

Confidentiality and non-compete in labour law

During the continuance of their employment, employees under their general obligation arising from employment may not behave in a way that could threaten the legitimate economic interests of their employer, as well as shall be bound by an obligation of confidentiality – an expert at Kovács Réti Szegheő Law Firm emphasizes to Origo. A non-compete agreement does not need to be made in writing and thus oral agreement may also be made in this subject matter. However, in order to avoid possible difficulties in providing evidences in the future, it is recommended that related agreements of the parties be reduced to writing – dr. Zita Orbán pointed out.

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However, the refraining from threatening the legitimate economic interests of the employer and the obligation of confidentiality are separated in terms of both duration and compensation – the expert of Kovács Réti Szegheő Law Firm indicates.

Legally distinct concepts

Whereas the former, except as otherwise specifically agreed, falls on employees only during the continuance of their employment, and after the employment is terminated only for a definite duration (a maximum of 2 years) and can be enforced under an agreement made for a specific compensation (a minimum of one-third of the base salary payable for the same period), the latter namely the obligation of confidentiality falls on employees without a time limit and financial compensation.

Based on the foregoing, it is neither necessary nor advisable to enter into an agreement with an employee of such content under which the employer pays compensation to the employees to maintain their obligation of confidentiality after their employment is terminated.

When is it worth considering entering into an agreement?

However, when it is in the interest of the employer that employees could not act as a potential competitor of the employer for a definite duration – for a maximum of 2 years – after their employment is terminated, it is worth considering entering into a non-compete agreement – dr. Zita Orbán Zita suggested.

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It may occur whether in the form of a contract of employment or an individual agreement. Furthermore, the parties may also enter into this agreement as early as upon establishment of the employment or at any time during the continuance of the employment.



Particular attention must be paid to the termination of the employment

Considering that according to the consistent judicial practice, a non-compete agreement is deemed as individual agreement even when it is part of the contract of employment. The termination of the contract of employment in any manner whatsoever – whether by common accord or termination notice – will not automatically terminate the non-compete agreement. The employer or the parties shall mutually arrange for the same in addition to the contract of employment.

Therefore, based on the foregoing, it is recommended that respective provisions of termination (withdrawal) be incorporated in the non-compete agreement in order for the legal relationship the employer may no longer desire to maintain is capable of being terminated.

One of the most fundamental content elements of the non-compete agreement is an adequate compensation in determining which particular attention must be paid as to what extent the agreement would prevent the employee from establishing a new employment, with special regard to the qualification and practice of the employee.

Employees should not lose their livelihood

A non-compete agreement should obviously not lead to a limitation as a result of which employees would no longer be able to earn a living. In consideration of this fact and the actual economic interests of the employer, it is recommended that practices from which employees should refrain during the duration of non-compete should be specified accurately and with particulars in the non-compete agreement.

The minimum value of the compensation specified by legislation does not mean as a matter of course that the compensation determined as one-third of the base salary would at any rate be regarded as proportionate in respect of particular non-compete, since the compensation must be essentially suitable to compensate the disadvantages caused by the non-compete agreement – the expert of the Kovács Réti Szegheő Law Firm finally emphasizes.