

January 2016

## **Employee Business Protection**

### **Sweden**

#### **Summary**

During employment all employees are bound by a duty of loyalty. After the employment relationship has ended, the general principle is that employees are free to compete, and even solicit clients and former colleagues.

However, it is possible for an employer to protect itself by including restrictive covenants in the employment agreement. Restrictive covenants are enforceable under Swedish law as long as the clause is reasonable, is not too far reaching, and lasts no longer than 18 months. In addition, the employee must be paid a minimum of 60 per cent of their monthly salary during the period in which the covenant is enforced.

If the employment agreement does not contain a non-compete clause, the employees' duty of loyalty will only last until the employment relationship is terminated.

#### **Restrictions during employment**

All employees are bound by a duty of loyalty during employment, irrespective of their position. Under Swedish law, this duty prohibits employees from conducting competitive business and from engaging in other activities that may result in a conflict of interest. An employee's breach of the general duty of loyalty during employment may enable the employer to summarily dismiss the employee (i.e. to dismiss them without notice).

An employee's duty of confidentiality and the protection of trade secrets are stipulated under the Swedish Act on Protection of Trade Secrets (*Sw. lag 1990:409 om skydd för företagshemligheter*).

#### **Restrictions after employment**

As stated above, the general rule is that non-compete clauses are enforceable under Swedish law if the employee is paid at least 60 per cent of their monthly salary during the restricted period. In addition, the restrictive covenant must not be too far reaching. Should its validity be tested in court,



an overall assessment of the clause will be made by weighing up all relevant aspects, such as the amount the employee is paid during the restrictive period and the breadth of the geographical area in which the employee is prohibited from joining a competitor.

The reasonableness of a non-compete clause is neither determined nor regulated by statute. It has been developed by case law and a collective labour agreement from 1969 (which was amended in July 2015), the content of which is recognised as setting out the basic legal principles under Swedish law.

Please note that the recent changes in the collective bargaining agreement have not yet been tested by the courts.

A non-compete clause drafted for the purpose of keeping an employee with special skills or competence out of the market will never be considered a legitimate purpose. The same applies to clauses drafted with the sole purpose of protecting the employer's market share.

### **Non-solicitation**

In Sweden, a client non-solicitation clause is considered to be a type of non-compete clause, but it is not considered to be as restrictive as a "regular" non-compete clause, as it does not automatically prevent an employee from engaging in other professional activities.

Similarly, clauses restricting former employees from poaching or hiring former colleagues are not considered to be as restrictive as regular non-compete clauses.

Therefore, the general principle is that employers are free to limit employees from soliciting former colleagues or clients even without payment. The same factors will, however, be taken into account in deciding whether or not the clause is too far reaching (and therefore unenforceable).

### **Enforcement mechanism**

According to recent case law, Swedish courts are not inclined to modify or enforce part of a restrictive covenant if, overall, it is deemed to be too broad. The courts will rather declare the clause null and void. Therefore, employers are advised to keep the clause specific and precise, while at the same time limiting it to no longer than 18 months.

Lastly, clauses stipulating that the employer reserves the right to withdraw or waive a non-compete clause at any time will be considered fair.

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

**For more information regarding employment law in Sweden, please contact:  
Pia Nyblæus, ADN Law Advokatfirma KB, [pia.nyblaeus@adnlaw.se](mailto:pia.nyblaeus@adnlaw.se).**

