

Restraint of Trade private member's bill

A private member's bill which seeks to restrict restraint of trade provisions in employment agreements has been drafted and is going into the parliamentary ballot.

Restraint of trade provisions are commonly used by employers to protect their commercial or proprietary interests, however they are void (both unlawful and unenforceable) unless they can be established as reasonable.

The two restraint of trade provisions often used in combination are non-competition clauses and non-solicitation clauses. Non-competition clauses seek to prohibit an employee from setting up their own business, and/ or working as an employee for a competitor of the employer. Non-solicitation clauses seek to prohibit employees from approaching customers/ clients, contractors, suppliers and/ or employees from the previous employer.

The starting position when interpreting a restraint of trade provision is that they are contrary to public law and unenforceable. The onus then falls on the party wishing to enforce the restraint to establish that it is reasonable.

See our article [here](#) for more on what ought to be considered when assessing the enforceability of a restraint of trade.

Private member's bill

Politician Helen White has drafted her Employment Relations (Restraint of Trade) Amendment Bill to restrict the use of restraint of trade provisions further. The Bill will now go into the parliamentary ballot, and if it is drawn out, could go through the legislative process and become law.

The Bill as it stands would amend the law to:

- provide that restraints of trade have no effect wherever an employee earns less than three times the minimum wage;
- limit the use of restraints to those situations where the employer has a proprietary interest to protect;
- require employers to pay half the employee's weekly earnings for each week that the restraint of trade remains in effect; and
- limit the duration of restraints of trade to no more than six months.

White says that she is expecting push back at select committee if the Bill makes it that far on the three times minimum wage restriction. She says however, "*it is in the public interest that lower-paid employees should be free to take a job with a competitor for more money or better conditions, or to use their skills to start their own business*".

The Anderson Lloyd employment team will provide further information on how the Bill progresses if it is pulled from the ballot.

Want to know more?

If you have any questions about restraint of trade provisions, please contact our specialist [Employment team](#)