The Job Clause Act

12 June 2008, The Danish Parliament passed Act No. 460 of 17 June 2008 on employers' application of job clauses (hereinafter referred to as the "Job Clause Act"). The Job Clause Act includes employee clauses, which are often found in executive service agreements and regular employment contracts. As of 1 July 2009, the Job Clause Act entails that previously effective employee clauses in employment contracts becomes ineffective if they do not comply with the terms of the Act.

The rules of the Job Clause Act also apply to the so-called non-solicitation clauses, which are agreements made between an employer and other companies with a view to prevent or limit the employees' possibilities of employment in another company.

New requirements to employee clauses

The Job Clause Act establishes a number of requirements to be fulfilled before an employee clause can be effective, both in relation to the employee that the agreement is entered into with and those employees that are affected by the clause in that their occupational prospects are limited. Among other new additions, the Job Clause Act entails that a written agreement is entered into with the employee, on whom the employee clause is specifically imposed, and with those employees who are affected by the clause. The employment contract must further include information on how the employee's job prospects are limited by the employee clause, e.g. information about the identity of the contracting parties and the duration of the contract. Though the rules alone include employees and by this, not managing directors, agreements must be entered into with those employees that are undesirable for recruitment by the managing director.

In conformity with the rules on customer and competition clauses, employees included in the employee clause must further be compensated with 50% of the employee's salary on the time of resignation in the period after the resignation where the employee clause is in force. Employment contracts must include information on the employee's right to compensation. However, if the employee already receives compensation according to a customer and or competition clause, the right to compensation hereto becomes in-effective. As in customer and competition clauses, the rules on netting, termination access etc., also apply.

In general, the new rules entail that companies are forced to identify the employees comprised by employee clauses and that the employees must be compensated for the clause.

Non-performance of the agreement

As of 1 July 2009, the consequences of non-performance are that the employee clause cannot be imposed

(i) on the resigned employee, or
(ii) on those employees that the resigned employee may recruit.

The latest legal usage further indicates that an employee clause can be a material term of employment, which must appear from the employment contract. Non-performance in a specific case prompted a compensation claim of DKK 75,000 according to the Employment Contract Act.

We thus recommend that a review of the company's employment contracts and non-solicitation agreements are carried out with a view to establish whether ineffective clauses exist as of 1 July 2009.

We would be pleased to be at your service in connection with such a review and with legal advice in connection with the adaptation of employee clauses and non-solicitation clauses, making sure that these are made consistent with the new requirements of the law as of 1 July 2009.

If you have questions regarding the above or require additional information differential treatment on the labour market, please contact attorney Dan Moalem (dmo@mwblaw.dk) or attorney Christina Lund (clu@mwblaw.dk).