

Resignation from post-contractual non-compete obligation

The non-payment of the compensation for non-competition may cause a legally effective renunciation from post-contractual non-competition with future effect – even in unintentional form of an enraged email.

In the case ruled by the Federal Labor Court on January 31, 2018 (case 10 AZR 392/17) the defendant did not pay the compensation agreed upon in the post-contractual non-compete agreement after the employee has left the company – despite being reminded. Therefore, the plaintiff addressed the following email to his former employer:

“Reference is made to your email as of March 1, 2016 as well as the telephone conversation with Mr. B. I would like to inform you that I feel no longer bound to the non-compete obligation as from now...”

It was not the intention of the plaintiff to rescind from the non-competition obligation. He just wanted to emphasize his claim for payment of the compensation for non-competition. However, the federal judges evaluate this incautious statement as resignation from the post-contractual non-compete agreement.

The Federal Labor Court has thus confirmed the view, which is almost unanimously agreed upon in judicature: If a payment of the compensation for non-competition is not paid or is paid delayed, the former employee is entitled to resign from the non-competition obligation.

In the opinion of the federal judges, the resignation can be effected by an incautious email phrasing. Decisive for the interpretation of the respective declaration is the objective “recipient horizon” only.

Consequences

Employers, who want to prevent competition from former employees, shall ensure that the compensation for non-competition is duly and timely paid.

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