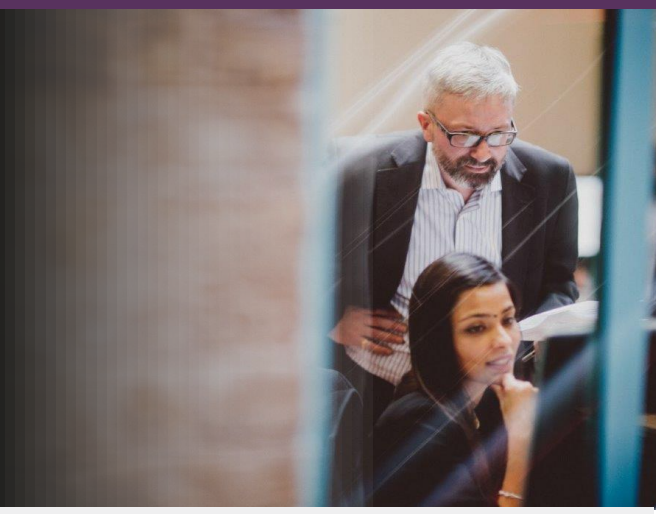
RIAA Barker Gillette

Always Available

Non-Compete. Get it right to protect against competition



June 2020

Companies looking to protect their business by relying on non-compete clauses for key employees should check that any post-termination restrictions are reasonable.

When an employee leaves and there is a threat of commercially sensitive information about operations and customers being passed to a competitor, the restrictive covenants in the contract of employment are effectively the safety net in protecting know-how and business relationships.

A recent case heard in the High Court has shown that while the court will enforce non-compete clauses, restrictions must go no further than protecting legitimate business interests. It also highlighted the importance of being clear about any so-called 'garden leave' where employees work out their notice period at home.

In Square Global Limited v. Leonard, a broker was required to give six months' written notice. The employment contract also contained a restriction on him working for a competitor for six months after the end of his employment. When he handed in his notice, with immediate effect, and left to work for a competitor, his former employer relied on the employment contract. In response, the broker claimed he had been constructively dismissed, arguing this released him from his obligation to give notice and from the non-compete clause.

The High Court, though, upheld the employer's argument and said that the six-month non-compete clause was reasonable and went no further than necessary to protect the employer's legitimate business interests. It was therefore enforceable. The court also decided that the broker was required to serve out his six-month notice period, on top of the six-month restriction, keeping him out of the market for a total of 12 months.

This compares with a case in 2014, Ashcourt Rowan Financial Planning Limited v Hall, where the High Court held that a restrictive covenant designed to prevent a former employee from working for a competitor for six months was unenforceable because the covenant was too widely drawn, going beyond protecting the legitimate business interests of the employer to be in restraint of trade. The High Court found that the covenant was not confined to what was reasonably necessary and covered indirect involvement without any obvious justification.

The law has always regarded a covenant 'in restraint of trade' as being void, because an individual should be free to follow his trade and use his skills without undue interference. Such clauses are therefore only enforceable if they are strictly limited to what is necessary to protect a business.

Employment partner, Karen Cole said:

"This is a reminder that employers need to ensure that anti-compete clauses and other restrictive covenants are reasonable and focus on activities which would involve the employee directly competing with their old employer. Trying to do a catch-all is impossible to enforce.

Garden leave and how or when that might be offset should also be tackled. What's important is that any restrictions are carefully drafted and checked at the outset."

If you have an employment law query, contact employment partner, Karen Cole today.

RIAA Barker Gillette

Always Available

Karen Cole
07903 619 001
karen.cole@riaabg.com
www.riaabarkergillette.com

Click here to make an online appointment

Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.