

Restrictive Covenants

October 2010



Introduction

It is essential that all organisations protect the core components of their business (clients, customers, employees, intellectual property, process information) as these are critical to competitiveness and providing all stakeholders with a secure future.

An employee may leave your business armed with valuable knowledge gained during their employment. This information may be an attractive asset to a competitor seeking to gain market advantage or may help the employee to set up a rival business, steal your customers or even poach key members of your team!

What can you do?

The use of Restrictive Covenants in your employment contracts is the accepted and proven method of providing protection against this (and at the very least, they can act as an effective deterrent).

Restrictive covenants can be used to prevent ex-employees from:

- Setting up competing businesses
- Working with your key competitors
- Soliciting your clients
- Poaching your employees
- Using your confidential information or intellectual property.

Employers can however get carried away, drafting them far too widely in terms of location or business activity. This means they are worthless as they become completely unenforceable.

Contact Us

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Current Climate

Protecting your competitive advantage is particularly important in this current economic climate. The key with Restrictive Covenants is to be reasonable, showing the legitimate business interests you need to protect.

However, Restrictive Covenants also affect how marketable an employee is and therefore employees may seek to take steps to avoid them. It is therefore important to strike a balance between protecting your commercial interests and preserving the employee's right to work.

One size does not fit all!

Bearing in mind these competing interests, employers should ensure that the Covenants:

- Only apply to those employees who could cause damage to the business
- Be of a reasonable duration – generally a maximum of 6 months but a longer period might be appropriate depending on your business (i.e. with contract renewal periods of 1 year)
- Be reasonable in terms of geographical scope
- Name any specific competitors that you may want to restrict your ex-employees from working for.

Where an employee breaches their Covenants you can take action. Generally, this involves quickly obtaining an injunction that will stop them from their actions and then pursuing the employee and/or their new employer for compensation (damages).

Practical Tips

- Consider the use of bespoke contracts, tailored to suit different levels and categories of employees
- If covenants are included in the contract of employment, ensure it is signed and dated by the parties.
- Write a letter to departing employees reminding them of their covenants.

Warning: If you breach an employee's contract of employment, **no** part of the contract will be enforceable including the Restrictive Covenants.

STOP PRESS

Bribery Act

The implementation of the Bribery Act 2010 has been delayed and will not now come into force until April 2011 (not 1 October 2010 as previously advised). The Government intends to publish guidance into what organisations can do to ensure they do not fall foul of the new anti-corruption law in the new year.

A New Apprentice Wage

A new minimum wage of has been introduced for Apprentices. From October 2010, apprentices below the age of 19, or aged 19 or over but in the first year of apprenticeship are entitled to a minimum wage of £2.50 per hour.

Can We Help?

For further information on any of the issues raised here or if we can help with any issue relating to the employment or performance of your employees, please do call us on **01708 758958**.

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