



TEAM MOVES, GARDEN LEAVE AND RESTRICTIVE COVENANTS

10 KEY POINTS

HIRING A TEAM

- “Do It Yourself”: approach employees individually (not groups), do not use “recruiting sergeants” and do not ask them for information to assist your recruitment.
- Make sure they understand their obligations: write to them to confirm and consider arranging independent legal advice.
- Check their employment contracts: are there any express duties to disclose approaches by competitors, what are the notice periods and post-termination restrictions?

LOSING A TEAM

- Act quickly: delay may prevent the ability to obtain an injunction.
- Investigate: secure relevant data before interviewing employees; consider searches for electronic information.
- Beware constructive dismissal: e.g. overly-intrusive investigations, behaviour toward employees who resign, over-zealous attempts to “turn” employees.

GARDEN LEAVE AND RESTRICTIVE COVENANTS

- An employer has good prospects of being able to suspend an employee unilaterally, even without a garden leave clause, if the employee has previously broken his contract with the employer.
- It is necessary to look at restrictive covenants and garden leave as single regime for protecting the employer.
- Employers need to keep covenants under significant review and consider reissuing them when an individual is promoted or changes role. Otherwise, the employer may have to justify the covenant by reference to the job which the employee was first doing when the covenants were entered into.
- Non-competition covenants are now more likely to be upheld by the Courts.

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12 October 2010