

New rules on restrictive employment clauses in Denmark

On 10 December 2015, the Danish Parliament passed the bill on the new Danish Act on Restrictive Employment Clauses, comprising all restrictive employment clauses that enter into force on 1 January 2016 or later. The Act entered into force on the same date – 1 January 2016.

According to the Act, the term *restrictive employment clauses* comprises both no-hire clauses, non-competition or non-solicitation clauses, and combined clauses – i.e. provisions containing both a non-competition and a non-solicitation clause.

Term and compensation

According to the new rules, compensation for a clause will constitute a monthly payment corresponding to 40% of the employee's salary at the time of resignation if the clause has a term of up to six months. If a clause has a term between six months and the maximum term of twelve months, the compensation will constitute 60% of the employee's salary at the time of resignation.

The new rules also imply that employees are entitled to a one-off payment – i.e. compensation for the first two months after the resignation – regardless of the type of clause entered into or if the employee has obtained other suitable employment. Compensation for the first two months after the time of resignation shall constitute a one-off payment and be payable no later than on the date of resignation.

Furthermore, the employer no longer has access to set-off against salary paid by a new employer. It means that an employee, who has obtained other suitable employment after the date of resignation, will still be entitled to compensation. However, the compensation is accordingly reduced from 40% to 16% of the salary (for non-competition or non-solicitation clauses with a term of up to six months) and from 60% to 24% of the salary (for non-competition or non-solicitation clauses with a term of up to twelve months and combined clauses with a term of up to six months).

Consequences

One of the most important changes is a prohibition of no-hire clauses and at the same time, the Act on Employer's Use of No-Hire Clauses has been repealed. It means that an employer cannot impose no-hire clauses on employees after 1 January 2016. In order to ease the changes, an interim provision has been introduced, according to which existing no-hire clauses may be maintained until 1 January 2021, after which date they will become invalid.

Existing non-competition clauses and non-solicitation clauses entered into before 1 January 2016 shall still be comprised by the previous rules in force.

At the forefront with your restrictive employment clauses

Thus, employers should consider and revise restrictive employment clauses in their employees' contracts in accordance with the new rules. At the same time, employers should in each individual case carefully consider and assess whether restrictive employment clauses are actually required, as the new act will render such clauses more expensive.