Guide to Employment Restraints

1. What is an "employment restraint"?

Employment restraint are restrictions by which an employer seeks to prevent an employee from carrying out some activities that are related to his or her employment.

Employment contracts often include restraint of trade clauses that can apply during the employment and after the employment ends.

Also the law implies certain restrictions into every employment relationship, some of which may continue after the employment comes to an end.

2. Employment contract restraint of trade clauses

Some common restraint of trade clauses in employment contracts are:

- non-solicitation clauses;
- no competition clauses;
- no poaching clauses; and
- confidentiality clauses.

Restraint clauses are void unless they are reasonable in the circumstances by being no wider than reasonably necessary to protect the employer's legitimate interest and are not contrary to the public interest. The law in this area is complex and you should consider taking advice about an employment restraint issue.

3. No competition clauses

"No competition" clauses prevent the past employee from competing with the employer.

4. No poaching clauses

"No poaching" clauses prevent the past employee from approaching and trying to solicit the employer's employees and contractors to leave their employment and work for the employee or their new business.

5. Confidentiality clauses

Confidentiality clauses protect the employer's trade secrets and other information that may be regarded as confidential. They may apply during the employment and long after the employment ends.

Even if there is no confidentiality clause the law usually implies a duty to protect the employer's confidentiality even after the employment ends.

6. Implied duty of loyalty

The law usually implies a duty for an employee to be loyal to their employer during the employment. For example it may breach the employment contract to accept a secret profit even if the employment contract does not explicitly state that.

7. Fiduciary duties

Some employees with special responsibilities may owe additional duties – fiduciary duties – to act in good faith and for the benefit of their employer and their clients.

8. Further information

You should consider contacting WorkLegal without delay for advice about an employment restraint situation.