

# Non-competition clause

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## □□ Introduction

**Non-competition clause** is a restriction under which an employee cannot engage in competitive activities against their employer, either during employment or after its termination (if provided for). To be effective, it must be **in writing and meet specific conditions**.

## □□ 1. Legal Basis

- **Labor Code** – Articles 101<sup>1</sup>–101<sup>4</sup>
- **Civil Code** – regarding liability for damages
- Judicial decisions of the Supreme Court – including II PK 123/19 (concerning proportionality and compensation)

## □□ 2. When can a non-competition clause be introduced?

### □ a) During the employment contract

The non-competition clause may relate to:

- conducting competitive activities (company, sole proprietorship),
- working for another competing entity (employment contract, commission, contract).

□□ Example: An employee hired as a sales specialist at company X cannot work for direct competitor Y or start a similar business.

### □ b) After termination of employment

The non-competition clause after the end of employment applies only to employees who have access to confidential information and its validity requires:

- **written agreement,**
- **specification of the duration of the non-competition,**
- **payment of compensation** (at least 25% of the last monthly salary × number of months of the non-competition).

☐ Example: An employer can require a former IT manager to refrain from working for competitors for 6 months by paying a monthly compensation.

### ☐ 3. How to introduce a non-competition clause?

#### ☐ a) During the contract

- **Form:** written agreement, most often as a **separate document** or **an annex to the employment contract**.
- **No compensation payment is required**, but violation of the clause may result in **disciplinary action** or **damage claim**.

#### ☐ b) After termination of employment

- Requires **explicit consent of the parties** in writing,
- Mandatory monetary compensation – even if the employee suffers no loss,
- Can be paid as a one-time sum or **monthly** (recommended practice).

### ☐ 4. What should the non-competition agreement contain?

Employer and employee data - ☐ Yes

Scope of the ban - ☐ Yes (Clearly specify what constitutes competition)

Duration - ☐ Yes (After employment ends – mandatory)

Compensation amount - ☐ Yes (Min. 25% of salary (Art. 101<sup>2</sup> § 3 Labor Code))

Method of payment (monthly/one-time) - ☐ Yes (Determining the form secures both

parties)

Contractual penalties (optional) - ⚠ Recommended (It is worth defining in case of breach of the clause)

## ☐☐ 5. When does the non-competition clause become invalid?

- After **the lapse of the stipulated duration**,
- If **the employer does not pay compensation** (on the employee's side – the agreement ceases to apply),
- If **real competition ceases to exist** (e.g., liquidation of the company),
- **By mutual agreement** – the agreement can be terminated earlier (in writing).

## ☐☐ 6. Violation of the non-competition clause - consequences

Liability for damages - Obligation to pay compensation promptly

Disciplinary action (if employment continues) - Loss of the right to claim (if no written record)

Possibility of legal claim - Possibility of expiration of the agreement (Art. 101<sup>2</sup> Labor Code)

## ☐☐ Legal Basis

- **Labor Code**: Articles 101<sup>1</sup>-101<sup>4</sup>
- **Supreme Court ruling of September 11, 2003 (I PK 403/02)** – validity of compensation
- **Supreme Court ruling of April 5, 2012 (II PK 223/11)** – form of the non-competition agreement