

Title of thesis: Restriction of Performance of Other Gainful Activity During the Employment Relationship

Abstract

This diploma thesis deals with the issue of restriction of performance of other gainful activity by employee during his employment relationship. In accordance with the wording of the legal provision governing the employee's obligation not to compete with his employer by performance of other gainful activity, it may seem that this is fairly clear regulation. However, further examination provides more detailed view that the provision conceals several aspects which may be confusing for employees. Such misunderstanding of this restriction may frequently lead to breach of that duty, without awareness of employee. It is therefore no exception that the Supreme Court of the Czech Republic often deals with the settlement of disputes concerning void termination of an employment relationship, which occurred by the employer due to a breach of the employee's obligation not to perform other gainful activity which is prohibited by law. By studying this case-law thoroughly, it is possible to find out boundaries between what is considered to be a violation in question and what is not.

In fact, the legislation imposes the restriction on the performance of other gainful activity on the employer's scope of business, which is the main reason why the employee does not realize that by his conduct he breached his duty under his employment relationship. The employee naturally perceives his potential concurrence to the employer only in relation to the type of work (job title) he performs for the employer, which is why employee is mistaken.

Thus the aim of the thesis is to analyse which employee's activity shall be considered as breach of a duty not to perform other gainful activity and which could still be in accordance with the legislation.

The study also partly concentrates on how an employee should proceed in order not to breach his duty. Indeed, the legislation permits the performance of an otherwise forbidden gainful activity, in case that prior the commencement of that activity, the employee obtains written consent from the employer for performance of that concurrence activity. This section also outlines the consequences of breaching this duty.

The penultimate part of this work partly deals with the issue of restriction of performance of other gainful activity of the so-called "civil servants" and points out the differences between these and other employees. Afterwards, the thesis focuses on the foreign legislation of this restriction, namely in the Slovakia and Swedish Kingdom. Both countries offer differences that could be inspirational for improvement of domestic legislation.

The conclusions offer overview of the reasons why is this restriction often misunderstood by employees. Finally, the author reflects on the issue of a purpose of the legislation. The author is offering a thought which can provide an answer to the question why this special legislation is necessary in our country, while it is sufficient abroad to generally stipulate that the employee is obliged to be loyal to his employer.

Key words: other gainful activity, concurrence, employer's consent, loyalty