



Are non-compete clauses worth the paper they're written on?

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As non-compete clauses are contrary to the public policy of 'providing a sufficient and trained labour force' (see Section 106 of the *Industrial Relations Act 1996*), is it worth including them in employment contracts?

A reasonable clause

Correctly worded non-compete and other restraint clauses can ensure your organisation is protected and, if required, be successfully enforced.

To enforce a non-compete clause the duration and scope must be reasonable, and not overly restrictive.

For example, the longer a restraint's duration, the less likely it will be considered reasonable. The advantages of employees' connections with clients or knowledge of confidential information are reduced over time and, at some point, will not be worth protecting against.

Clauses can apply - or not apply - to specific circumstances. If the clause applies to particular roles or job titles for example, has the employee's role changed since signing the contract? Failing to update agreements to reflect changes can mean the clause no longer applies.

A restraint clause can still be valid when making redundancies. For example, if the redundancy is a result of a specific business division closing down, then a restraint clause preventing an employee soliciting clients for a competing business in that niche could be deemed reasonable.

Identifying risks

You should also identify the risk the clause is protecting against. This could be with regards to:

Geographic location

If the employee covers a geographic location, a restraint restricting competitive activity in this location may be reasonable.

Mode

The clause may need to cover online business, channel sales partners and other distributors and/or specific retail outlets.

Competitors

If a competitor is clearly defined, the more reasonable (and enforceable) the clause is deemed to be.

What this looks like in practice

The law around restraint clauses is more 'shades of grey' than black and white. However a well drafted restraint prohibiting post-employment competition can be enforced.

Here are [two recent cases](#) where the court has enforced a non-compete contract.

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