

## When employees bolt with your business

Many business-owners are fearful that their employees may depart with copies of their client details, "know-how" and fellow employee contact details, only to set up business in competition.

And with good reason - without having the proper safeguards in place first, then once the horse has bolted, there is little you can do.

This is one area where an ounce of prevention really is worth a pound of cure. Laws protecting employers are much more effective if preventative action is taken before secrets walk out the door.

Firstly, you should make it clear to your employees, and demonstrate by your own behaviour, that the relevant information is confidential. This might involve physically or electronically protecting the information, or limiting it to particular employees on a "need to know" basis.

Secondly, a "restraint of trade" agreement with employees is essential. This would, preferably, be included in the employee's employment contract when they first join the business, but it can still be done later by asking them to sign a separate document.

It is critical that the restraint of trade clause is properly drafted.

If a business owner has to enforce a restraint in Court, the law will consider whether the restraint is unreasonably excessive and against the public policy, in that it may have the potential to reduce competition and vibrancy in a free market economy.

Under this scrutiny, excessive and improperly drafted restraint clauses are frequently struck out, rendering them entirely ineffective.

In a properly drafted restraint clause, "less is more".

The restraint should be limited to restrict competition by the employee:

- only from activities which would directly compete with the business - not attempting to keep the employee out of the entire industry altogether;
- only within a reasonable distance from the location of the business. This will vary depending on the nature of the business - for example 3 kilometres might be reasonable

for a hairdressing salon, but for a car parts manufacturer a far greater distance might be acceptable;

- only for a reasonable period of time - whilst restricting an employee for 6 months might be considered reasonable by a Court, 5 years is likely to be excessive and struck out.

The key point is that, if you have employees with access to your confidential information, and who have not signed a restraint, you should address this now, so that you won't in future regret that you didn't.

We would be happy to prepare a standard restraint clause for your employees, or for that matter a full employment agreement, if you require. Feel free to give us a call for an informal chat.

**Contact:**

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