

Employment Agreements – Restraint of Trade

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Restraint of Trade clauses are common provisions in Employment Agreements. Essentially, it is an employee's promise that they will not do something.

Reasonableness

A restraint of trade clause must be reasonable. An example of a reasonable restraint of trade clause is when it protects an employer's legitimate proprietary interests. An example of an unreasonable restraint of trade clause was found in the case of a mortgage broker in Marlborough. In this case the employee had been employed in a clerical/administrative role and as such there was little risk of her enticing clients away to a competitor.

Enforceability

An employer will usually seek enforcement of a restraint of trade clause when an employee leaves and finds new employment with a competitor. In this situation, the employer will want to make sure that the restraint of trade clause in the Employment Agreement is in force and they will seek an injunction to ensure this.

In a recent Employment Relations Authority decision, a Tech Company applied for an interim injunction against four of its previous employees. The Tech Company had entered into agreements to purchase a number of IT businesses. Following the purchases four employees of the IT businesses resigned, failing to provide the notice required in their Employment Agreements.

The employees also sent letters to the Tech Company allegedly cancelling the purchases of the IT Businesses. The letters stated that the four employees had nominated a new entity to transfer the IT businesses to and were taking with them customers that they had bought to the Tech Company as the purchaser. They also said they were taking assets such as vehicles, hardware, laptops and phones and that all four employees were moving to employment with a new Tech Company. The employees then proceeded to take the Tech Company's assets, confidential information, passwords, security data and other equipment.

The question for the Authority was whether they could issue interim injunctions³ requiring each of the employees to comply with the provisions of their Employment Agreements including confidentiality, non-solicitation and restraints of trade.

The Authority held that each of the employees must comply with the above listed provisions in their Employment Agreements. Restraint of trade provisions and the like are clauses that survive termination of employment.

If you are seeking new employment and are wondering whether a restraint of trade provision in a previous Employment Agreement is enforceable, then it is best to take advice first, otherwise you risk breaching your contractual obligations.