact of the Initiative

Starting in fast food, the initiative expanded across multiple industries that used no-poach clauses in franchise agreements, including: automotive services, child care, cleaning services, convenience stores, custom window treatment, electronic repair services, home healthcare services, home repair services, hotels, insurance adjustors, parcel services, tax preparation, and travel agencies.



**4,700+**  
**Locations  
in Washington**



**197,000+**  
**Locations  
Nationwide**



**“** *What [a no-poach agreement] actually looks like is suppressed pay and limited mobility within the company. This is a giant step for those of us who want to use our skills in job training, for those that are first time workers or those that are fine-tuning their skills in the food industry. I want to share my skills with those coming into the food industry and I can't do that if I can't put food on the table.* **”**

— Merlee Sherman, Jimmy John's employee

# List of Corporate Franchisors That Eliminated No-Poach Clauses Nationwide

Company Name	# of Locations* (WA/US)	Company Name	# of Locations* (WA/US)
1-800-Radiator	(5/186)	Canteen	(6/287)
A&W	(28/629)	Care Patrol	(4/139)
AAMCO	(17/618)	Caring Transitions	(7/175)
Aaron's Leasing	(26/1,689)	Carl's Jr.	(33/1,168)
Abbey Carpet	(14/798)	Carraba's Italian Grill	(0/233)
Abra Auto Body & Glass	(2/208)	Carstar	(30/333)
Advanced Fresh Concepts	(175/3,800)	Charley's Philly Cheesesteak	(8/527)
AdvantaClean	(7/140)	Choice Hotels (Clarion, Comfort Inn, Comfort Suites, Woodsprings)	(94/5,212)
Aire Serv	(3/191)	Chuck E Cheese's	(11/500)
Allegra	(3/223)	Church's Chicken	(3/1,009)
AlphaGraphics	(7/193)	Cinnabon	(25/836)
Annex Brands	(10/632)	Circle K	(48/5,082)
Any Lab Test Now	(6/177)	Club Pilates	(9/546)
Anytime Fitness	(65/2,559)	Club Z!	(4/371)
Applebee's	(42/1,782)	CMIT Solutions	(8/232)
AR Workshop	(4/142)	College Hunks Hauling Junk & Moving	(3/134)
Arby's	(57/3,283)	Comfort Keepers	(5/659)
Arthur Murray International	(7/207)	Concrete Craft	(3/59)
Auntie Anne's	(28/1,229)	Costa Vida	(8/96)
Baja Fresh	(4/131)	Critter Control	(3/148)
Bambu	(7/67)	CruiseShipCenters	(8/99)
Bar Method	(3/124)	Curves	(14/367)
Baskin Robbins	(80/2,560)	Denny's	(56/1,607)
Batteries Plus Bulbs	(15/720)	Dickey's Barbecue Pit	(18/564)
Ben & Jerry's	(12/215)	Dollar Rent-a-Car	(3/191)
Best in Class	(10/65)	Domino's	(137/5,587)
Bishops Barbershop	(10/79)	Drama Kids	(3/70)
Board & Brush Creative Studio	(4/189)	Dutch Bros	(53/292)
Body & Brain Yoga	(6/107)	Edible Arrangements	(8/1,153)
Bonefish Grill	(2/188)	Einstein Bagel	(11/698)
Bricks & Minifigs	(3/38)	Elements Therapeutic Massage	(4/245)
Budget Blinds	(40/1,037)	Elmer's	(4/29)
Buffalo Wild Wings	(16/1,214)		
Burger King	(120/7,226)		

\*The total number of locations for most businesses are constantly in flux. As such, these totals are point-in-time estimates based on a combination of publically available data and information provided by the businesses themselves. The US total is inclusive of WA locations.

Company Name	# of Locations* (WA/US)
Emerald City Smoothie	(32/40)
Engel & Volkers	(3/165)
European Wax Centers	(5/708)
Express Employment Professionals	(23/757)
Ezell's Chicken	(15/15)
F45 Training	(6/294)
Famous Dave's	(6/142)
Fast Signs	(15/603)
Fibrenew	(3/177)
Figaro's Pizza	(3/32)
Firehouse Subs	(9/1,112)
Fit Body Boot Camp	(6/477)
Fit4Mom	(16/316)
Fitness Together	(5/142)
Five Guys	(26/1,321)
Five Star Painting	(5/185)
Fix Auto	(13/154)
Floors to Go	(4/122)
Freshii	(5/128)
Frontier Adjusters	(16/635)
Frugals	(3/7)
FujiSan	(6/367)
Fyzical	(9/381)
Glass Doctor	(6/246)
Global Recruiters	(3/193)
GNC	(75/4,294)
Golden Corral	(3/489)
Gold's Gym	(5/312)
Good Feet	(6/141)
Grease Monkey	(18/283)
Great Harvest	(6/200)
Guesthouse	(8/28)
H&R Block	(228/9,981)
Hand and Stone	(12/434)
HealthSource Chiropractic	(8/172)
Hertz	(39/3,386)
HobbyTown	(8/120)
Home Instead Senior Care	(15/610)

Company Name	# of Locations* (WA/US)
Homesmart	(5/165)
Hometeam Inspection Services	(3/172)
Huntington Learning Center	(8/293)
I Love Kickboxing	(9/215)
IHOP	(31/1,671)
Image360	(4/131)
Inchin's Bamboo Garden	(3/26)
InXpress	(5/110)
ITEX Corporation	(3/94)
Jack in the Box	(151/2,237)
Jackson Hewitt	(106/5,746)
Jamba Juice	(28/820)
JDog Junk Removal & Hauling	(9/164)
Jersey Mike's	(41/1,343)
Jiffy Lube	(20/1,922)
Jimmy John's	(127/2,774)
John L. Scott Real Estate	(75/110)
Johnny Rockets	(4/175)
Kiddie Academy	(11/214)
Kona Ice	(3/1,203)
Krispy Kreme	(8/343)
Kung Fu Tea	(4/235)
L&L Hawaiian Barbecue	(8/184)
La Quinta	(16/888)
Little Caesars	(90/4,332)
Maaco	(16/456)
Mac Tools	(17/693)
MaidPro	(17/2,335)
Management Recruiters International	(8/488)
Manchu Wok	(5/28)
Massage Envy	(24/1,173)
Mattress Depot	(31/31)
McDonald's	(271/16,193)
Meineke	(16/799)
Melting Pot	(4/104)
Menchie's	(31/442)
Merry Maids	(28/1,001)

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Company Name	# of Locations* (WA/US)
Mio Sushi	(3/13)
Molly Maid	(17/246)
Mora Iced Creamery	(4/8)
Mr. Appliance	(5/213)
Mr. Electric	(3/159)
Mr. Handyman	(5/215)
Mr. Rooter	(3/200)
Mrs. Fields	(2/149)
My Place Hotels	(3/51)
Nature's Pet	(4/19)
NextHome	(8/336)
NMC Franchising	(3/4)
Nothing Bundt Cakes	(4/292)
NOVUS Glass	(19/162)
Orangetheory	(35/1,052)
OsteoStrong	(5/65)
Outback Steakhouse	(16/740)
Padgett Business Services	(8/216)
Palm Beach Tan	(7/541)
Panda Express	(67/1,900)
Panera	(32/2,043)
Papa John's	(52/3,314)
Paul Davis Restoration	(4/192)
Pelindaba Lavender	(6/14)
Phenix Salon	(3/271)
Pillar to Post	(22/499)
Pirtek	(3/89)
Pizza Factory	(9/105)
Pizza Hut	(131/7,496)
Planet Fitness	(26/1,495)
PLAYlive Nation	(7/40)
Poké Bar Dice & Mix	(3/64)
Popeye's	(22/2,231)
Port of Subs	(5/136)
Pro Image Sports	(2/116)
Property Damage Appraisers	(10/650)
Pump It Up	(4/151)
PuroClean	(6/247)

Company Name	# of Locations* (WA/US)
QDOBA	(25/728)
Quiznos	(87/491)
Rainbow International	(8/315)
Real Deals on Home Décor	(2/54)
Real Property Management	(6/281)
Realty One	(6/126)
Remedy Intelligent Staffing	(3/73)
Restoration 1	(7/153)
Right at Home	(9/471)
School of Rock	(5/227)
Senior Helpers	(6/301)
ServiceMaster	(62/3,114)
SERVPRO	(40/1,716)
Sharetea	(15/75)
Signarama	(3/500)
Signs by Tomorrow	(2/85)
Signs Now	(2/82)
Singers Company	(4/72)
Sizzler	(3/112)
Soccer Shots	(5/227)
Sonic	(16/3,500)
Sport Clips	(34/1,700)
Spring-Green Lawn Care	(7/97)
Starcycle	(2/10)
Supporting Strategies	(3/86)
Synergy	(8/317)
Taco Johns	(4/394)
Tailored Living	(3/160)
Tan Republic	(6/64)
TCBY	(3/229)
The Barbers	(14/34)
The Barbers, Hairstyling for Men & Women (Cost Cutters, Smartstyle)	(6/2,471)
The Habit Burger Grill	(8/273)
The Joint Chiropractic	(9/468)
The Little Gym	(12/206)
The Maids	(3/1,344)
The Original Pancake House	(7/133)

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Company Name	# of Locations* (WA/US)
The UPS Store	(124/4,827)
Thrifty Rent-a-Car	(4/300)
Thrive Community Fitness	(5/5)
Tim Hortons	(0/738)
Toro Tax	(2/130)
Transworld	(6/165)
Tropical Smoothie Cafe	(3/719)
Tutor Doctor	(6/355)
Two Men and a Truck	(4/274)
uBreakiFix	(4/467)
UBuildIt	(3/80)
Urban Float	(4/8)
Valvoline	(33/1,127)
Velofix	(4/55)
Villa Pizza	(7/225)
Waxing the City	(4/117)
Weichert Realtors	(9/478)
Westside Pizza	(21/28)
Wetzel's Pretzels	(11/288)
Window Genie	(3/131)
Wingstop	(12/1,027)
World Inspection Network	(24/176)
Zeek's Pizza	(16/16)

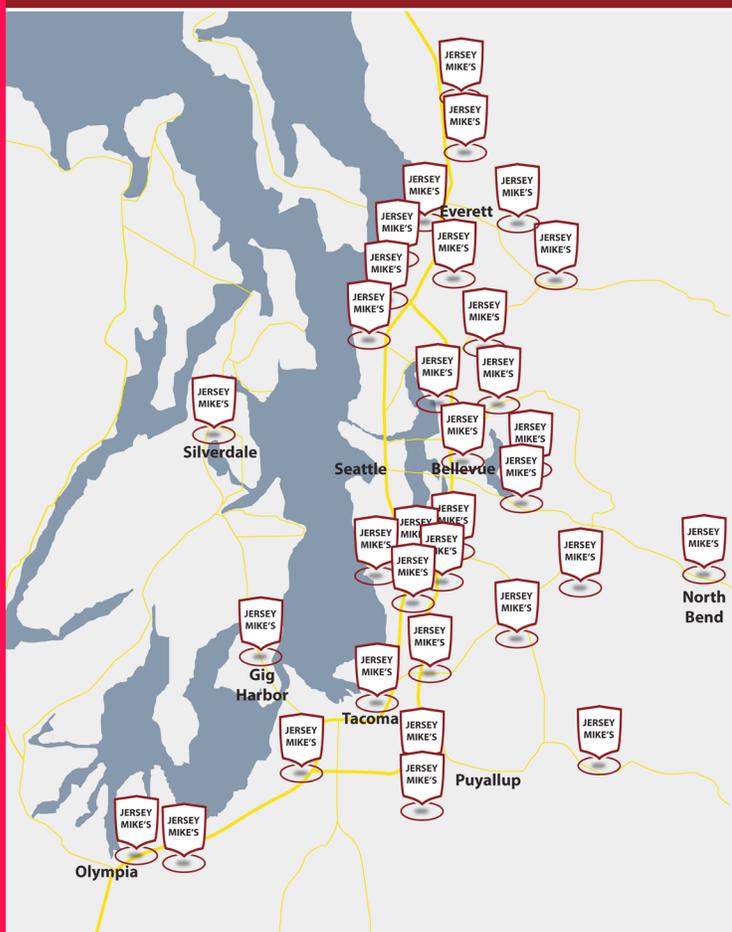
\*The total number of locations for most businesses are constantly in flux. As such, these totals are point-in-time estimates based on a combination of publically available data and information provided by the businesses themselves. The US total is inclusive of WA locations.

# Successful Lawsuit

In 2018, Attorney General Ferguson offered restaurant chain Jersey Mike's the opportunity to sign a legally binding agreement to stop enforcing no-poach provisions and remove them from existing franchise agreements. In exchange, the company would not have to pay any form of monetary penalty. Unlike dozens of other corporate chains at the time, Jersey Mike's refused, and Ferguson filed a lawsuit against the company. This was the first lawsuit against a company for its use of no-poach clauses by a state attorney general.

On August 23, 2019, Jersey Mike's agreed to pay \$150,000 to resolve the lawsuit and end its use of no-poach provisions.

## PUGET SOUND AREA JERSEY MIKE'S



“

*No-Poach practices are wrong – and illegal...*

*Jersey Mike's could have saved time and money by doing the right thing and agreeing to a legally binding commitment to end these practices when we first approached them. Today's resolution will benefit thousands of its workers nationwide...*

*Corporations that refuse to eliminate no-poach clauses can expect a lawsuit from my office. This sends a message to companies like Jersey Mike's who refuse to take my deal: you'll end up paying for it.*

— Attorney General Bob Ferguson

”

# Congressional Testimony

On October 29, 2019, Assistant Attorney General Rahul Rao testified before the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial and Administrative Law. The subcommittee consists of 13 representatives, including U.S. Rep. Pramila Jayapal of Washington state.

In addition to other antitrust work of the office, Rao discussed the success of the anti-no-poach initiative. He 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 percent of corporate chains include no-poach provisions in their franchise contracts.



“

Within seven months of launching our investigation, we secured legally binding agreements...from seven fast food franchisors to immediately stop enforcing and eliminate no-poach clauses from their franchise agreements nationwide... We believe that all no-poach provisions in franchise agreements are per se violations of Washington's antitrust laws, and its federal analogues.

---

*-Assistant Attorney General Rahul Rao*

”

“

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 in this case, no-poach agreements, based on stories that were in the news and economic analysis and consumer complaints. And then you act aggressively and pursue an enforcement strategy that has resulted in positive gains for millions of workers across the country.

---

*-U.S. Representative Pramila Jayapal*

”

# Acknowledgments

Thank you to the team of Attorney General's Office employees whose knowledge, skills, and expertise contributed to this initiative.

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