

Four recommendations - whether a non-competition obligation clause exists and whether it is necessary

There is often an agreement on non-competition obligation in the employment contract, which remains in force after the termination of the employment contract. The non-competition obligation may last up to 12 months and the employer must pay reasonable compensation on a monthly basis during this period. In addition, the agreement must include exactly what the worker is not allowed to do during that period.



In practice, it appears that the parties to an employment contract, often the employer, do not remember the existence of such an agreement. The employer considers that if the monthly remuneration is not paid to the employee, the employee understands that this obligation does not have to be fulfilled. In fact, this is not the case. The employer runs the risk that the employee has fulfilled the obligation and submits a claim for the payment of the compensation not received.

Four recommendations.

1. Does the employment contract contain a non-competition obligation clause?

Some employers will be surprised when they receive a letter of claim from the employee regarding the payment of the non-competition obligation fee. Therefore, it is worth reviewing the employment contracts and see whether the corresponding restraint applies to the employees only during the term of validity of the employment contract or whether it remains valid after the termination of the employment contract.

2. Does the non-competition obligation clause comply with applicable law?

If the employment contract has been concluded before 01.07.2009, then this employment contract must be reviewed. This is because the Employment Contracts Act in force before that date provided for a completely different regulation from the current agreement on non-competition obligation. This old one is no longer valid today. If the agreement on non-competition obligation has been concluded after 01.07.2009, check whether it complies with applicable law.

3. Is the non-competition obligation clause necessary?

Assess whether the agreed non-competition obligation is necessary after the termination of the employment contract. This need is worth assessing, because an agreement reached years ago may no longer be necessary and justified today. It must be borne in mind that the restraint entails a significant monthly financial cost for the employer.

4. If the restraint is not needed, cancel it.

According to the Employment Contracts Act, an employer can unilaterally cancel the non-competition obligation by notifying the employee 30 calendar days in advance. The notification should be in a form which can be reproduced in writing. It is important that the employee receives it. For example, if, during the period of validity of the employment contract, you think that this restraint is not necessary to be applied to the employee, please inform the employee of its termination.