

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 101¹–101⁴
- **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. 101² § 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. 101² Labor Code)

Legal Basis

- **Labor Code:** Articles 101¹-101⁴
- **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