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Restraint Disputes Increase

EMPLOYERS URGED TO TAKE PRECAUTIONS AS RESTRAINT DISPUTES INCREASE

An increasing number of employers are relying on restraint clauses in employment contracts to take action against former employees, according to a Brisbane lawyer.

Hayden Small of law firm McCullough Robertson, said he believes a tight labour market is responsible for the increased disputes, as employers look to better protect the value they have built up in their staff.

“While the type of conduct employees are engaging in when their employment ends is not new, in recent years an increasing number of employers are willing to try their hand and have restraints enforced,” Mr Small said. “The disputes that are occurring relate to various types of conduct, from working for a competitor, to working for clients of the former employer as well as the alleged theft of intellectual property.

“Employees should no longer take restraint clauses lightly, as the ramifications for a breach can be substantial,” he said. Mr Small said while disputes are increasing across most Australian industries, there seems to be additional growth in the IT industry. “The problem with the IT industry is there is a lot of work from home, so the line can become blurred regarding who owns the intellectual property to some of the projects,” Mr Small said.

“When employees leave they may want to take ideas they have been working on to a competitor. This can create problems where employers believe that they own the intellectual property in those ideas.

Mr Small said restraints should be carefully worded, and not be too broad or they risk being unenforceable. “While you should consider the correct restraint in each circumstance, it is often better to draft a conservative restraint clause as it will have a better chance of standing up if challenged in court.”

“Employers should also have good systems in place to identify information as being confidential in nature. This may include providing employees with confidentiality agreements, acknowledgement forms, simply marking documents as confidential, sending intranet reminders as well as verbally reminding employees of the confidentiality of certain documents,” he said.



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Mr Small offered the following advice for employers looking to protect their confidential information and intellectual property when an employee resigns:

- Have a meeting with the employee to remind them of the restraints. Make sure that there is a witness to the meeting.
- If there are no restraints, remind the employee that the company takes its intellectual property and confidential information rights very seriously. Request the employee signs a deed confirming their obligations in this regard.
- When the employee resigns have the IT department do a complete search of their email usage to check whether there has been any unauthorized disclosure to a third party.

For more information see: www.mccullough.com.au