

Employment & Employee Benefit

# The Employment Contract: Key Clauses to be aware of

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Every contract of employment consists of essential clauses but there are some additional clauses which, if relevant to the particular employment, may be vital to also insert into an employment contract. Examples of such are as follows:

### Freedom from Third Party Obligations

A new employee may be subject to a post termination restriction imposed by his or her previous employer, which prevents the employee from working for a competitor for a particular time period. In hiring such an employee a competitor runs the risk of being joined in any legal action against the employee for inducement to breach of contract and it is therefore advisable to include a clause in the contract whereby the employee confirms that he or she is free from such obligations to any third parties.

### Garden Leave

A garden leave clause in an employment contract enables an employer to require an employee not to attend work during the employee's relevant notice period and/or require the employee to carry out specific duties and thereby prevent him or her from coming into contact with customers and suppliers. The employee is still entitled to receive his or her normal pay and any other benefits during such leave but is bound by the express and implied terms of the employment including, for example, confidentiality and fidelity and restraint of trade.

### Search Clause

Any attempt to search employees without their consent would constitute assault and could give rise to a claim for defamation. Employers therefore may wish to provide in contracts of employment that they have the right to search employees, their baggage, locker, company vehicle, etc. An employer should provide that in the event of an employee refusing to submit to a search, this will be treated as misconduct and therefore result in the implementation of the disciplinary procedure.

### Restraint of Trade

A restraint of trade clause seeks to restrict an employee after their employment terminates from any or all of the following: (i) using confidential information or trade secrets obtained whilst working for their former employer; (ii) working either on their own account in competition with their former employer or for a competitor of their former employer; and (iii) soliciting a former employer's customers, suppliers or staff.

Subject to the fullest extent permissible by law, an employer can impose a restraint of trade clause on an employee post termination. However an employer seeking to impose such restrictions should be aware that such restrictions can be difficult to enforce. They must be limited in terms of duration, geography to the area in which the employer carries on business and the scope of the employer's business. Accordingly, any such provision contained in an employment contract must be reasonable in

all the circumstances and no more than is necessary to protect the employer's legitimate business interests.

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