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NON-COMPETE OBLIGATION OF THE EMPLOYEE AGAINST THE EMPLOYER



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Nowadays, a company's portfolio and production secrets have become among the most valuable assets of enterprises. As a result of the growth of the sectors and the increase in the number of competitors, workers have the opportunity to use the information they have gained by joining the competing companies after they leave the job and to use them against their former employer's benefit. Therefore, employers are actively taking measures to keep such sensitive information away from third-parties. Non-compete agreements signed between an employee and an employer is one of such measures. A non-compete clause, which are most commonly seen in employment agreements, is only valid if such a clause is met with the conditions stated by the Turkish Code of Obligation and the Turkish Labour Law. Non-compete obligation is an assurance mechanism that might be added as a clause in an employment agreement or may be signed separately under the name of non-compete agreement. This assurance mechanism helps the employer to prevent the employee from using the information about the employer gathered during the course of employment against the employer's interest or for the benefit of his own or third parties.

Under Turkish Labour Law, the non-compete obligation of the employee arising from the nature of the work and an obligation of loyalty is in force throughout the continuation of the contract without the requirement of a non-competition provision in the employment contract. It can be understood clearly that an employee's duty of non-compete is in force for the duration of a valid employment contract and an employee does not have to actively make such a commitment.

The biggest danger for an employer can arise after an employee has left the company. In today's information age, it is much easier for an ex-employee to use the information gathered during the course of his employment at a rival firm. While an ex-employee of a rival company can be an attractive candidate for employment in the job market, there are big risks involved for any company looking to hire ex-employees of its rivals.

For example, the world famous food chain KFC has 11 spices in its recipe and it is one of the spices remained a secret for a long time. Even though the name of the famously secret "11th spice" has become public knowledge, KFC has proven to be able to stay ahead of the competition by keeping this information secret for a long time.

However, in the context of today's information network, it is proving increasingly difficult for companies to prevent their trade secrets and know-how from becoming public knowledge. While this is the case, the information companies seek to protect through non-compete agreements is not limited to know-how but also includes information regarding many other aspects of a business such as customer portfolios and organisation of work.

Work organisation encompasses the departmentalisation, co-ordination and the daily decision making of the company, all of which are vital to the operation of a company. Large scale companies are able to maintain high levels of efficiency and production through the establishment of such work organisation structures. In an effort to move ahead of the competition in the market, firms can acquire knowledge on the work organisation structures of rival companies and implement them in order to increase efficiency and productivity. One of the major risks faced by a company is the possibility of losing customers due to a rival company having obtained their customer portfolio information.

As a result of being faced with the risks mentioned above, companies protect themselves and their financial interests by signing non-compete agreements with an employee at the end of a term of employment. With the execution of a non-compete agreement between an employer and an employee, ex-employees become liable to pay the penalty amount agreed in the contract as well as the pecuniary damages incurred by an ex-employer resulting from a breach of the agreement.

Due to rapid developments in technology and the fact that information and data has become more valuable than tangible goods owned by companies, it can be argued that the current implementation of non-compete agreements between companies and their employees is no longer sufficient to keep know-how and trade secrets confidential. While the subject of any alternative methods, which may be adopted in the future, to ensure that company know-how and trade secrets remains confidential, currently the most effective method of obtaining this outcome under Turkish Law is through a non-compete agreement.

Answers. Not theories.

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