

January 2016

Employee Business Protection

Norway

Summary

Employees have a duty under Norwegian law to remain loyal to their employer, and as a general rule cannot compete with their employer during employment.

The parties may agree non-compete clauses that restrict the employee's freedom to start a business in certain sectors, or to compete with the employer, after their employment ends. Non-compete clauses must not unreasonably restrict the employee from seeking work or carrying out business.

In March 2015 the Norwegian Government proposed new legislation concerning non-competition clauses. As at today's date it has not been decided if and when the proposed legislation will come into force.

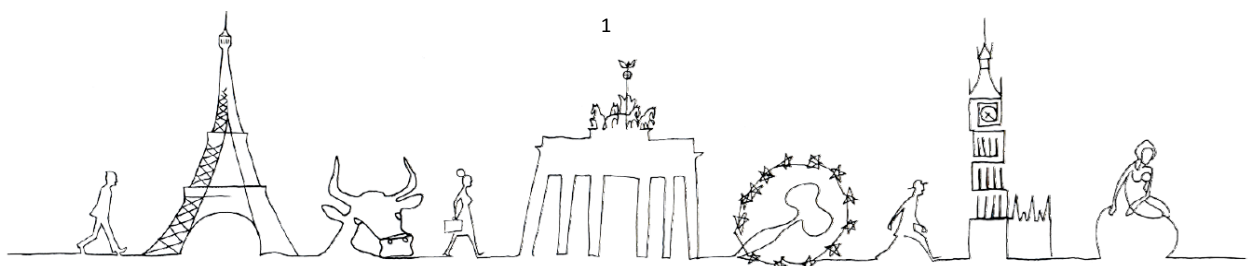
Restrictions during employment

Employment contracts will normally contain clauses that restrict the employee from doing business that competes with their employer. The employee's duty to remain loyal to the employer is based on unwritten law, and will to a large extent apply even if the duty to not compete is not included in the employment contract.

Breach of a non-compete clause will in most cases give reason to terminate the employee, and in the most serious cases with immediate effect.

Restrictions after employment

As a general rule, after employment it is not possible to restrict an employee from taking employment with a competitor, or starting a competing business, without a non-compete clause in the employment contract. A non-compete clause must be reasonable. Under the present legislation the evaluation of a clause is based on the duration, the geographical area, and whether the employee is given compensation during the non-compete period. Most non-compete clauses will offer the employee compensation, and will not exceed 12 months. The level of compensation will vary from 50 to 100% of the employee's salary, depending on how restraining the clause is.



The unwritten duty of loyalty towards the employer will remain in force after the employment has ceased. The employee may therefore not divulge trade secrets and confidential information.

Poaching of customers and colleagues may give rise to a claim for compensation in special cases. Customers and colleagues should be protected through non-poaching clauses, although the employer may take legal action if a former employee (without any restrictive clauses) actively pursues the former employee's customers or staff.

Enforcement

Breach of post-termination restrictions may be enforced by an injunction, usually coupled with a claim for damages.

Proposed new legislation

The proposed new legislation covers three types of post-termination restrictions:

- **Non-compete:** Non-compete clauses may be agreed where the employer has a special need for protection against competition from former employees. Such clauses may last a maximum of 12 months, and the employer must pay compensation. The compensation shall equal full pay up to a ceiling of approx. €185,000.
- **Non-solicitation:** Non-solicitation of customer clauses may be agreed, but only for customers that the employee has had contact with, or responsibility for, during the 12 months before the employment ended. The employee may request a written statement from the employer which provides whether the employer will invoke the clause or not and, if so, which customers are included in the non-solicitation clause.
- **Non-recruitment:** This proposal limits non-recruitment clauses as between businesses. It does not cover non-poaching clauses as between the employer and employee. As a general rule, an employer may not enter into non-recruitment clauses with other businesses, other than in connection with negotiations for the transfer of undertakings, and in acquisition agreements. In these cases, non-recruitment clauses may last up to 6 months.

Note that the rules limiting non-competition and non-solicitation clauses do not apply to the employment contract of the CEO of a business, if the CEO's employment contract contains an agreement for severance pay on termination of employment.

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

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