

NJORD Estonia: The employer has never had an exclusive right to an employee





The media headline "New Laws: Employer Loses Exclusivity to the Employee" caught the eye as somewhat surprising and confusing. Despite the addition of the restriction of competition agreement in the Employment Contracts Act, the employer has never held exclusive rights to the employee. After the agreed working hours, the employee has been and remains to be free to work anywhere as long as it does not conflict with the restriction of competition agreed upon in the employment contract.



According to the Employment Contracts Act, which was in force until 31.07.2022, an employer could never have had an exclusive right to an employee due to the fundamental right of everyone to freely choose their field of activity, profession and place of work (§ 29 of the Constitution). In practice, there have been situations where this principle has been violated in the employment contract. For example, after the end of the working day, an employee is prohibited from entering into either paid or free employment contract, contract for services or other civil law contracts without the prior written consent of the employer. In essence, an employee should ask the employer for written permission before becoming a volunteer pet walker. This is certainly neither necessary nor reasonable and has nothing to do with the employer's activities. Such an error could be resolved by the amendment of the employment contract.

Starting from 01.08.2022, the Employment Contracts Act has been supplemented by a regulation according to which an employer may not prohibit an employee from working for another employer unless the parties have entered into an agreement on the restriction of competition. Thus, it is also a matter of fixing the situation, that has been in force so far, in the Employment Contracts Act.

Read more here about what else was amended in the Employment Contracts Act, which entered into force on 01.08.2022.

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