

Post-termination restrictions – legal update



Tillman v Egon Zehnder [2019] UKSC 32

The Supreme Court handed down a landmark judgment on 3 July 2019, with the court unanimously approving the restrictive limits within post-termination covenants of employment contracts. This change marked the first significant re-evaluation of restrictive covenants in 99 years, since the case of *Attwood v Larmont* [1920].

The case concerned an employment contract between Mary-Caroline Tillman, a former investment banker, and her employer, Egon Zehnder, which included a six-month non-compete covenant limiting her ability to “directly or indirectly engage or be concerned or interested in” any business in competition with Egon Zehnder. After 13 years’ service, in 2017 Ms Tillman left the company and soon took up employment with a direct competitor. Egon Zehnder then sought an injunction to delay her transfer, arguing that it breached the covenant.

Ms Tillman alleged that the effect of the requirement to not be “interested” in any competing business was so restrictive that it would (by way of example) unreasonably prohibit her from holding even a minority shareholding in such a business. Accordingly, she claimed the covenant exceeded the company’s need to protect its legitimate interests and was therefore void.

Judgment

The Supreme Court ruled that the covenants were not an unreasonable restraint of trade, although if they had been, the parts deemed unreasonable could have been severed by striking them out with a “blue pencil”, effectively leaving a valid non-competition clause.



Implications for employers

For future employment law, this means that restrictive covenants are valid only if they are reasonable within the circumstances. If deemed unreasonable, severance can occur which means that the rest of the covenant would remain enforceable. The decision reflects a relief for employers in both their ability to enforce post-termination limitations to protect their businesses and retain an enforceable employment contract, even if certain disputed terms are deemed to be unreasonable by law. However, although the judgment offers reassurance for employers, caution should still be taken when drafting post-termination covenants to ensure that restrictions are not excessive and unreasonable.

How we can help

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