SHOOSMITHS

Rail Forum HR Leaders Group

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FOR WHAT MATTERS

Restrictive Covenants

"A negative covenant that restricts the way in which a party can act"

Basic position: restrictive covenants are illegal due to being a restraint of trade and contrary to public policy, unless the employer can show that:

- It has a legitimate business interest that requires protection; and
- The protection sought by the restriction is no more than is reasonable to protect that legitimate interest.

Future of non-compete clauses

- Government have announced intention to introduce statutory cap of 3 months on non-compete restrictions
- Will only apply to employment contracts (e.g. not shareholder / partnership agreements)
- No date for introduction yet
- Unknown at present whether any restriction which is over 3 months in length will become unenforceable, or whether will only be enforceable for first 3 months
- Longer notice periods and use of garden leave likely to become more common
- Will not apply to other types of restrictive covenants (e.g. non solicitation, non-dealing)

Restrictive Covenants

Types of restrictions:

- Confidentiality clause
- Non-solicitation restriction
- Non dealing restriction
- Non-compete restriction


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