

January 2016

Employee Business Protection

Turkey

Summary

According to Turkish law, during employment employees are legally obliged to work with due care, and must act loyally in preserving the legitimate interests of their employer. In addition, employees cannot carry out paid work for a third party in such a way that they will breach their obligation of loyalty to their main employer. In particular they cannot compete with their employer.

Turkish law neither allows employees to use the information they learn during the performance of work (especially information such as production and business secrets) for their own benefit, nor does it allow them to reveal such information to third parties. They are also obliged to keep this information secret after the termination of their employment to the extent necessary for the protection of their employer's legitimate interests.

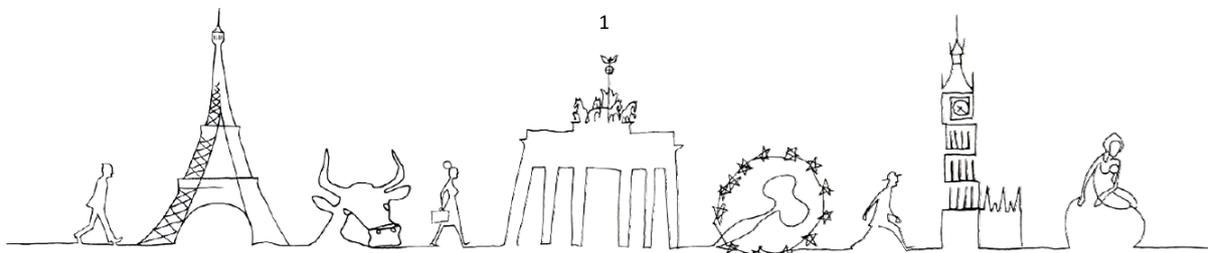
The parties to an employment contract can agree non-compete provisions either during the employment contract or after its termination in accordance with the rules stated in the respective codes and the principles determined by the Supreme Court.

Restrictions during employment

The obligation not to compete was not formalised until the Turkish Code of Obligations No. 6098 (TCO), which came into force in 2012. However, such obligations were considered a natural consequence of the employee's loyalty to their employer. Now, by virtue of the TCO, non-competition during the term of the employment agreement is regulated through written laws.

The prohibition on competition during employment cannot be considered a limitation of the employee's freedom to work. In that respect, employees can work in another job as long as such job is not performed during the working hours of the main job and its performance does not breach the non-compete obligation to the main employer. Therefore, it could be said that what is sought through a non-compete clause during the employment agreement is the protection of the business interests of the employer.

Article 25/II-e of the Labor Code No.4857 entitles employers to promptly terminate (i.e. without the need for notice) the employment contract if the employee commits a dishonest act contrary to the principles of faithfulness and honesty to their employer (such as a breach of trust, theft or disclosure of the employer's trade secrets). Although it should be evaluated according the circumstances of



each case, breach of a non-compete clause by an employee may result in prompt rightful termination. This will negate the employee's right to severance and notice pay.

Neither the Labor Code nor the TCO mentions the compensation and/or penalty payable to the employer in case of the employee's breach of a non-compete clause during employment but it would be possible to insert such provisions in the contract as per the general rules of Turkish Law, on the condition that such provisions are all in accordance with the specific principles and judgments of the Supreme Court.

Restrictions after employment

The parties to an employment agreement can also agree non-compete clauses, whereby the employee undertakes to refrain from engaging in any activity that competes with the employer's business, working for another competitor business or running a competitor business on his own account, or entering into a relationship of mutual interests with another competitor business, even after termination of the employment agreement.

In order for a non-compete clause to be valid, the TCO sets forth certain conditions, namely:

- the employee must have capacity to act;
- the employment relationship must allow the employee to acquire knowledge of customers or production secrets or works performed by the employer and the use of such knowledge by the employee must cause the employer to suffer significant damage;
- apart from in specific circumstances, the maximum period is 2 years;
- the non-compete clause must be limited in terms of place, time and types of work, such that the employee's future economic activities are not unfairly endangered.

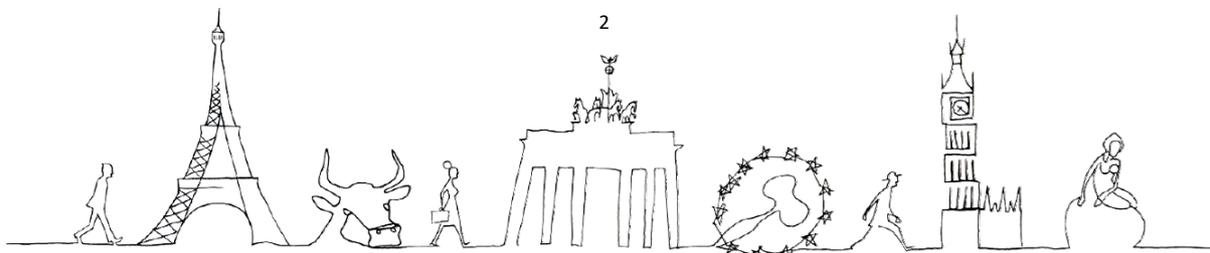
The TCO authorises the courts to limit the scope or term of excessive non-compete clauses taking all the circumstances into account.

An employee who is in breach of a non-compete clause after the termination of their employment must cover all damage that their employer incurs as result of such breach. If the parties to an employment agreement have agreed a penalty in the case of breach of a non-compete clause, the employee must pay such penalty and also cover the employer's additional damages, if any. The TCO also allows the employer, under certain circumstances, to request the cessation of any activity violating the non-compete clause.

It should be noted that if the employee pays a penalty prior to the end of the non-compete, to prevent the employee from being released from their obligations this should be separately stated in the employment agreement.

Termination

The prohibition on competition ceases or terminates if:



- the employer no longer has any considerable interest in continuing the restriction;
- the employer has terminated the employment agreement without any justified reason; or
- the employee has terminated the employment agreement due to a reason that can be attributed to the employer.

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

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