

Restrictive Covenants



If you are a senior executive, director or senior manager you are likely to have post-termination restrictive covenants in your contract of employment. These contractual clauses restrict what you can do both during your employment and after it ends. They are designed to protect your employer but in doing so can severely restrict your own options and even your ability to earn a living.

If you are concerned that restrictions might affect you, we recommend specialist advice.

The main types of post-termination restrictions are:-

- a) Confidentiality – a requirement to keep confidential information and trade secrets to yourself. But be aware: even if your contract does not include an express confidentiality clause you are still likely to owe duties to your employer.
- b) Non-poaching – preventing you taking your employer’s staff with you to new employment.
- c) Non-solicitation – preventing you from trying to obtain business from your employer’s customers or prospective customers.
- d) Non-dealing – a bar on dealing with any of your former employer’s customers or potential customers.
- e) Non-competition – a wide ranging attempt to stop you working for any of the competition.

You need to know if the restriction is enforceable in law. The clause must go no further than reasonably necessary to protect the employer’s legitimate business interests. If the duration of the covenant is too long or geographically too wide it may not be enforceable.

Restrictive covenants are often carelessly drafted - we can help with interpretation and our specialist advice helps you identify the strengths and weaknesses of your case, before you embark on alternative employment. We can look at your contract in detail, discuss the nature of your role with you and fully assess the enforceability of the restrictions with reference to the latest Court decisions. We offer:

- Initial review and advice so you can weigh up your options
- Assistance with termination package negotiations – you might be able to agree that your employer should waive the restrictions
- Advice and legal representation if you are threatened with injunctive relief or being sued for compensation

Breaching a restrictive covenant can have drastic consequences – injunctions, claims for damages and substantial claims for legal costs all need to be considered. It is therefore essential to secure the right advice, at the earliest opportunity.

Our advice is practical, clear and to the point. Our fixed fee arrangements mean that you know exactly where you stand.

If you need advice about restrictive covenants or any other clauses in your contract, please contact us.

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This Fact Sheet is for information only and is not intended to be a substitute for legal advice.