

Decision of the Supreme Court of Lithuania - concerning supplementary agreements to an employment contract.



Under Article 33 of the Labour Code, the parties to an employment relationship may conclude supplementary agreements to the employment contract.

In the case at hand, the employer challenged the legality of a supplementary agreement which provided for the payment of 8 months' severance pay in the event of termination of the employment contract on any grounds.

The employer argued that its former director had agreed with several employees on extremely high severance payments upon termination of their employment contracts, with a plan to leave the company and compete with it in another company they set up. As a result, one of the employees also terminated his contract without any valid reason and immediately started providing services to a competing company.

The Court noted that:

- Such agreements are not compulsory, but **once they are concluded, they become binding**;
- In order to determine the legality of such an agreement, it is important to establish **whether the parties knew that the agreement was contrary to the company's objectives, whether the agreement was made in bad faith and whether the parties acted intentionally**;
- Such an agreement cannot be regarded as an agreement intended to lure the employee to a competing company or to induce him to terminate his employment, since **a higher severance payment is a normal measure to encourage the employee's participation in the work process and to provide him with financial security and additional social guarantees**.

Timely payments to the employee

According to the Article 147 (1) of the Labour Code, if, upon termination of an employment relationship, the employer is late paying the employee through no fault of the employee, **the employer must pay a forfeit in the amount of the employee's average remuneration for one month multiplied by the number of late months, but no more than six**.

As there was no evidence in the case that the severance pay had been paid when there was no reason not to, the Court held that the employer was liable to pay the employee the forfeit. However, the employer argued that the amount of the forfeit should be reduced. The court pointed out that:

- The amount of forfeit can only be reduced on the grounds set out in the legal provision itself, and since the maximum forfeit of 6 months is provided, both parties can clearly foresee the sanction that may be imposed on the employer, thus there is no reason to reduce the amount of forfeit.

Our recommendation:

The Labour Code provides for the possibility of concluding supplementary agreements on matters beneficial to the employee.

However, before concluding such agreements, it is necessary to assess whether your company will be able to continue to fulfil its obligations thereafter, as once such an agreement is concluded, it becomes binding.

It is also highly advisable to conclude non-competition agreements with employees to avoid situations where potential competition with the company puts the employer at a disadvantage without the possibility of remedying the situation. However, non-competition agreements may only be concluded with employees who have special knowledge or skills, who are in possession of the company's commercial secrets and confidential information, which can be applied in an organization in competition with the employer. A confidentiality agreement is therefore also highly recommended.

Finally, remember that employees should always be paid on time, as your company may have to pay forfeit for late payments.

If you have any questions about the agreements you enter into with your employees, we recommend you consult a lawyer.

