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FINLAND

Non-competition clauses in labour contracts

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Preliminary remarks

In this questionnaire, “plaintiff” refers to the employer with whom the employee signs the labour contract. “Defendant” refers to the employee who signed the labour contract. Sometimes the new employer can also be a defendant.

The law governing covenants not to compete in labour contracts relates to many areas of the law (such as freedom of occupation, freedom of contracts, etc.) and may be taken into consideration when replying to the questionnaire. This subject also relates to theories of economics and freedom of trade and competition, which can also be taken into account.

1. What clauses, if any, are in your country’s constitution relating to covenants not to compete in labour contracts? Are there clauses relating to the freedom of occupation; protection of property (if so, does this include intellectual property and trade secrets); freedom of contract, etc. If there are such clauses, how are they applied relating to covenants not to compete? Which, if any, of the EU Directives relating to this subject are applied in your country?

The Constitution of Finland includes in Sec.18 the specific provision on the right to work and the freedom to engage in commercial activity. Under the provision, everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice.

2. Is there a statute in your country that governs the enforceability of covenants not to compete? Or, is the law governed solely by case law?

The enforceability of covenants not to compete is governed by the Employment Contracts Act (2001).

If there is a statute, does the statute relate to specific professions or industries?

The Employment Contracts Act is a general statute governing all the employment relationships besides seaman work. The Seamen Act (1978) includes respective provisions on non-competition.

3. In general, are covenants not to compete in labour contracts enforceable in your country? Following are some possible answers:
 - (a) In my country covenants not to compete are not enforceable under any circumstances.

If they are not enforceable, explain the legal and economic basis for this rule.

- (b) In my country covenants not to compete are enforceable under certain conditions and to a certain extent.

Yes.

(If the answer is yes, there are further questions about the condition required for the covenant to be enforceable.)

4. What are the employer's protected interests and how are they defined?

During the term of employment employees shall not do work for another party or engage in such activity that would, taking the nature of the work and the individual employee's position into account, cause manifest harm to their employer as a competing activity contrary to fair employment practices.

On especially weighty grounds related to the operations of the employer in the employment relationship, it is possible to conclude an agreement restricting the freedom of an employee to compete with the employer after the termination of an employment relationship. In determining the existence of especially weighty grounds referred to above, account shall be taken of the nature of the employer's business, the protection he needs because of business or trade secrets or special training provided by him, as well as the position and tasks of the employee.

What is the public's interest in enforcing covenants not to compete? Is this a reason for statutes and case law?

5. If covenants not to compete are enforceable in your country: what must the plaintiff show to prove the existence of an enforceable covenant not to compete?

- (a) Is a written contract required?

No, but in practice covenants are concluded in written form.

- (b) Is a trade secret required to prove the employer's case? If so, how is a trade secret defined? Does it include customer lists, price lists, systems of work?

The business or trade secrets are not defined in labour law. In the Penal Code a business secret is defined as a business or professional secret and other corresponding business information that a businessman keeps secret and the revelation of which would be conducive to causing financial loss to him/her or to other businessmen who have entrusted him/her with the information. It is clear that customer lists, price lists, systems of work, computer systems, etc. may be included in this definition.

- (c) Does the employer need to give the employee consideration (in addition to a regular salary) as a condition for the covenant not to compete to be enforceable?

A covenant may restrict the freedom of an employee for six months at most after the end of the employment relationship, or for one year at most in case the employee can be regarded to have had reasonable compensation for the disadvantage caused by the covenant.

- (d) Will geographical factors, time factors and the special characteristics of an industry be considered when deciding whether to enforce a covenant not to compete?

See point 4.

- (e) Must the covenant not to compete meet a “reasonable test”? If so, who has the burden of proof? How, if at all, does your case law balance between such rights as freedom of contract, property rights and freedom of occupation?

If a person has entered into an agreement not to engage in such an activity, such an agreement shall not be binding to the extent that it unduly restricts his freedom of activity. If an agreement has been concluded within the limits of the Employment Contracts Act, an employee has the burden of proof regarding undue restriction.

- (f) May the new employer be sued for employing an employee who is violating the covenant not to compete in his labour contract with the former employer? If so, in which court? Is this hearing held jointly with the suit against the employee? Note: the new employer has no contract with the former employer and there is no employee-employer relation between them.

An employment contract concluded by an employee in violation of his duties under a previous contract of employment is not invalid, but the employee is liable for damages for the neglect of his duties. If the second employer knew of the violation, he is liable for damages to the first employer jointly and severally with the employee. The case shall be filed in a general court of law.

- (g) If the employer terminates the labour contract, is the covenant not to compete enforceable? Does it matter what the reason for the dismissal is?

An agreement of non-competition does not bind the employee if the employment relationship has been terminated for a reason deriving from the employer.

7. If a covenant not to compete is held by a court in your country to be overly broad, will the court modify the covenant? What other flexibility do courts have relating to relief they can grant?

A covenant concluded in violation of a provision in the Employment Contracts Act is null and void. In other respects, the general provisions shall apply to the validity and mitigation of such agreements.

8. Do the courts issue preliminary (temporary) injunctions for violation of covenants not to compete in labour contracts?

Not usually.

9. What are the remedies which courts can and do grant when an employee has violated his/her covenant not to compete?

A conventional penalty for a violation of the covenant may not exceed the earnings of the employee during the final six months of the employment relationship.

The time limit and the maximum amount of the conventional penalty are not applicable to a covenant concluded with the immediate subordinates of the managing director of the undertaking who are in managerial position and participate in the direction of the undertaking.

10. Which court(s) in your country have jurisdiction over legal matters relating to covenants not to compete in labour contracts? (Labour Courts; Civil or Commercial Courts; Administrative Law Courts; Constitutional Court, etc.).

The general courts of law, but these kinds of cases are often handled also in arbitration.

11. Are there any leading or illustrative judgments that you would like to describe relating to covenants not to compete in labour contracts?

Do you have any additional remarks on this subject?
