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Employment Law

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Employment Updates

Termination of Employment

The date on which an employee's employment terminated, when she resigned without notice, was the date on which her employer opened and date-stamped her resignation letter. This was the day resignation had been communicated.

Facebook Comments Were Grounds for Dismissal

A Northern Ireland Tribunal has held that an employee was fairly dismissed for making vulgar comments about a female colleague on his Facebook page. The remarks had not brought the company into disrepute but the harassment of the colleague was, on its own, sufficient to amount to a fair dismissal.

Unsuccessful applicants and recruitment information

The ECJ has ruled that discrimination law does not extend to unsuccessful job applicants being provided with information about the recruitment process. However, the refusal to allow such access may be taken as an inference of discriminatory practices.

Surrogacy Leave

An Employment Tribunal has referred questions to the ECJ as to whether the mother of a new baby via a surrogacy arrangement is entitled to maternity leave.

Keeping It Confidential

In the course of their employment, employees will have access to information that is essential to your business; client lists, pricing policies or perhaps a marketing strategy. But, when your employee leaves you, how can you protect this information?

It really depends on the type of information you want to protect. Although trade secrets remain protected after employment has ended, confidential information can only be protected whilst the employment continues.

The difference between confidential information and trade secrets was set down in the memorable case of *Faccenda Chickens v Fowler*. The Court of Appeal defined what might amount to a trade secret; including secret processes of manufacture, formulae etc. Any information falling outside of this definition will be "mere confidential information".

However, the situation is not as clear cut as it would first seem. The Court added that whether a specific piece of information can be classed as a trade secret will depend upon various factors, including the nature of the business and the extent to which the employer valued and protected the information.

There have since been numerous cases where the courts have attempted to distinguish confidential information from trade secrets. Trade secrets have also been described as the type of information for which steps have been taken to limit its distribution and which, if disclosed, would be likely to cause real or significant damage to the owner.

Important too is the fact that information gained by an employee during his employment which may be confidential must be distinguished from those skills and experience that the employee has acquired during this time. The right of an employee to utilise acquired skills and experience cannot be restricted.

Employers may choose to protect confidential information, by including an express confidentiality clause in the employment contract, to survive after the employment has come to an end. Whilst a carefully drafted clause will be useful, there may still be some debate as to what forms of confidential information can be protected in this way. Furthermore, an employer bringing an action for breach of a confidentiality clause will have to be very clear about the information that has been used and the damage that has been caused.

Further protection can be provided by the addition of specific post-termination restraints in the employment contract. These restrictions prevent an ex-employee, for a reasonable period of time, from working for a competitor, dealing with clients and suppliers of his former employer which he had previously dealt with and/or poaching key employees. Such clauses, however, must be reasonable and extend only so far as to protect the former employer's legitimate business interests; anything further will be seen as a restraint of trade. Nevertheless, they are perhaps a more effective way of preventing employees from using sensitive information that their former employer wants to protect.

Julie Shannon

Julie is our employment law specialist. She has several years' experience in representing and assisting companies (both large and small) as well as individual employees.

Julie can assist you with employment documentation, tribunal representation and advice and assistance on employment procedures including disciplinary hearings, redundancies and TUPE transfers.

Contact Julie at:

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Our Employment Services:

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- Tribunal representation
- Drafting / negotiating compromise agreements
- Health checks for your employment documentation and procedures
- Contract and handbook drafting

We will:

- Explain the law and tell you best how to use the law
- Advise you on your best options
- Prepare the appropriate documents
- Protect your position

Want to learn more?

Our new Factsheet, **"Employment Facts and Figures"** is now available. Please email Julie if you would like a copy.

Post-Termination Restrictions

Otherwise known as restrictive covenants, we outline below the most common forms of restriction. These restrictions will be for a specified period following the termination of employment (generally three to twelve months) and can also be limited to a specific area depending upon what is reasonable in the circumstances and provide they go no further than protecting the employer's legitimate business interests.

Non-competition	Prevents the former employee from working for a competitor as a contractor or employee, or setting up in competition with his former employer. The clause will be for a specified period of time and within a specific area.
Non-solicitation of business	Prevents the former employee from contacting customers of the business with whom he dealt or had contact in a specific period prior to the termination of his employment. The clause will generally be for a specific period of time.
Non-solicitation of employees (non-poaching)	Prevents the former employee from enticing away his former employer's key employees into new employment. Again, this will be for a limited period of time, estimated as the time the employee may reasonably expected to have influence over his former colleagues.
Non-dealing	A more widely drafted version of the non-competition and non-solicitation clauses. It also prevents the former employee from dealing with previous customers and clients, even if they make the approach. Because it is more far-reaching than a non-competition clause, it can be more difficult to enforce.