

An employee's disloyal conduct results in a claim for damages to the employer

A Danish employer was recently awarded DKK 1.5 million in damages due to the disloyal conduct of an employee. The employee had established a competing company performing work for one of the employer's customers.

During their employment, employees are under an obligation to display loyal conduct to their employer, for example implying that an employee is not entitled to carry out competing activity in respect to his or her employer. This is in accordance with law.

In this case, however, the question was whether this kind of disloyal conduct may result in the employer's claim for damages for any loss suffered.

A brief summary

The employee, who was employed as an engineer, handed in his resignation in October 2010 with a view to working for his own company together with another person.

After the resignation, the employee's former employer entered into a cooperation agreement with the employee's newly established company. The agreement entitled the employee to make offers to one of the employer's customers, but the accounts for the work had to be settled with the employer.

In February 2014, however, the employer became aware that the employee had established the company already in April 2010 – six months prior to the resignation – while he was still working for the employer. This prompted the employer to commence legal proceedings against his former employee claiming competing activity and to raise a claim for damages.

Obvious competing activity

The Western Division of the Danish High Court found for the employer and determined that the employee had acted disloyally by being co-owner of a company competing against the employer's business.

The High Court also attached great importance to the fact that the employee through his employment relationship had acquired knowledge of the employer's customer, for whom the employee subsequently performed work.

Based on the above, the High Court assessed that the employee's competing activities had resulted in the employer's loss of DKK 1.5 million due to loss of turnover. The employee and his company were ordered to jointly compensate the employer for his loss.

The decision shows that ...

According to Danish law and case law, an employer enjoys a higher degree of protection in case of an employee's disloyal action in the form of competing activities. The judgment also shows that it is taken into account whether the employee has acquired knowledge of the employer's customers through the employment relationship.