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New rules on non-compete clauses in employment contracts in sweden

The national employer's association in Sweden (the Confederation of Swedish Enterprise) and the national employees' association for white collar employees (PTK), have entered into an agreement regarding the use of non-compete clauses in employment contracts (the "2015 Agreement"). The 2015 Agreement replaces the previous non-compete agreement between the parties (the "1969 Agreement") and will come into effect on 1 December 2015.

An employer who is a member of an employer's association that has signed up to the 2015 Agreement will be bound by it automatically. The 2015 Agreement is also expected to change the Swedish Labour Court's assessment of the enforceability of non-compete clauses in employment contracts in general. Furthermore, the 2015 Agreement contains certain important changes to the 1969 Agreement's rules on the use of non-compete clauses, including:

Wider Scope. The 2015 Agreement extends the permissible scope of non-compete clauses. According to the 2015 Agreement, employers whose employees hold trade secrets, and the disclosure or use of which would be detrimental, may use non-compete clauses where appropriate. The 2015 Agreement does not, by contrast to the 1969 Agreement, focus on the protection of the manufacturing industry.

Duration. The duration of the non-compete provisions contained in the 2015 Agreement will be assessed with the needs of the employer's business in mind and on a case by case basis. The term however may not exceed 18 months unless there are special circumstances. Non-compete clauses that are aimed at protecting short term trade secrets may not exceed 9 months.

Compensation during the non-compete. The 2015 Agreement introduces additional requirements on the employee to show loss of income (in order to be entitled to compensation during the non-compete).

Employer's right to unilaterally adjust the non-compete clause. Employers are given the right to unilaterally adjust an agreed non-compete clause during the course of employment by limiting (but not extending) the duration and scope of a non-compete clause. An employee must also under certain circumstances inform his or her employer if they are intending to join a business covered by the non-compete obligation. This will give an employer the opportunity to tailor the non-compete to the specific situation by shortening the duration or limiting the scope.

Disputes. Disputes regarding non-compete clauses covered by the 2015 Agreement shall not be submitted to public courts but to a designated arbitration board. With an aim to achieve case-law status, the arbitration board's rulings will be public. Employers who are not members of an employers' association, and consequently not immediately bound by the agreement, will still submit a dispute to the public courts.

Recurring penalty. In order to prevent continuous or recurring violations of a non-compete clause, employers will be able to, in addition to any contractual liquidated damages, file for a so called "recurring penalty" which is a fine based on the duration of a specific violation.

Implementation. The 2015 Agreement is expected to come into force on 1 December 2015 and will, as of then, be directly applicable to contracts entered into on 1 December 2015 or thereafter. For employment contracts entered into before 1 December 2015, the rules set out in the 1969 Agreement will continue to apply.

REVIEW OF EMPLOYMENT CONTRACTS

We recommend all employers who are using non-compete clauses to review their employment contracts and, going forward, adapt the employment contracts to the rules as set out in the 2015 Agreement.



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