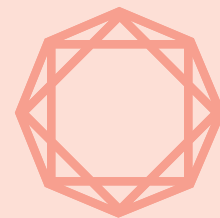


10 Crucial Questions

**You need to ask yourself if
there is a restraint of trade clause
in your employment contract**



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Is there a restraint of trade clause in your employment contract that you have no idea what it means? Are you familiar with what your rights and obligations are? Importantly, do you know if you are free to work where you choose to once your current employment comes to an end?

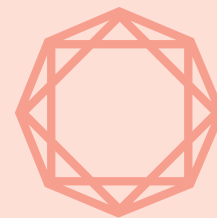
Restraint of trade clauses are tricky clauses that many employers insert into employment contracts to stop employees from competing with their business or otherwise using information they deem to be confidential information. If you sign the employment contract, this often means you cannot pursue the future career opportunities in the way you may want to.

You might come face to face with restraint of trade clauses in a couple of different scenarios.

- Maybe you recently secured a new role, but the company wants you to sign an employment contract that has a complicated and confusing restraint of trade clause in it that you honestly have no idea what it means.
- Or perhaps you recently resigned from your position and later received a nasty letter from your old boss threatening you that you cannot work anywhere else.
- Or maybe you are somewhere in between. You are thinking of leaving your job and hoping to secure a great new role elsewhere, but in the back of your mind there is that niggling feeling that there might be something in your employment contract that restricts you from working in the way you want to.

Whatever your situation might be, we know the confusion that is running through your mind. You are worried about agreeing to terms that unfairly restrict your ability to pursue the career you want. You are anxious about potentially doing the wrong thing, breaching the restraint and permanently damaging your reputation. You are unclear on what you can and can't do and want to understand your obligations so you can move forward with confidence and avoid getting sued.





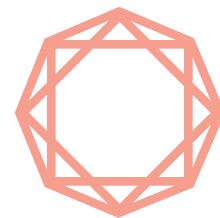
So, what should you do if you find yourself in one of these scenarios?

Ultimately, you need to seek advice from an employment lawyer that specialises in advocating for employees' interests. Armed with the right advice, you can minimise your legal risk and most importantly, make clear and confident decisions regarding your career options.

To help get you started on the right track, we've compiled a list of 10 crucial questions you need to ask yourself if there is a restraint of trade clause in your employment contract. While not exhaustive, this list will give you a flavour for the types of issues you need to explore when faced with a complex restraint provision and/or legal threat from an employer.

Get ready to rediscover your voice in the workplace so you can pursue your professional goals without fear!





10 Crucial questions you need to ask yourself if there is a restraint of trade clause in your employment contract

Once you have identified the relevant provisions in your employment contract that deal with your post-employment restraint obligations, consider the following....

1. What do I want to be able to do post-employment and how does it compare to the type of work I do for my current employer?

RUBIX TIP: Start by getting clear on what the career opportunity is that you want to pursue and then consider how it compares to the type of work you perform for your current employer. Are they competitors? How does the type of work or positions compare?

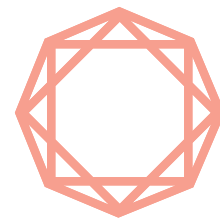
2. Have I carefully identified and considered the legitimate business interests that my employer may want to protect through this restraint of trade clause?

RUBIX TIP: Consider why your employer may have included a restraint of trade clause in your employment contract in the first place. What is it that they are likely concerned about? Note: An employer can only protect reasonable 'legitimate business interests' – i.e. something that is reasonably tied to their confidential information or good will. Just because there is a restraint of trade clause in your contract does not mean that it is reasonable or enforceable.

3. Is the restraint tailored to the circumstances applicable to my position of employment or has my employer blindly used a pro-forma template that isn't directly relevant or applicable to my role?

RUBIX TIP: Consider whether the restraint is logical in terms of the role you hold and the work you do. Is it written pursuant to Australian laws or the applicable State laws?





10 Crucial questions you need to ask yourself if there is a restraint of trade clause in your employment contract cont.

4. Is the restraint precise in terms, clear and simple to understand?

RUBIX TIP: Do you understand what the restraint is saying or are there parts that are confusing or don't make sense? Try and break the restraint of trade clause down into manageable parts. Map out what it says in writing.

5. Does it contain cascading clauses that alter the meaning and effect of the clause – if so do they contain an undecipherable number of variables or is the clause logical, defined and reasonably limited in potential scope?

RUBIX TIP: Consider what the intended scope is and how far the restrictions reach both in the best- and worst-case scenarios. Map out the different variables detailed in the restraint in writing.

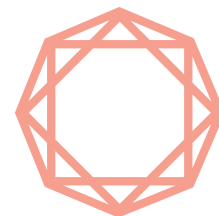
6. Does the restraint limit the people or businesses that I can have contact with and if so, are those people or businesses reasonably connected to my role and employment?

RUBIX TIP: Consider who your employer is trying to stop you from interacting with. Is the reach too wide and oppressive? Is it clear who the so-called 'client' or 'competitor' is? Do you know what it means to 'solicit' a client? Do you know what your rights and responsibilities are if one of those clients approaches you after you cease your employment?

7. Is the restraint still fit for purpose – eg if your role has changed over time is the restraint still reasonably applicable to what you do at work?

RUBIX TIP: Consider if your position has changed over time and whether the terms of your employment have also changed. If you have been given a multitude of employment contracts over time, this may have impacted the operation of the restraint.





10 Crucial questions you need to ask yourself if there is a restraint of trade clause in your employment contract cont.

8. Did my employer give financial consideration in exchange for the insistence that I comply with the restraint?

RUBIX TIP: Consider what you got in exchange for you agreeing to the restraint? Did you get a higher salary? A promise of a payout on termination? What was 'in it' for you?

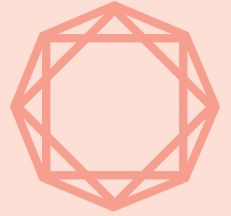
9. Did my employer remind me of my obligations under the restraint provisions prior to me leaving my employment or at any other time during my employment?

RUBIX TIP: Reflect on what your employer told you about the restraint of trade clause (if at all). Were any particular representations or promises made that you relied on?

10. What is the risk that my employer will commence litigation against me if I breach the restraint?

RUBIX TIP: Regardless of whether the restraint is enforceable at law or not, consider what may happen if you ignore the restraint of trade clause and proceed with your career plans without first seeking advice. Is your employer going to threaten or commence legal action against you? Are you confident in how you would respond in such a scenario?

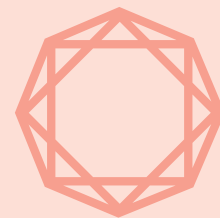




What are my options if there is a restraint clause in my employment contract and *I need more help?*

Rubix Legal has a variety of solutions that will help you resolve your restraint of trade queries.





Restraint of Trade Advice & Strategy Session

(Our most popular choice)

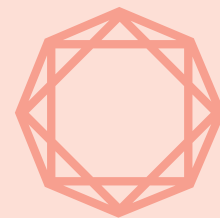
This package explains your restraint of trade rights and obligations and provides you with the clarity you need to make career transitions with confidence.

This package includes:

- An Employee's Guide - A user-friendly guide that helps you learn the basics of restraint of trade clauses so you can make career transitions with confidence.
- A customised questionnaire to capture all your questions and uncertainties about your restraint of trade clause.
- Review of your relevant employment contract/s
- A 1 x 45min Advice and Strategy Consultation (conducted via Teams or telephone) to walk through your questionnaire, answer any questions you have and develop a strategy on how best to proceed
- A high-level Consult Recap summarising the issues specific to the restraint of trade clauses in your employment contract and the best way forward
- An optional 1 x 15 min Followup Consultation to answer any final questions you may have about the restraint or our advice.

Cost \$990 incl GST

Start here and
book today



Bespoke Legal Packages

If you require ongoing legal advice or representation in relation to a restraint of trade dispute with your employer, we offer a series of different legal solutions to suit your budget. This can include guided do-it-yourself solutions or done-for-you solutions.

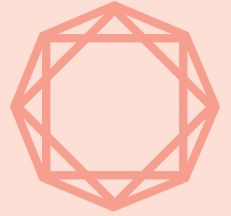
For example, we can draft a response to your employer contesting the validity and enforceability of a restraint of trade clause and seek to negotiate an amicable resolution on your behalf. Alternatively, we can provide you with advice on your rights and obligations so you can proceed to engage with your employer directly regarding the matter. In the unfortunate event that litigation is commenced, we can act on your behalf in relation to the proceedings. Contact us today to find out more about our bespoke packages.

Still unsure?

If you are really unsure on where to start, then our free 20-minute discovery call is the perfect place to start. We will have a brief chat about your concerns and guide you as to the best approach.

Start here and
book today





About *Rubix Legal*

Rubix Legal was established by Nikolina Palasrinne, who was tired of the old ways of doing law and determined to find a better way of delivering value to her clients. Offering a fresh approach, Rubix Legal assists professional employees who are serious about their careers with resolving work-related legal issues.

Why we are different

At Rubix Legal we are focused on delivering long lasting value for our clients.

The last thing we want you to do is walk away from your legal experience disillusioned, confused or with a bad taste in your mouth. We want you to be equipped and empowered to thrive so you can move on to do the best work of your life.

How do we do this?

We are exclusive to employees – we only advise, act for and represent employees meaning you can trust that we are completely on your side. Our mission is to inspire you to succeed in your chosen profession.

*Helping employees
find their voice
in the workplace.*





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