

## **Abstract**

### **Contractual restriction of performance of other gainful activity of an employee**

This thesis has three main purposes. The first purpose of this thesis is to analyse the non-competition clause in the Labour Code, which is the only means of contractual restriction of performance of other gainful activity of an employee. I also focus on identification of eventual problems that might occur when applying this legislation. The second purpose of this thesis is to compare selected questions concerning the non-competition clause in Czech and German law. The third purpose of this thesis is to present suggestions *de lege ferenda* and to propose amendments to the Labour Code.

The thesis is divided into five main chapters. The first chapter is followed by the second chapter, which is subdivided into four subchapters. The first subchapter deals with the restriction of other gainful activity of an employee identical with the scope of business of the employer for the duration of employment. This restriction arises directly from the Labour Code. The second subchapter focuses on the restriction of business activities of the employees employed in public administration. The third and the fourth subchapter contain a general description of non-competition clause in the Labour Code and prohibited non-competition clause in the Civil Code.

The third and key chapter contains a detailed description of functioning of non-competition clause in the Labour Code and a legal analysis of relevant judgments. The first subchapter focuses on the bilateral nature of the competition clause in labour law, the second one deals with the professional restriction of the employee. The third subchapter contains an analysis of requirements to be fulfilled to form a valid non-competition clause. The requirements that particularly have to be fulfilled are the written form and the personal, territorial and temporal effect of the obligation in accordance with the law. Also the possibility of entering into a non-competition clause during the probation period is mentioned. The fourth subchapter deals with the requirement on paying the monetary compensation by the employer. Following subchapter contains the consequences of the breach of the non-competition clause by the employee, namely the contractual penalty and the damages. The fifth subchapter describes the consequences of entering into a void non-competition clause. The sixth subchapter focuses on the means of cessation of the obligation from the competition

clause, especially termination, withdrawal, payment of the contractual penalty and a special kind of severance payment.

The fourth chapter compares selected questions concerning the non-competition clause in the Czech Labour Code and the German HGB. The first subchapter contains the essential requirements for entering into a non-competition clause according to HGB. It is followed by the second and third subchapter, which compare the personal, territorial and temporal effect of a non-competition clause in Czech and German law. The fourth and fifth chapter compare the obligation of an employee, calculation of the monetary compensation, and the contractual penalty.

The conclusion is reached in the fifth chapter. It mainly deals with the problems with application of the relevant legislation that may occur in legal practice. It especially focuses on the possibility of entering into the non-competition clause by a juvenile employee, consequences of the lack of written form of the non-competition clause, or the consequences of forming a non-competition clause, in which the obligation is longer than one year. This chapter also contains suggestions *de lege ferenda*. It proposes that the Labour Code should impose an obligation on the parties to the non-competition clause to specify its territorial effect. Further, the possibility of entering into a non-competition clause by an employee working based on an agreement on work performance should be prohibited.