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## **Employee Business Protection**

### **Denmark**

#### **Summary**

The main legislation in Denmark governing this area is the Salaried Employees Act. It is important to keep in mind that the Danish Parliament is expected to adopt a new law on employment clauses in late 2015, following the general election in Denmark this summer. The adoption of this new law will fundamentally change the legal position, and the principles mentioned below, in this area.

#### **Scope and requirements**

The provisions of the Act only regulate employment clauses between an employer and a salaried employee. Employment clauses are defined as non-compete clauses, non-solicitation clauses and combined employment clauses. The exact position in Denmark is slightly more complex, but in summary the term 'salaried employees' largely covers 'white-collar workers' and employees whose work is predominantly of a white-collar nature.

It is possible to impose restrictive clauses for non-salaried (i.e. blue-collar) employees but this is quite rare. Such a clause would need to be "reasonable" and go no further than necessary to achieve the aim of the clause.

#### **Restrictions during employment**

During employment, employees have a general obligation to act loyally towards their employers and the workplace. This also includes basic confidentiality obligations, for example regarding trade secrets.

#### **Restrictions after employment**

Non-compete clauses and non-solicitation clauses with a salaried employee must have certain boundaries in order to be valid under Danish law. If the employee has been employed for 3 months or less, the clause is unenforceable. If the employee has been employed for more than 3 but no more than 6 months, the clause cannot extend for more than 6 months after termination of employment. Non-solicitation clauses can only extend to customers who the employee has had commercial contact with within the last 18 months before the termination of their employment.



For non-compete clauses to be enforceable it is a requirement that the employee holds a special trusted position within the company. A special trusted position means that you must be in contact with sensitive confidential information regarding e.g. the company's finances, client relations or other trade secrets

The employer must pay the employee compensation in return for these restrictions. The compensation must be at least 50% of the employee's salary per month as long as the clauses are valid and in effect.

### **Enforcement mechanism**

Employment clauses may be enforced by the employer. The employer may also be entitled to damages.

### **Types of restriction**

There are three main types of restriction in Denmark:

1) Non-compete

This type of clause is an agreement between the employer and the employee that after termination of employment the employee will not conduct business or be employed by a company of a certain type.

2) Non-solicitation

This type of clause is an agreement between the employer and the employee that after termination of employment the employee must not be employed by or have any form of commercial contact with the former employer's customers or other commercial parties.

3) Combined employment clause

This type of clause is a mix of the non-compete and non-solicitation clauses, which in effect run for the same period of time.

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

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