

Three Clauses to Include in Employment Contracts

by Katherine Hawes, Aquarius Lawyers

An employee contract should make clear to both the employer and the employee the terms and conditions of employment and the rights and responsibilities of both parties. In order for both employer and employee to benefit from the contract, it must be legally valid and must not contain any stipulation, which is contrary to the law. For example, the contract cannot include a clause that allows the employer to terminate the contract for a reason which is not supported by the contract and by the general law.

In order to ensure that your employment contract protects both you and your employees, it should include the following three clauses:

1. Restraint of Trade Clause

A restraint of trade clause ensures that anyone who leaves the business – whether it is a partner or an employee – do not take any records of clients with them. An example of such clause could be:

“You must not solicit any business or keep personal records of any client of our company.”

Restraint of trade clauses can also be used to prevent ex-employees and partners from starting up a similar business within a particular time period or specific location. For example:

“You must not establish your own electrician business within a 10km radius of this business within 6 months.”

A word of caution however – the court of law tends not to uphold clauses which prevent an employee from working within their chosen field. For example, if an employment contract stipulated that a chef must not work within a radius of 50km of this restaurant for a period of 6 months following the termination of employment, the courts would be extremely hesitant and may deem this clause as unreasonable.

2. Confidential Information Clause

A confidential information clause is important in order to protect your business from the disclosure of confidential information. There are two

main types of information that can be protected by this type of clause. These are known as ‘trade secrets’ and ‘know how’.

A trade secret has been described in the courts as the “information, which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret”.

Examples may include customer lists, pricing information, costing information and profit and loss statements. By inserting a confidentiality clause, you aim to prevent your employees from using this information for any other purpose both while they are employed and also when they cease to work in your organisation.

Know how is a type of confidential information that is learned by the employee or partner, and becomes a part of their knowledge and skill set. This knowledge and skill will be applied while they are in employment or partnership with your company.

3. Acceptable Social Media Commentary Clause

In this day and age, almost every person uses social media. Words and images posted on social media have the ability to spread far and wide in a very short period of time, so you should monitor employee use of social media. In order to ensure that your employees and partners’ use of social media is not detrimental to your business, it is good practice to insert an acceptable social media clause into your employment contract. This clause can include stipulation on what, when and how employees can use social media, both during the course of business and after hours.

As many businesses now have business profiles on social media platforms such as Facebook, Instagram and twitter, it may be worthwhile to include a clause as to who actually owns the social media accounts.

With over 20 years’ legal and business experience, Katherine Hawes is the founder and principle solicitor of Aquarius Lawyers. To find out more about Katherine’s fixed-rate small business packages, please see www.newagelegalsolutions.com.au.



Katherine Hawes

Marketing Tips

....Continued from page 22

In summary, I believe SEO needs to be considered, but it’s not something you need to worry about.

Build a good website, update it as much as possible with content that’s valuable to prospective clients, and do what you can to make it SEO friendly, but the rest is largely – and thankfully – out of your hands. I’ll cover easy SEO wins in next month’s issue.

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