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Taking counsel

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New Issues in Employment Disputes

Although the Labor Law of Latvia has been in force for less than three years, some case law regarding its application has been developed by now. The Senate of the Supreme Court of Latvia publicized its summary of court practice in labor disputes concerning employment termination, which raises new issues that employers should consider.

Dismissing an employee is never pleasant and seldom a simple matter. For example, the law provides that the employer may unilaterally propose amendments to the employment contract on condition that the employee will be dismissed, if he refuses to agree on the amendments. Following lengthy debates between practitioners and academics in the field, the senate has confirmed in its recent rulings that a refusal of an employee to agree to amendments to an employment contracts is itself valid ground for termination without the need for further reference to other provisions of the law. However, such amendments, and hence the dismissal, must be justified by the employee's conduct, abilities, or economic, technical, organizational or equivalent measures being implemented in the undertaking.

It is often the case that, prior to dismissal, the employee may have attended expensive professional training under the employer's direction, for example, special courses in the group's parent company abroad. The employer's loss in the event of dismissal is twofold - the risk that the employee may use the gained knowledge to compete with his former employer, and the burden of expenses associated with the training, which is effectively investment lost. The senate has been strict in interpreting the provisions of the Labor Law, under which it is the employer's duty to cover the expenses of such training. Therefore an agreement between the employer and the employee about the repayment of such costs is likely to be declared void, if challenged.

A "restriction of competition" clause in the employment contract is aimed at barring the employee from performing such professional activity, which can be detrimental to the employer's interests. The scope of the restricted activity must be precisely defined, and the employee is also entitled to an adequate monthly compensation. If, however, the employer decides for some reason that the restriction of competition has no practical use, he may only withdraw from it unilaterally prior to the termination of employment. If the employer fails to withdraw from restriction of competition before giving termination notice, he may be forced to pay the agreed compensation without getting any benefit from the restrictions the employee observes.

The obligation of confidentiality is another important tool for the protection of the employer, and as a general rule all information considered confidential must be indicated as such to the employee, if the latter is required to observe secrecy. Yet, a recent ruling of the senate established that, by disclosing some sensitive information meant for the employer's internal use and related to its business, an employee had violated his confidentiality duty even though the information had not been explicitly identified by the employer as a trade secret. This principle could potentially be the "last straw" for an employer whose employee has suddenly imparted internal information, however, a detailed list of trade secrets in an employment contract or internal work regulations is still a safer option.

The senate has also addressed the issue of dismissal of management board members of a company, if they are engaged under an employment contract. Since the Commercial Law entitles the supervisory board or the shareholders' meeting to remove management board members from office at any time, the senate has considered that in such a case, the Labor Law rules are inapplicable, therefore, no notice period, severance pay or similar obligations of the employer

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under Labor Law have to be observed. It remains to be seen whether this will be confirmed in future case law. As well it remains to be seen whether the rules on dismissal will be relaxed vis-à-vis some categories of employees, especially senior executives of companies.

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