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HRSINGAPORE[®] Digest - Non-Competition Clauses in Employment Contracts

With the economic downturn dawning on us, some may want to secure financial stability by working for competitors in the same industry for a higher pay.

For competitive industries, the departure of an employee to the competitor may spell a loss of profits and clients, especially in sales-related jobs.

Companies may, as a consequence, attempt to protect themselves by including Non-Compete clauses in Employment Contracts, such as restricting employees from working for competitor's firm within a year of resignation.

Much discussion in the HR Community has led HR Practitioners to the consensus that although the clause is mutually agreed by both employee and employer, it will be difficult to enforce for the following reasons. Firstly, most HR Practitioners agree that employees who resign to join the competitors cannot be sued for a breach of contract as the law takes into account the livelihood of the employee. Should a company want to sue the ex-employee for a breach of contract, there will be a need to prove that the company's legitimate interests have been compromised.

Firstly, most HR Practitioners agree that employees who resign to join the competitors cannot be sued for a breach of contract as the law takes into account the livelihood of the employee. Should a company want to sue the ex-employee for a breach of contract, there will be a need to prove that the company's legitimate interests have been compromised.

Secondly, it will be difficult to prove that an employee has divulged sensitive information or trade secrets which compromised their previous employer.

And thirdly, a competitor or the competition may be too vague to be accurately

defined. For instance, would a sales executive for a newspaper who resigns and joins an advertising agency be moving to a competitor?

When including or drafting such clauses into employment contracts, HR Practitioners have suggested five points to take note of:

- Protecting Legitimate Interests (trade secrets / confidential information, nature of work, industry)
- Employee's Position in the company (higher appointment holders have access to more confidential stuff)
- Geographical Restrictive Covenants (definition of "competition")
- Period of Restraint (too long a duration may not be allowed in law)
- Where to include the Non-Competition Clause (Employment or Termination)

They also agreed that such clauses may serve as a deterrent even if it will be onerous to legally bind the employee to it.

A broader view of the issue has also been advocated by HR people i.e. look internally and review the organisations reward schemes and strategies for measures to improve retention. Alternatively, promote the bonding of employees to make them more loyal.

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HRSINGAPORE wishes all HR Mothers a Happy Mothers Day!

Developing Effective HR Policies & Procedures Workshop **- 8 June 2016**

What will happen if there are no traffic rules and traffic lights?: Chaos.

What happens if there are too many rules and too many lights? : Chaos also!

HR policies and procedures provide fundamental rules about and guidelines to practices and behaviour of the people in the organisation. They can be likened

to game rules. They safeguard fairness and equality for all in the organisation, guide management and supervisors, and clearly explain expectations. HR policies reflect organisational culture and ensure compliance with employment legislation. More than drawing boundaries HR policies should also recognise and address people's needs.

Hence, the challenge is to strike a balance between having too many and having too few policies by having the right approach and by creating relevant and effective HR policies so as to effectively manage talent to deliver business results.

For details, please click on: <http://hrsingapore.org/hrpolicies/>

Course Outline

- Why HR policies are important.
 - Defining policy and procedure.
 - How culture impacts HR policies.
 - A Case Study: GM's Faulty Ignition Switch Car Recall.
 - Some considerations before drafting HR policies.
 - 9 steps in developing policies.
 - Effect on bad HR policies.
 - Group discussions on some policies.
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