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Non-Compete Legal Changes

What Employers Must Know

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Non-Compete Legal Changes: What Employers Must Know

The UK Government has proposed limiting non-compete clauses to a maximum duration of 3 months.

Currently, if you or your client are operating businesses in England and Wales, non-compete clauses must be no wider than necessary to protect legitimate business interests, and limited to a reasonable period. This change will add an additional hard limit on enforceability.

The proposed changes won't affect non-solicitation clauses (which stop ex-employees poaching clients or staff), non-dealing clauses (which limit their contact with past clients), paid notice periods, garden leave, or confidentiality clauses. LLP and partnership agreements will remain unaffected.

Employers may decide to extend garden leave clauses and combine these with a three-month non-compete period.

Where an employee enters into a parallel LLP and employment contract – common among senior individuals in certain industries – it is likely to continue to be possible to include non-competes lasting for longer than three months.

The impact on settlement agreements is uncertain. Since the proposed limit applies specifically to employment and worker contracts, settlement agreements might potentially be exempt. Employers might still negotiate longer non-compete restrictions as part of a settlement.

Employers will still need to demonstrate that their non-compete agreements are proportionate and necessary to justify imposing such restrictions. Employers cannot assume that non-competes lasting three months or less will automatically be enforceable without a legitimate business need. Justification will still be a crucial factor in determining enforceability.

The impact of the legislation on existing non-competes which are longer than three months, is unclear. They may be deemed void, enforceable for a maximum duration of three months beyond the date the legislation is introduced or become non-enforceable if the three-month limit has already passed.

There are also some potential oddities caused by only changing one type of restriction. For instance, an ex-employee could be allowed to join a competitor after three months. However, the ex-employee might still be restricted by ongoing non-solicitation and non-dealing clauses, which limit his/her ability to solicit or engage with previous clients.

The timetable for introducing this change has not been specified, but it will be done "when parliamentary time allows". This could mean it is still some time away.

Employers should carefully evaluate the implications of these changes on their businesses. It may be advisable to review and update contractual agreements to ensure they are future-proof and align with the evolving landscape. By proactively amending the agreements, employers can adapt to the potential effects of the new legislation, and safeguard their interests effectively.