January 2016

Business Protection in an Employment Relationship

Finland

Summary

The basis for employee business protection in Finland is the constitutional right for freedom of business. During the employment that freedom is, in certain respects, limited directly pursuant to employment law provisions thus protecting the employers.

In general, after the employment, the employees' right to conduct business is not limited by law. Therefore it is not unusual to have a non-competition and/or confidentiality agreement in place particularly in cases where the employee may receive and possess employer´s trade and business secrets. A non-competition agreement may also be concluded in case where the employer has paid the employee special training.

Restrictions during employment

During the employment, the law provides the general obligation for the employees i) not to compete in the same line of business with his employer if that would be against the interest of the employer, and ii) not to divulge or utilize the employer's trade or business secrets.

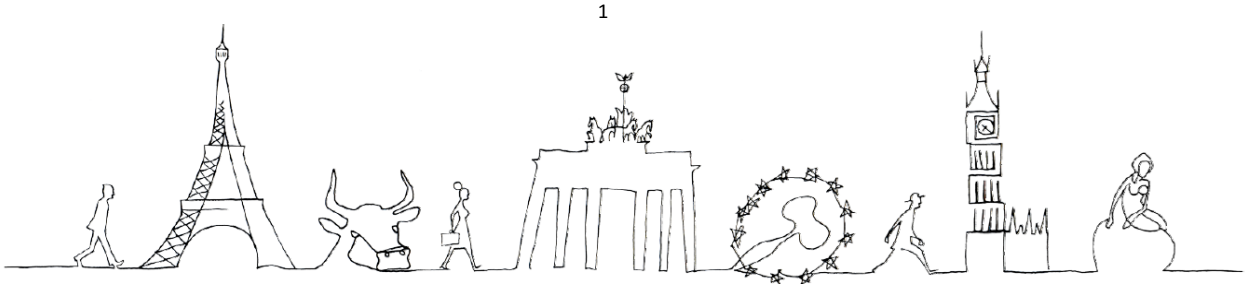
Non-competition

In accordance with the non-competition obligation, the employee may not:

- work for another employer nor act as an entrepreneur in the same line of business with his employer if this would harm the interests of the employer;
- solicit clients or customers of the employer; or
- make preparations for competing activity (mere planning or registration of a new company is usually not forbidden).

Though the law provides general non-competition obligations for the employee, it is common to include a detailed non-competition clause into the employment contract. The employer may, however, allow the employee to engage in competing activity.

An employee may take up a secondary occupation regardless the restriction on competing activity as long as the secondary employer does not compete with the primary employer. Should the secondary



occupation have a negative effect on the primary employment, such as weaker performance etc., the primary employer may prohibit the employee from taking up a secondary occupation.

The restriction on competing activity, based on the Employment Contracts Act, applies only during the employment relationship. After the employment relationship has ended, the employee may freely engage in competing activity, unless he has signed a non-competition agreement.

Both an employee who breaches the aforementioned restrictions on competing activity, and a secondary employer who knowingly employees an employee against these restrictions, are jointly liable for any loss caused to the primary employer.

Trade and business secrets

During the employment, the employee may not divulge or utilize the employer's trade or business secrets.

Trade and business secrets may entail economic or technical data such as information on working methods, computer programs, production quantities, formulas and customer registers etc. Trade and business secrets under this restriction must be of economic value to the employer.

An employee who divulges or utilizes employer´s trade and business secret is liable to compensate the resulting losses caused to the employer. The person having benefited from the infringement is jointly liable for the compensations if he has been aware of the illegal acquisition of the information. An unlawful divulging or utilizing of the trade and business secrets may also lead to criminal liability.

Restrictions after employment

The right for freedom of business provides that the employee may freely compete and take advantage of his knowledge after an employment has ended. In order to limit those rights, agreements of non-competition and/or non-disclosure may be concluded when concluding the employment contract or at any point during the employment relationship's course or even after that.

After the employment, the only restriction posed directly by Employment Contracts Act to the employees is not to use any employer's business or trade secrets that the employee has obtained unlawfully.

Non-competition agreement

A non-competition agreement, which restricts the employee´s rights to engage in competing activity after the employment relationship has ended, can be made only for a particularly weighty reason related to the operations of the employer. The non-competition agreement cannot be unreasonable towards the employee.

In assessing the particular weight of the reason for instituting a non-competition agreement, it shall be taken into account e.g. the nature of the employer's operations, the information the employee has in its possession regarding the employer´s business and trade secrets, the special training given to the employee by the employer as well as the employee's status and duties. The higher position the employee has in the organisation, the more justified the use of non-competition agreement is. The use of such agreement is rarely justified with workers who merely carry out e.g. repetitive work. However, the decisive factor is whether the employee is in possession of information that has relevance in competition issues.

A non-competition agreement may also be justified when protecting clients' interests.

A non-competition agreement may remain in force for the maximum of six months from the employment relationship's end. In case the employer pays to the employee a reasonable compensation for the imposed restrictions, the term may be the maximum of one year. The compensation can be paid during or after the employment relationship.

Contractual penalties are typical sanctions used in non-competition agreements. Such penalty may not exceed the amount of pay that the employee has received during the last six months preceding the end of the employment relationship.

A non-competition agreement is deemed void insofar as it contradicts with the aforementioned restrictions. However, the maximum duration and maximum contractual penalty restrictions do not apply to employees who have special duties and position in the employer's organisation. Such duties and position may include especially direction of the enterprise, corporate body or foundation or an independent part thereof or if the employee has an independent status comparable to such managerial duties.

A non-competition agreement is binding on the employee only if the employment relationship is not terminated due to a reason attributable to the employer. Thus non-competition agreements are not binding in collective redundancies. If an employee resigns without the employer having been in breach of the employment contract, or if the employment contract has been terminated on person-related grounds, the non-competition agreement is binding.

Non-disclosure agreement

Sometimes the employer can secure his interests to a sufficient extent with a non-disclosure agreement and it is not necessary to conclude a non-competition agreement. By a non-disclosure agreement the employee's obligation to refrain from divulging or utilizing the employer's trade or business may be extended to the time after the employment relationship. A non-disclosure agreement may also be used to specify the employee's confidentiality obligations during the employment relationship.

There are no similar restrictions set by the law for the use of non-disclosure agreements as there are regarding the use of non-competition agreements; e.g. there are no legal limitations to the term or contractual penalties. It shall, however, be taken into account that the court may adjust unreasonable contracts.

This material is for general information only and is not intended to provide legal advice.

For more information regarding employment law in Finland please contact:
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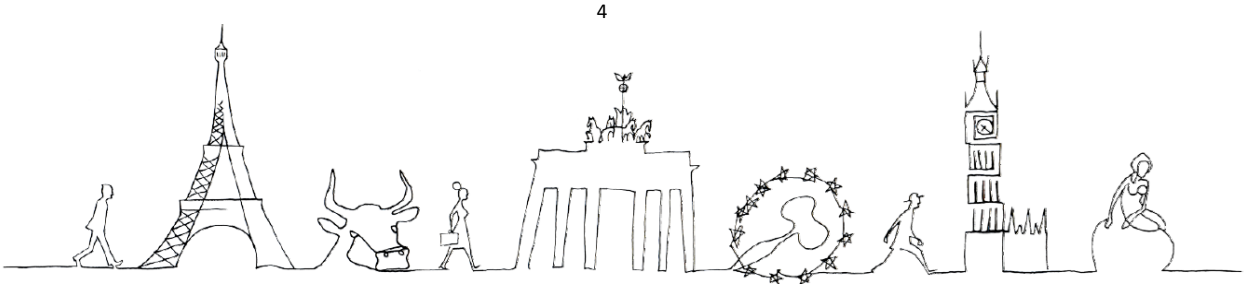

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