

Restrictive covenants

Some recent cases have seen the topic of restrictive covenants return to the spotlight. Let's have a look...

Restrictive covenants are used by employers to restrict an employee's conduct as a means of allowing the employer to protect its business. The means of restricting employees fall into two categories: during the employment relationship; and after the employment relationship. We focus on the latter.

Restrictive covenants form part of the contract of employment. So, if an employer commits a fundamental breach of contract (eg, by invalidly dismissing an employee without notice) then the employee is entitled to end the contract and its terms (including its post-termination restrictive covenants) will no longer be binding.

The principal reason why an employer may want to restrict a former employee is because he or she may have special knowledge of strategic and technological information about its business or client contacts that the former employee may try to use for the benefit of a new employer or for him or herself.

Enforcing restrictive covenants

The English courts traditionally view a contractual term restricting an employee's activities after termination as being a "restraint of trade" and contrary to public policy. Consequently, they will not enforce them unless certain conditions are met.

In order to be enforceable, the employer must be able to show that the covenant in question goes no further than is reasonably necessary to protect a legitimate interest of its business. The courts will look to strike a balance between the employer's interests and allowing the employee the freedom to work where he or she chooses and to take advantage of the professional skills and knowledge he or she has developed. Covenants included in a contract only to deter an employee from leaving are most unlikely to be enforceable.

The courts have identified only a small number of legitimate interests which can be protected by restrictive covenants.

- Client or customer connections, including those with prospective clients or customers. Restrictions preventing an ex-employee from dealing ("non-dealing") with customers or soliciting the business

of customers ("non-soliciting") are most often used here although, in some cases, a restriction on the ex-employee from competing directly or working for an entity in competition with the employer ("non-compete") may also be appropriate

- Confidential information and trade secrets, including customer lists, price lists, costings, financial details and terms and conditions of contracts with key suppliers. Non-compete restrictions are usually the most effective method of protecting confidential information, although other restrictions may also be relevant
- Workforce stability, particularly in a highly competitive business. Covenants preventing the employment and "poaching" of other employees are crucial here.

A sensible consideration when drafting restrictive covenants will be the seniority of the employee in question. A senior executive is more likely than a junior assistant to be privy to trade secrets or to be essential to nurturing the goodwill between a company and its clients. In *Associated Foreign Exchange Ltd v International Foreign Exchange (UK) Ltd* [2010] EWHC 1178 (Ch), a non-solicitation covenant was held to be unenforceable partly because the employee in question was not particularly senior and did not play a key role in obtaining new business. However, the courts will consider the facts of each case. In *Hydra plc v Anastasi* [2005] EWHC 1559, for example, a restriction preventing ex-employees from soliciting or enticing away existing employees was still found to be enforceable despite the fact that it failed to distinguish between senior and more junior staff. The court accepted that the stability of the employer's small workforce (of 12 employees) needed to be protected.

In assessing what time limits are reasonable, the courts will look at the shelf life of any confidential information, and the length of time that it will take to recruit and train new employees who will be able to establish a rapport with customers. As the most obvious restraint on trade, non-compete covenants will usually only be upheld for shorter periods than covenants in relation to non-solicitation/dealing.

Most sensibly drafted contracts will reduce the duration of a restriction by any time that an employee spends on garden leave, as this will go to the overall reasonableness of the restriction. However, in *BGC Tullett Prebon plc v BGC Brokers LP* [2010] EWHC 484 (QB) the court rejected the argument that a contract had to reduce the period of restriction by any period of garden leave to make the restriction reasonable. It held that the court could take a period of garden leave into account when exercising its discretion on the period of any injunction awarded. The court also held that a six-month non-compete restriction was reasonable considering the importance between a broker and trader in their working relationship but that a non-solicitation of clients restriction that covered clients with whom a broker's connection may have ended years before had to be narrowed.

Recent case law has seen carefully worded post-termination restrictive covenants of up to 12 months being upheld. Restrictions beyond months seem particularly vulnerable. However, 12 is not a magic number: many restrictions of less than 12 months have been held void as they exceed the level of protection which is reasonable in the particular circumstances.

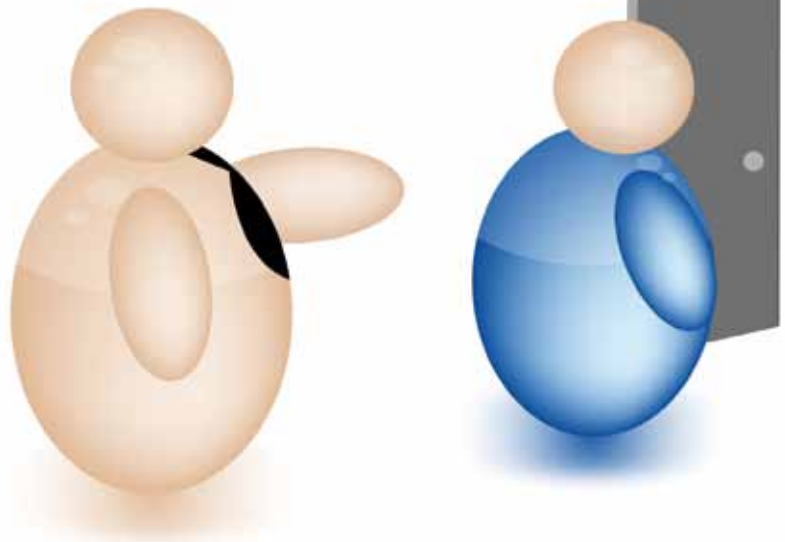
The geographical area of a restriction must be no wider than is sufficient to protect the confidential information or goodwill of the employer. In *Office Angels Ltd v Rainer-Thomas* [1991] IRLR 214, an area limited to a radius of 1000m around the ex-employee's branch was held to be too wide as it covered most of the City of London. Conversely, worldwide restrictions may be valid due to the global nature of business and communications systems.

Damages can be awarded to an employer in respect of an employee's breach of an enforceable restrictive covenant. If damages are inadequate, an injunction may be granted against an employee to prohibit him or her acting in a certain way. A "spring board" injunction may also be granted to stop a new employer benefiting from a breach of a valid restriction by a new recruit.

From this, we can see that the best way of keeping an ex-employee out of the market is through garden leave.

Grievances raised during a disciplinary process

Most employers know the sinking feeling that accompanies receipt of a grievance from an employee recently notified of the proposal to dismiss or take disciplinary action against him or her.



Inevitably the employee will demand that the grievance, including any appeal, be fully ventilated before the next step is taken in any disciplinary or dismissal process. Allowing for difficulties in finding available companions, sudden illnesses and doctors' notes referring to work-related stress, this could easily take weeks, perhaps months. There is also the risk that in the course of the grievance procedure the employee will actually or allegedly alienate the management staff concerned with it, so whittling down still further the number of "untainted" candidates he or she will accept as suitable to conduct the original disciplinary or dismissal process. Does the employer have to see that grievance process through, or can it bat on with the proposed dismissal or disciplinary action regardless? This question was recently considered by the Employment Appeal Tribunal (EAT) in *Samuel Smith Old Brewery v Marshall*.

Mr and Mrs Marshall were managers of one of the brewery's pubs. In accordance with the terms of their management agreement with the brewery, they were instructed to reduce their staff's working hours in response to difficult trading conditions. They refused to do so, partly on the basis that this would increase their own working hours, and raised a grievance about the instruction. This was rejected and they lodged an appeal. Before the appeal was heard, however, they were invited to attend a disciplinary hearing on the basis that their continued refusal to implement the change in hours as instructed by the brewery constituted gross misconduct. The Marshalls then refused not only to change their staff's hours but also to attend the disciplinary hearing on the grounds that their grievance appeal was still outstanding. They said they had been advised that the brewery "could not do that to them" in those circumstances. The brewery rose swiftly to the challenge, conducted the disciplinary hearing in their absence and dismissed both for gross misconduct. The Marshalls brought claims for unfair dismissal, arguing primarily that the brewery should not have gone ahead with the disciplinary hearing until the grievance appeal had been concluded (the brewery looked at it post-dismissal and rejected it at that stage instead).

The employment tribunal upheld the claim, partly on that basis, but its decision in that respect was overturned by the EAT, which said in rebuttal that: "It is only in the rarest of cases that it would be outside the range of reasonable responses for an employer to proceed with a disciplinary process before hearing a grievance appeal, at least in the absence of some clear evidence of unfairness or uncompensatable prejudice."

Though this case relates just to disciplinary proceedings leading to dismissal, there is no reason why the same should not also be true for a dismissal proposed on any other grounds, or for proposed action that is short of dismissal. Employers should adopt a considered but pragmatic approach when dealing with overlapping dismissal/disciplinary and grievance issues. We

have to bear in mind that hearing the grievance first may equally lead in other cases to charges that the disciplinary matter is thereby pre-judged, so there is no absolutely safe way forward. The tribunals will be keen to see, primarily, that the employee is not prejudiced unnecessarily by the procedure adopted, and in particular that any decision to press ahead with the underlying disciplinary or dismissal process does not deny the employee the usual and proper procedural safeguards, eg the right to make relevant representations before a final decision is made, to bring documents and witnesses, etc.

The key word here for the employer is "relevant", and grievances which genuinely touch upon the subject matter of the initial dismissal or disciplinary proposal must therefore be treated with more circumspection than those which do not. No two cases will be identical but it is possible to split these circumstances into three main categories.

1. If a grievance is totally unrelated to the disciplinary allegations, it would normally be safe to progress with the disciplinary matter and deal with the grievance at a later stage (if it has not been overtaken by a dismissal).
2. If the grievance essentially constitutes the employee's defence to the disciplinary issues then it is desirable to deal with the two things at the same time, eg a proposed dismissal for poor performance where the grievance alleges this was due to a manager's bullying. If the manager was heavy-handed then this might taint the dismissal proposal, but if the work was objectively poor then the bullying allegation would have to carry far less weight. No discussion of the one could sensibly be carried out without a rehearsal of the other. Support for this approach can be found in the *Acas Code of Practice on Disciplinary and Grievance Procedures*.
3. If the grievance seeks to impugn the integrity of the individual who is to make the disciplinary or dismissal decision, then the safest course of action will be

either to adjourn the disciplinary hearing until the grievance has been resolved (this will probably mean concluding the appeal too) or simply to sidestep the grievance by shifting the making of the proposed decision to someone else. Often this latter course is wiser in any case where the employer's hierarchy gives space to do so — even if the grievance is heard first and is comprehensively rejected on good grounds, the employee is likely still to allege that bias arises through the fact of the grievance being made at all, whatever its outcome. In the absence of these precautions it will, in effect, be the person accused who has to rule on a grievance against him or herself, and that could well constitute the "clear evidence of unfairness" referred to by the EAT. Pressing ahead regardless in these cases will generally only be safe where the size of the employer or the seniority of the employee means that there is simply no-one else who can sensibly make the decision.

A degree of procedural insurance can sometimes be obtained in these cases by notifying the employee in writing of the proposal to press on with the underlying procedure, either parking or incorporating the grievance as the case may be, and inviting any counter-proposals. This allows the employer to move ahead if no representations to the contrary are made, or at least to see and therefore make an informed and reasoned decision to disregard them if they are. If the statutory fairness question can revolve around "uncompensatable prejudice" as referred to by the EAT, this step puts the onus on the employee to highlight that prejudice at an early stage, and any inability to do so convincingly will more or less legitimise the employer's choice to push on.

The Samuel Smith case does not, therefore, give employers a blanket consent to ride roughshod through parallel grievances when in pursuit of a disciplinary or dismissal outcome, but it certainly adds weight to the merits of a considered decision not to let that process be derailed by a grievance which is anything less than immediately compelling.

Pre-employment health questions

Keeping up to date with policies, practices and procedures now in force.

From 1 October this year, it has been unlawful under the **Equality Act 2010** to ask job applicants about their health (including whether they have a disability) before they have been made a job offer or included in a pool of applicants from which a role may be offered, except in limited circumstances.

In question and answer form, Stuart Chamberlain, Croner author and employment law specialist, considers the scope of this new requirement and suggests some action that employers should now take.

Q: What does the Act stop an employer doing?

A: Employers are no longer able to ask questions about an applicant's health before offering work or able to send out questionnaires containing questions about general health and medication issues with application forms. And they cannot require applicants to have a medical assessment before they make a job offer.

Asking an applicant questions about past health, previous absences and sick days lost to work prior to any job offer being made will certainly be unlawful.

Q: What are the exceptions?

- A:** Employers are only able to ask health-related questions in order to:
- establish whether any reasonable adjustments need to be made for applicants during the selection process
 - decide whether an applicant can carry out a function intrinsic to the job, eg if the job entails heavy manual handling, an employer may ask candidates whether they could manage this
 - monitor diversity among job applicants

- take positive action to assist disabled people. Employers who wish to improve disabled candidates' chances of being selected for a vacancy are allowed to guarantee them an interview, and they can ask on the application form if the applicant has a disability for this purpose — but they must make it clear on the form why they are asking the particular question
- establish whether a job candidate has a disability where the role requires the employee to have a particular disability.

Q: How will this be enforced?

A: Applicants who think an employer is acting unlawfully by asking prohibited questions can complain to the Equality and Human Rights Commission (EHRC), but they cannot take the employer to an employment tribunal. Organisations found guilty or suspected of discrimination may be investigated by the EHRC, which can require the employer to draw up an action plan and could potentially fine the organisation up to a maximum of £5000.

If an employer relies upon information received by turning down an applicant for the job, he may have committed direct discrimination. At the tribunal he or she would have to show that there was no discrimination.

Q: Can I ask questions about health after a job offer has been made?

A: An employer will be able to ask generic health questions about a person's disability or medical conditions once a job offer has been made, perhaps requiring applicants to undergo a medical assessment, and make a job offer conditional on it. If a job offer has been made

and an employer finds out that the applicant is not fit for the role, the organisation can either make reasonable adjustments so the person can do the job or withdraw the offer of employment if there is objective justification for doing so.

Employers may include a health questionnaire with their offer letter to prospective employees but they should only include questions that cover conditions and disabilities relevant to the job specification, or if the employer wishes to increase the number of disabled employees in the workforce.

Q: What should the employer be doing now?

- A:** The employer should do a number of things.
- As a starting point, review recruitment and promotion processes and ensure they comply with the new requirements.
 - Update staff on the new requirements and make sure that all are aware of the prohibition on asking health questions (apart from the few listed exceptions) and that they do not ask unlawful questions at an interview or initial meeting.
 - Remember that the prohibition on asking such questions applies even if the applicant raises the issue of their disability at the interview.

Conclusion

This provision is intended to protect disabled job applicants from discrimination during the recruitment process — to ensure that they are not screened out on the basis of their disability without being given the opportunity to show that they have the skills and competencies for the job. It should already have led to change in recruitment practices and procedures. It is imperative that all staff are made aware of this new rule.

Top business issues

Every month we bring you the top issues from callers to our telephone advice lines. These were the top issues in October.

Tax & VAT	Employment	Legal	Health & Safety
1. Capital allowances — interaction of annual investment allowance and special rate expenditure.	1. Absence/sickness.	1. Contract (legal).	1. Accident recording and reporting.
2. HMRC enquiries — information powers and ability to enquire into previous years.	2. Conduct.	2. Company and clubs.	2. Risk assessment.
3. VAT land and property — development of brown field sites.	3. Disciplinary procedures.	3. Other (legal).	3. Policy implementation.

Legislation timetable



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Legislation timetable

Area	Legislation	Details	Date
Compliance	Bribery Act 2010	The aim of the Act is to consolidate existing legislation on bribery. For the purposes of the Bribery Act, bribery is defined as "the giving or taking of a reward in return for acting dishonestly and/or in breach of the law". The four possible offences under the Act will be: bribing another person, being bribed, bribing a foreign public official and failure to prevent bribery. While the Act outlines bribery as a criminal offence, it has a particular implication for employers as the Act proposes that if a corporate offence is committed then both an organisation and its directors can be liable for the act of bribery.	April 2011
Additional Paternity Leave	Additional Paternity Leave Regulations 2010	Additional Paternity Leave will be available for fathers at 20 weeks after the birth of the child for a maximum of 26 weeks, if the mother returns to work. The remainder of the mother's Statutory Maternity Pay will be paid to the father. The Regulations will benefit parents of babies due on or after 3 April 2011 or or children matched for adoption on or after 3 April 2011.	April 2011
Transfer of Undertakings	Transnational Information and Consultation of Employees (Amendment) Regulations 2010	These Regulations amend the Transnational Information and Consultation of Employees Regulations 1999 and implement the recast European Works Council Directive (2009/38/EC). They also implement the Agency Workers Directive in so far as it is relevant to the transnational information and consultation of employees. European Works Councils that are created after 5 June 2011 will be subject to all the revisions introduced by the 2010 Regulations.	5 June 2011 and 1 October 2011
Agency Workers	Agency Workers Regulations 2010	Temporary agency workers will be entitled to equal treatment after 12 calendar weeks in the same job, but this will not apply to occupational pension schemes or occupational sick pay.	1 October 2011
Pensions	Pensions Act 2008	The Government is proposing to provide access to a private pension to all employees aged between 22 and state retirement age, who are earning more than £5000 a year and are not currently enrolled in a workplace pension scheme.	2012
Pensions	Employers' Duties (Implementation) Regulations 2010	These Regulations set out the dates from which employers have a duty to arrange for jobholders to become active members of automatic enrolment pension schemes.	1 September 2012



Head teacher fined after pupil injured

A Merseyside head teacher has been fined £20,000 after one of his students suffered permanent injuries when he fell through the school roof.

On 14 August 2008, the day of A-level results, the now retired 63-year-old head teacher led a group of teenagers onto a roof at his college in Crosby. The court heard that he wanted to show his students a part of the school they had never seen.

However, one of the 18-year-old students, who asked not to be named, stepped onto a fragile roof skylight and fell 2.5m through it, fracturing his skull, breaking ribs, perforating an eardrum and suffering permanent damage to his right eye.

Following the trial at Liverpool Crown Court, the head teacher was found guilty of breaching s.7(a) of the Health and Safety at Work, etc Act 1974, which covers the duty of employees while at work to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions.

Mike Sebastian, HSE Principal Inspector in Merseyside, said: "The roof was kept out of bounds for a reason. As the head teacher, he should have thought about the possible consequences before deciding to take them through two locked doors onto the roof."

Lord Young's health and safety review published

Lord Young's long-awaited review of the operation of UK health and safety laws and the growth of the compensation culture, entitled "Common Sense, Common Safety"¹, was finally published in October.

Recommendations

The report calls for:

- changes to compensation claims, with restrictions on advertising for "no win, no fee" arrangements and changes in the way personal injury claims are handled
- the extension of the simplified Road Traffic Accident Personal Injury Scheme to include other personal injury claims
- an end to the "plethora of forms" for school trips and instead a single consent form covering all activities a child might undertake at school
- the simplification of risk assessment procedures for low-hazard workplaces, such as offices, classrooms and shops
- new professional standards for health and safety consultants with accreditation and a web-based directory of accredited consultants
- insurance companies to stop requiring that low-hazard businesses employ health and safety consultants to carry out risk assessments
- new pressure on councils that ban events on health and safety grounds to put their reasons in writing, and new routes for redress for the public to challenge decisions
- consolidation of health and safety regulations into "a single set of accessible regulations"
- changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), including extending the period before an injury or accident needs to be reported
- a new consultation to improve the role of the Health and Safety Executive (HSE) in dealing with large companies
- combining food safety and health and safety inspections in local authorities
- protection for police officers and firefighters from prosecution under health and safety legislation while performing their duties
- the abolition of the Adventure Activities Licensing Authority.

Reaction to the review

Prime Minister David Cameron introduced Lord Young's review on the operation of health and safety legislation and the compensation culture in Britain by expressing his support for "all of the recommendations put forward".

He pledged his own backing and said: "Good health and safety is vitally important. But all too often good, straightforward legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low risk."

The HSE released a statement "warmly welcoming" the publication of Lord Young's report. Judith Hackitt, the HSE Chair, said: "Publication of the report is a tremendous opportunity to refocus health and safety on what it is really about — managing workplace risks. Getting this right is good for employers, employees and Britain as a whole."

The report was also welcomed by John Cridland, the Deputy Director-General of the CBI, who commented: "Lord Young is right. We need a can-do, not a can-sue culture. This report rightly criticises the tick-box approach to health and safety for drowning people in red-tape... Lord Young's report should put common sense back into the system, reduce bureaucracy, and improve our approach to managing risk."

In contrast, however, Brendan Barber, the General Secretary of the Trades Union Congress (TUC), said: "The review's recommendations are predictable but a grave disappointment all the same." He slammed the report for failing to contain "a single proposal" to "reduce the high levels of workplace death, injuries and illness" in the UK, citing the 20,000 people who die prematurely every year as a result of their work, and the two million people suffering ill-health because of their jobs.

¹ Common Sense, Common Safety can be viewed at www.number10.gov.uk/news/latest-news/2010/10/lord-young-report-55605.

First Corporate Manslaughter charges dropped



Legal and media reports have confirmed that the first corporate manslaughter charges against Peter Eaton, the Managing Director of Cotswold Geotechnical Holdings Ltd, in relation to the death of Alexander Wright, have been dropped. However, the charges against the company will proceed in January 2011, having been adjourned.

The case represents the first application of the Corporate Manslaughter and Corporate Homicide Act 2007 and relates to the death of Alexander Wright, which occurred on 5 September 2008. Mr Wright, who was employed by Cotswold Geotechnical Holdings as a junior geologist, was taking soil samples from inside an excavated pit when the sides of the pit collapsed, crushing him.

Peter Eaton was charged with gross negligence manslaughter and with an offence contrary to the Health and Safety at Work, etc Act 1974. However, Mr Eaton's solicitors, Pinsent Masons, have now argued successfully that, owing to ill health, the two charges should be permanently stayed.

The trial against Cotswold Geotechnical Holdings Ltd will continue in January 2011, with charges under the Health and Safety at Work, etc Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

Commenting on the case, Sally Roff, a Partner at Beachcroft LLP, slammed the delay and said: "At a time when there is so much scrutiny over the effective use of public funds, one wonders what is to be gained from pursuing a 'shell' company... The Corporate Manslaughter Act has become tarnished with delay both by the time it took to come to the Statute books and now in its implementation."



Job closure when on maternity leave

In the case of *Simpson v Endsleigh Insurance Services Ltd & others* [2010] UKEAT 0544/09, the EAT held that the employer was not obliged to offer to an employee a job in Cheltenham when she had previously worked in London.

The facts of the case were that Ms Simpson was employed by Endsleigh Insurance Services Ltd (Endsleigh) as an insurance consultant in London. Ms Simpson was on maternity leave when Endsleigh decided to close most of its outlets in London, including the one in which she worked. Endsleigh's plan was to move most of its work to call centres outside London, one of which was in Cheltenham.

As part of its consultation process, Endsleigh invited all absent staff (including Ms Simpson) to an announcement meeting and sent all absent staff details of alternative vacancies, which they were invited to apply for. In addition to the above, all the consultants were guaranteed a job in one of the call

centres, provided they were prepared to transfer (a relocation package was also offered).

Ms Simpson did not apply for any of the vacancies (except for one in London which was later agreed to be unsuitable). She issued tribunal proceedings claiming automatic unfair dismissal, having submitted a lengthy grievance to Endsleigh. The tribunal dismissed her claim and Ms Simpson's appeal was also dismissed by the EAT.

The EAT looked at the relevant sections of the Maternity and Parental Leave Regulations — 10(3)(a) and 10(3)(b) which effectively state that an employee whose job becomes redundant during her maternity leave period is entitled to be offered any suitable alternative vacancy that exists with her employer, its successor or an associated employer before her old contract ends. The new contract of employment must take effect immediately as her old contract ends and under the new contract:

- the work to be done must be both suitable in relation to the employee and appropriate for her to do in the circumstances and
- the provisions as to the capacity and place in which she is to be employed, and the other terms and conditions must not be substantially less favourable than those of her previous contract.

The tribunal had identified four potentially suitable vacancies for Ms Simpson in Cheltenham, none of which she had shown any interest in applying for. The tribunal had heard Ms Simpson's evidence and had concluded that she would not have wanted to move to Cheltenham.

The EAT held that the MPL Regulations require an employer to offer a position to an employee on maternity leave, ahead of those employees not on maternity leave, only if there is a suitable vacancy. As Ms Simpson had been deemed unwilling to relocate to Cheltenham, a vacancy in Cheltenham would not have been a suitable vacancy.

Ask an expert

Each month, one of our employment experts will be answering a question in this section. If you have an employment question that you would like our experts to answer, please e-mail it to cronerinfo@wolterskluwer.co.uk

Q: We have dismissed our employee under difficult circumstances following a redundancy situation, and we have now heard he wants to take us to an employment tribunal for unfair dismissal. How long should we worry about him bringing a claim?

A: It is important to note that not all employees will have access to an employment tribunal, and you should check their entitlement to make a claim before worrying about the time limits for bringing an unfair dismissal claim. In general terms, an employee needs at least one year's service in order to have the ability to bring an unfair dismissal claim (though there are a few special circumstances where the requirement for one year's service is waived).

For unfair dismissal claims, ex-employees have only three months to bring a claim against their employer. The time limit for an unfair dismissal

claim will run from when the decision to dismiss is communicated to the employee. While this is strictly enforced, a tribunal might decide to extend the time limit, where it was not reasonably practicable for the employee to bring the claim within the time limits, or if it is "just and equitable" to permit a time extension.

With all dismissals, irrespective of the employee's length of service, there is a risk of breach of contract if the employee is not served the appropriate notice, nor compensated for the loss of any contractual benefit which would have been due during the notice period — such as his company car or any healthcare benefit — in the circumstances he is not asked to work out his notice. In these circumstances, the ex-employee will have six years to bring a claim, as such claims are made in contract, not employment law, and therefore can be brought in a civil court, eg the small claims section of the County Court.

As a final point, ex-employees have up to six months to claim redundancy payment they believe they are owed but have not yet received. Therefore, this risk will remain even after the risk of an unfair dismissal claim passes.

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