

## RESTRICTIVE COVENANTS

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***Every business, whatever the size, has information that it considers both integral and invaluable to its success. Restricting the use of this information by employees after their term of employment may be vital to the protection of your market position. An ex-employee who has been privy to your client details and trade secrets may be an attractive asset to a competitor seeking to encroach upon your market.***

An employer may seek to protect the use of this information through the inclusion of a restrictive covenant in the contracts of employment of senior or key staff at the commencement of the employment relationship. The most common incorporate post-termination obligations whereby an employee agrees not to do certain things after he or she leaves the company. These obligations are called restrictive covenants and there are broadly four types:

1. non-compete covenants – which seek to prevent an ex-employee from directly competing or working for a competitor, usually within a specific geographical area, for a set period following termination;
2. non-solicitation/non-dealing covenants – which seek to prevent an ex-employee from entering into working relationships with former customers for a set period.
3. non-poaching of employees – which seek to prevent an ex-employee from recruiting former colleagues for a set period following termination;



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#### 4. restrictions on the use of confidential information

Whatever you decide to include it is important to bear in mind that restrictive covenants must go no further than is reasonably necessary to protect your legitimate business interests as otherwise the covenants will be unenforceable. However there is much debate in defining what is “reasonable” and what is a “legitimate business interest” in any given circumstance.

For example, a covenant which prevents an employee from working for a competitor for a period of twelve months anywhere within the United Kingdom may be enforceable against a national sales director but would not be appropriate for, say, a receptionist.

The issues that need to be considered in relation to restrictive covenants will vary considerably from case to case and from employee to employee and, as usual employers are advised to seek professional guidance. The point is that covenants can work to protect an employer’s business. They provide leverage even if an employer would rather not pursue the matter to a full court hearing or application for an injunction.