

January 2016

## **Employee Business Protection**

### **Ireland**

#### **Summary**

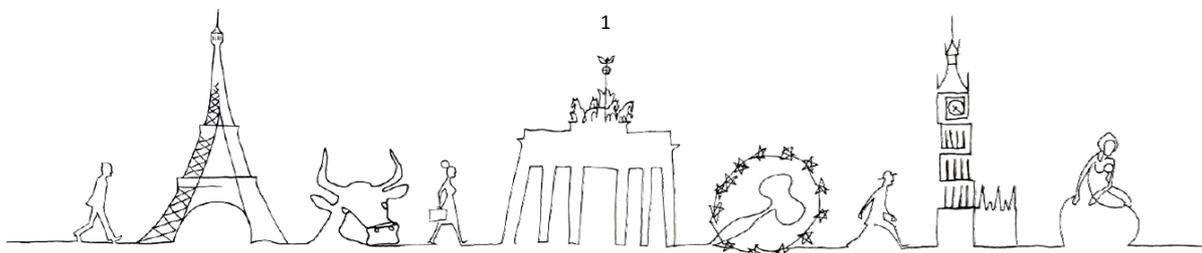
During employment Irish employees have a duty of loyalty and fidelity to employers and an employee is not entitled to compete against his employer, or act in conflict with his employers interests while employed. Usually, an employer can lawfully dismiss an employee where an employee is competing against his employer. In addition to an employee's implied duties of loyalty and fidelity, an employer should ensure that employee contracts of employment incorporate express terms protecting the business.

An employer can protect its trade secrets and confidential information. It is possible for an employer to limit a former employee's ability to compete with the business, and to prevent solicitation of colleagues and customers where this is reasonable.

#### **Restrictions during employment**

Employees have an implied duty of loyalty and fidelity to their employer while in employment which means they must act in their employers best interests, and employees cannot compete with their employers business. In addition employees have a legal duty to protect the trade secrets and confidential information of the business during employment. If an employee does compete against his employer he will be responsible for his employer's loss and can be lawfully dismissed.

There can be dispute between employers and employees as to what are trade secrets and confidential information. Information which is in the public domain is not confidential. Some confidential information for example plans or marketing strategies for a certain time period will become less important to a business as time elapses.



Employers based in the Republic of Ireland should further protect their business by incorporating express terms in their employment contracts and policies which will give supplemental protections to the business. Firstly, it is important to define what is meant by trade secrets and confidential information which the business wishes to protect. Secondly, to provide for a requirement for employees not to disclose trade secrets and confidential material while in employment. Thirdly, to consider a requirement for a duty of disclosure by employees if they become aware of another person intending to or disclosing trade secrets and confidential information.

Protections for employers are subject to the employee's right to protection in law for whistleblowing when disclosing wrongdoing.

In addition, employers should inform employees of their duty of fidelity and loyalty, that the employee is obliged not to compete with the business while employed and the consequences of doing so expressly, in contracts of employment.

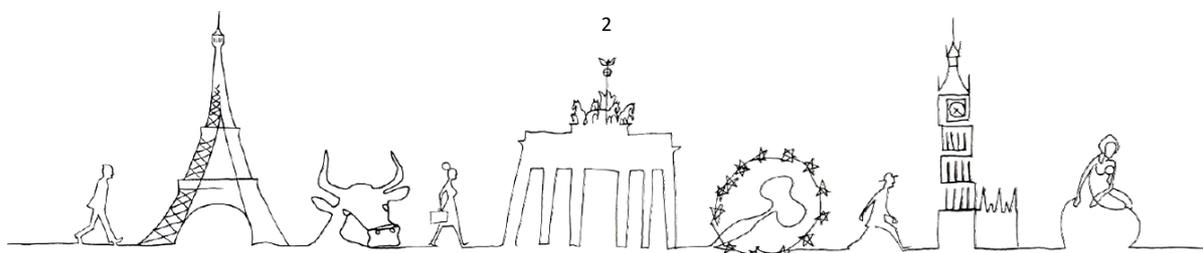
### **Restrictions after employment**

When an employee has left the business, a former employee is not entitled to disclose confidential information or trade secrets which are the property of his former employer. Whether information is confidential and if information is genuinely a trade secret will be considered carefully by a Court who will distinguish between confidential information and knowledge, information or skills gained from experience by a former employee of the business.

Employees are free to work for a competitor after their employment ceases unless the employee has agreed to a restraint on competing with the business after his employment ends. This is commonly for a period of 3- 12 months. Section 4 of the Competition Act 1991 prevents restraints of trade which have the effect or impact of distorting competition in trade. Generally, Courts are reluctant to uphold restrictions on employees and will not do so unless they are reasonable.

In order to protect the business an employer should consider the following restraints for key senior employees:

1. A restriction preventing competition by a former employee and contact with former customers or potential customers for a period after employment



2. The restriction should be limited in scope to certain customers or products relevant to the employee's work and geographically limited
3. The restriction may provide for non-solicitation of former colleagues or clients by a former employee. Consideration should be given to discharging payment to the employee for the non-compete period in certain circumstances

The scope of a restriction and its duration will be carefully considered by a Court to ensure it is lawful, and does not distort competition. An employer cannot enforce compliance by a former employee with a restraint where the employer has seriously breached the employee's contract.

Injunctions may be granted to employers to prevent unauthorised use of confidential information or trade secrets, or breach of a Non-Disclosure Agreement where a former employee is using the information as a springboard to gain advantage in a competing business. A Court may make an order preventing use of the confidential information for a period in these circumstances.

Carefully drafted employment contracts and policies agreed in writing with an employee are useful for an employer in the Republic of Ireland in order to protect the business from competition by former employees.

*This material is for general information only and is not intended to provide legal advice.*

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