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Key Considerations When Protecting Your Business

Reviewing your contracts, working practices and exit procedures can help identify weaknesses before an employee departure places important commercial interests at risk.

The Interests Requiring Protection
Identify the information, relationships and workforce connections that are genuinely valuable to the business. Contractual restrictions should be designed around specific commercial risks rather than applied without a clear purpose.

The Employee's Role
Consider the employee's seniority, responsibilities and access to clients or confidential information. Restrictions should reflect the influence and knowledge associated with the particular role.

Confidential Information
Clearly identify the information the business regards as confidential and explain how it must be handled. Practical security measures should support the contractual wording.

The Type of Restriction
Consider whether non-solicitation, non-dealing, non-poaching or non-compete provisions are needed. The appropriate combination will depend on the risks that could arise after the employee leaves.

Scope and Duration
Check whether restrictions are clear, specific and limited to what the business reasonably needs to protect. Clauses that are unnecessarily broad may be more difficult to enforce.

Notice and Garden Leave
Consider whether the contract provides sufficient notice and an effective right to place the employee on garden leave. This can help protect the business while preventing continued access to current information and relationships.

Promotions and Role Changes
Review protections when an employee is promoted or takes on greater responsibility. Restrictions drafted for an earlier, more junior role may no longer reflect the employee's access or influence.

Onboarding and Exit Procedures
Reinforce confidentiality and business protection obligations when employment begins and ends. Exit procedures should also address devices, documents, passwords and access to business systems.

Evidence of a Breach
Preserve emails, messages, access records and other relevant evidence if a breach is suspected. Avoid accessing personal accounts or devices without first considering privacy and data protection obligations.

Redundancy and Restructuring
Consider whether the transaction may lead to duplicated roles or other workforce changes. TUPE and ordinary redundancy requirements will need to be considered together before any decisions are made.

Urgency
Act promptly where confidential information, customers or employees are at immediate risk. Delay may reduce the effectiveness of any application for urgent protective relief.

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