

## **RESTRAINTS OF TRADE**

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In the current tight labour market many employers are insisting on restraints of trade in employment agreements. So what are they? In general terms it is a clause in an employment agreement restricting an employee when he/she leaves his/her employment from "competing" with his/her former employer. Such clauses are looked at very carefully by the Courts because they must be reasonable and cannot simply prevent an employee from working in the same industry.

For these reasons it is a common misconception that such clauses are not worth the paper they are written on. Actually, restraints can be a useful and effective tool, protecting employers' interests from employees who set up on their own or go to a competitor. The most common interests to protect are connections with customers and other employees formed by departing employees, and confidential information gained during the employment relationship. Restraints must be tailored to the particular employee and must be no wider than is necessary to protect the employer's particular interest in each case. If the restraint is not reasonable it won't be enforceable.

Employers should get advice on restraints before any key employee starts work or, in a sale of business situation, where the former owner is to stay on as an employee. If you have any restraint issues, please talk to the Employment Team.