

Act on Restrictive Employment Clauses

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WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby Make Known:

The Parliament (Folketinget) has passed and we have granted our Royal Assent to the following Act:

Part 1

Scope and definitions

- 1.-(1) This Act shall apply to restrictive employment clauses.
- (2) In this Act, the following terms shall be defined as follows:
 - 1) Restrictive employment clauses: No-hire, non-competition and non-solicitation clauses and combined clauses.
 - 2) Employee: A person who receives payment for personal work performed in an employment relationship.
 - 3) Other suitable employment: Work in an occupational area for which the employee has qualified or in which the employee has had a job, which is obtained after termination during the period in which the employee is subject to a restrictive employment clause.
 - 4) No-hire clause: An agreement made by an employer with other enterprises for the purpose of preventing or restraining an employee's opportunities to obtain employment in another enterprise or an agreement made with an employee in order to prevent or restrain other employees' opportunities to obtain employment in another enterprise.
 - 5) Non-competition clause: An agreement between an employee and his/her employer to the effect that, to prevent undue competition, the employee may not in the period after his/her termination operate a business or other activity of a certain character or take up employment in such a business or activity.
 - 6) Non-solicitation clause: An agreement between an employee and his/her employer to the effect that after termination, the employee may not take up employment with or directly or indirectly have any commercial contact with customers and other business connections of his/her previous employer.
 - 7) Combined employment clause: An agreement by which the employee is bound by a non-competition clause and a non-solicitation clause for the same period.
2. Derogation from the provisions of Part 3 of this Act is possible if agreed by a collective agreement entered into by the most representative workers' and employers' organisations.

Part 2

No-hire clauses

3. An employer cannot lawfully enter into any agreement on no-hire clauses.
- 4.-(1) In connection with negotiations for the transfer of a business, enterprises may, irrespective of section 3, enter into agreements with other enterprises with a view to preventing or restraining an employee's opportunities to obtain employment with another employer. Where an employee has been employed for three months or less by the

transferring enterprise, the employee may not be covered by an agreement made according to the first sentence above.

(2) A no-hire clause agreed according to subsection (1) may be maintained for up to six months after the clause was agreed, irrespective of whether the negotiations led to an agreement on the transfer of an enterprise.

(3) Where the results of the negotiations under subsection (1) above lead to an agreement on the transfer of an enterprise, the agreement may be maintained for up to six months after the time when the enterprise has been transferred.

Part 3

Non-competition clauses, non-solicitation clauses and combined employment clauses

5. An agreement on a non-competition clause shall solely be effective where the employee

- 1) holds an exceptionally entrusted position or enters into an agreement with the employer on the right to use an invention made by the employee;
- 2) receives written information on the conditions in the employee's employment that make it necessary to make an agreement on a non-competition clause,
- 3) has been in the employment of the employer for a continuous period of at least six months,
- 4) receives compensation for the period through which the non-competition clause is effective according to section 8,
- 5) is not bound by the non-competition clause for more than 12 months from the date of his/her resignation and
- 6) receives the information concerning the conditions referred to in para. 1) – 5) in writing.

6.-(1) An agreement on a non-solicitation clause shall solely be effective where

- 1) the agreement is concerned with customers with whom the employee has been in business connection within the past twelve months before the date of his/her termination/resignation,
- 2) the employee has been in the employment of the employer for a continuous period of at least six months,
- 3) the employee receives compensation for the period through which the non-solicitation clause is effective according to section 8,
- 4) the employee is not bound by the non-solicitation clause for more than twelve months from the date of his/her resignation and
- 5) the employee receives the information concerning the conditions referred to in para. 1) – 4) in writing.

(2) When an employee gives notice or where the employment of an employee who has accepted a non-solicitation clause is terminated, the employee must be given a list prepared by the employer showing the customers referred to in subsection (1) para. 1).

7. An agreement on a combined employment clause will solely be effective where

- 1) the employee will not be bound by the clause for more than six months from the date of his/her resignation and
- 2) the requirements of sections 5 and 6 are satisfied.

Part 4

Compensation

8.—(1) For agreements on non-competition or non-solicitation clauses that will have a duration of up to six months, the compensation to be paid according to section 5(4) and section 6(1)(3) must be at least 40 per cent of the salary per month from the date of resignation. Where the employee obtains other suitable employment, the compensation from and including the third to and including the sixth months after the resignation must however be at least 16 per cent of the salary per month as at the date of resignation.

(2) For agreements on non-competition or non-solicitation clauses that will have a duration of up to twelve months, the compensation to be paid according to section 5(4) and section 6(1)(3) must be at least 60 per cent of the salary per month as at the date of resignation. Where the employee obtains other suitable employment the compensation from and including the third until and including the twelfth month after the resignation must however be at least 24 per cent of the salary per month as at the date of resignation.

(3) The compensation to be paid according to subsections (1) and (2) for the first two months after resignation must be disbursed no later than upon the resignation as a lump sum irrespective of whether the employee obtains other suitable employment.

(4) The lump sum referred to in subsection (3) must in the case of clauses for a duration of up to six months be at least 40 per cent of the salary per month as at the date of resignation and for clauses with a duration of up to twelve months at least 60 per cent of the salary per month as at the date of resignation.

(5) The employee's entitlement to compensation according to subsection (1) or (2) will lapse in case the employee does not actively seek to find other suitable employment and fails to meet his/her loss mitigation obligation. The duty of loss mitigation will not comprise the lump sum according to subsection (3).

9.—(1) For agreements on combined clauses according to section 7 with a duration of up to six months the compensation must be at least 60 per cent of the salary per month as at the date of resignation. Where the employee obtains other suitable employment, the compensation from and including the third until and including the sixth months after resignation must, however, be at least 24 per cent of the salary per month as at the date of resignation.

(2) The compensation payable under subsection (1) above for the first two months after resignation must be disbursed as a lump sum no later than at the resignation, irrespective of whether the employee obtains other suitable employment.

(3) The lump sum referred to in subsection (2) must in the case of combined clauses be at least 60 per cent of the salary per month as at the date of resignation irrespective of whether the employee obtains other suitable employment.

(4) The employee's entitlement to compensation according to subsection (1) will lapse in case the employee does not make an active effort to find other suitable employment and fails to meet his/her duty of loss mitigation. The duty of loss mitigation will not comprise the lump sum referred to in subsection (2).

Part 5

Termination and breach

10.—(1) An employer may terminate an agreement as referred to in Part 3 at one month's notice for expiry at the end of a month.

(2) Upon termination according to subsection (1), the employee will be entitled to the lump sum referred to in section 8(3) and in section 9(2) upon resignation on the condition that the resignation takes place later than three months after the employee has commenced

the employment and within six months after the employer terminated the agreement and the termination is due to circumstances that would have made the employer entitled to enforce the agreement.

(3) Where the employee receives a salary during a notice period after his/her actual resignation, the resignation shall be reckoned from the end of the notice period.

11.-(1) Where the employer terminates the employment without the employee having reasonably caused the termination, or where the employee resigns voluntarily from his/her position and the employer's failure to meet the employer's obligations has given the employee a valid reason to do so, an agreement on a non-competition clause as set out in section 5 and the non-competition part of a combined clause according to section 7 will not be effective and the employee will be entitled to the lump sum according to section 8(3) and section 9(2) above.

(2) An agreement on a non-competition clause according to section 5 and the non-competition part of a combined clause according to section 7 will not be binding on the employee in so far as in respect of the time, place or other conditions it extends further than necessary to safeguard the employer's interests or unreasonably restrains the employee's possibility of occupation. The assessment of whether the clause will unreasonably restrain the employee's possibility of occupation must also be made taking account of the employer's interest in compliance with the agreement.

(3) Subsections (1) and (2) shall also apply to other persons than employees where, for the purpose of preventing undue competition, such persons have accepted an obligation to refrain from carrying on business or other activity of a certain character or taking up employment in such a business or activity.

(4) Where the employer has dismissed the employee from his/her service legitimately, an agreement as referred to in Part 3 may be maintained. The employee's entitlement to compensation under sections 8 and 9 will then lapse.

Part 6

Coming into force and amendments to other statutes, etc.

12.-(1) This Act shall come into force on 1 January 2016.

(2) The Act shall be effective for restrictive employment clauses agreed as from 1 January 2016 or later.

(3) Agreements on no-hire clauses entered into before 1 January 2016 in accordance with the rules that were previously in force may be maintained until 1 January 2021.

(4) Provisions on the use of restrictive employment clauses in collective contracts or agreements entered into before 1 January 2016 will remain effective until the date when the collective contract or agreement may be terminated for expiration.

(5) This Act shall not apply to agreements on non-competition and non-solicitation clauses entered into before 1 January 2016. Such agreements shall be subject to the rules previously in force.

13. Act No. 460 of 17 June 2008 on employers' use of job clauses shall be repealed.

14. The Act on the legal relationship between employers and salaried employees, i.e. Consolidation Act No. 81 of 3 February 2009 as amended by section 5 of Act No. 647 of 12 June 2013 and Act No. 52 of 27 January 2015 shall be amended as follows:

1. Sections 18 and 18A shall be repealed.

2. In section 21 the following words shall be deleted: ”but see section 18(5) and section 18A(6)”.

15. The Act on Agreements and Other Legal Acts in the Area of Property Law, i.e. Consolidation Act No. 781 of 26 August 1996 as amended by section 2 of Act No. 1376 of 28 December 2011, shall be amended as follows:

1. Section 38 shall be repealed.

16.-(1) This Act does not extend to the Faeroe Islands and Greenland. See subsection (2) below, however.

(2) Section 15 may be put into force for Greenland by a royal decree subject to the amendments required by the conditions of Greenland.

Done at Christiansborg Palace this 15th December 2015

Under Our Royal Hand and Seal

MARGRETHE R.

/ Jørn Neergaard Larsen