

Non-competition clauses in labour contracts

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1. What clauses, if any, are in your country's constitution? 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?

Articles of Italian Constitution relating to covenants not to compete in labour contracts are:

- Art. 4: "Italian Republic recognises to all citizens the right at work and promotes its effectiveness" (paragraph 1);
- Art. 35: "Italian Republic protects work in every its forms and applications" (paragraph 1);
- Art. 41: "Private economic enterprise is free" (paragraph 1).

In Italian labour law non competition of the employee towards his employer is regulated as follows.

- A. During the labour relationship (i.e. during the performance of the labour contract) employee can't compete with the employer. Art. 2105 of Italian civil code says that employee has a fidelity duty; he can't do any business in opposition to the employer interest and must keep secret about all manufacturing activities.
- B. Art. 2125 of civil code provides that employer (plaintiff) can covenant that employee (defendant) does not compete with him after the end of the labour relationship. This is properly for Italian labour law a covenant not to compete: an agreement made during the labour relationship when the contract is still effective. The covenant is valid only if: a) is written; b) is rewarded; c) has established limits of object, period or area. Term of covenant can't be more than five years for managers and three years for all other workers. A more long term is automatically reduced to the term fixed by law.
- C. After the end of the labour relationship employee has a right of free enterprise in the same field of activity of the employer. A covenant not to compete in this case is a

restriction of right of free competition and for art. 2596 of civil code is needed a written evidence of the agreement. For this article of the civil code prohibition of competition is possible only for an established area or an established activity and must be long no more five years.

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?

See n. 1. The statute (art. 2125 of civil code) does not relate to specific professions or industries

3. In general, are covenants not to compete in labour contracts enforceable in your country? Following are some possible answers:

Covenants not to compete are enforceable under certain conditions and to certain extent.

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

Employer's protected interest is not to have in the present and in the next a competition by employee which knows the systems of working of the enterprise, its customers etc. Nevertheless, judge in front of a covenant not to compete must consider interest of employee to have in the next an occupation according with his real capability.

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

Not. Covenant not to compete protects only private interests.

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?

Yes.

- (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?

There is not a definition. Employer has the burden of proof for the infringement of the covenant.

- (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?

Yes (see n. 1).

- (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?

Yes (see n. 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?

Yes (see n. 4).

- (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.

No.

- (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?

See n. 1/B.

6. 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?

No. The court cannot modify a private agreement.

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

Yes.

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

Jurisprudence of the courts consents that the employer (plaintiff) can claim an injunction to obtain that the employee (defendant) stops labour contract with new employer for all the term of the covenant not to compete. Plaintiff can claim to be restored of employee consideration of the covenant not to compete and (can claim) to obtain a compensation for damages.

9. 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.).

Labour Courts.