

Restraint of Trade Compliance Checklist

Ten questions to test whether your restraint agreements would survive a court challenge

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In July 2026 the Northern Cape High Court refused to enforce a restraint of trade against a regional manager who joined a direct competitor, because the restraint was never signed. The appointment letter had promised one; nobody followed through for ten years. Work through the ten questions below. Every unticked box is a gap a former employee's lawyer will find.

- ☐ **1. Is there a signed restraint of trade on file for every senior, sales and client-facing employee?**
A letter saying the employee "will be required to sign a restraint" is not a restraint. It is only an agreement to negotiate one later, and our courts will not enforce it.
- ☐ **2. Was the restraint signed at or before the start of employment?**
The safest restraint forms part of the offer itself. If it was signed later, make sure the employee received something of value in exchange, such as a promotion or an increase.
- ☐ **3. Does the restraint state the exact duration, in months, in the document itself?**
Terms communicated for the first time after resignation are unenforceable. The period must appear in the signed document, not in a follow-up letter.
- ☐ **4. Does the restraint define the geographical area, and does that area match where you actually operate?**
A restraint covering a whole province when the business serves a 300 km radius invites a public policy challenge and may be struck down or cut down.
- ☐ **5. Are the restricted activities listed separately: competing, soliciting clients, and poaching staff?**
Each restriction stands or falls on its own. Listing them separately allows a court to enforce the reasonable parts even if one part is too wide.
- ☐ **6. Does the restraint identify what you are protecting: trade secrets, confidential pricing, or client connections?**
A restraint that merely eliminates competition is unenforceable. It must protect a genuine proprietary interest, and the document should say what that interest is.
- ☐ **7. Is your confidentiality clause separate from, and in addition to, the restraint?**
A confidentiality clause protects information, but it does not stop an employee from joining a competitor. Only a restraint does that. You need both.
- ☐ **8. When contracts are updated, renewed or replaced, does the restraint carry over in writing?**
A restraint in an old contract can be lost when a new contract is signed without one. Check every version, especially after promotions.
- ☐ **9. Does your exit procedure remind departing employees of the restraint and recover all devices and data?**
A written exit acknowledgement, signed before the last day, removes any argument that the employee was unaware of the restraint.
- ☐ **10. Do you act within days, not months, when you suspect a breach?**
Restraint applications are urgent by nature. Delay weakens both the urgency of the application and the value of the relief.

How did you score?

10 ticks: your paperwork is in good shape. Diarise an annual review. **7 to 9 ticks:** you have gaps worth closing before your next senior resignation. **6 or fewer:** your restraints may not survive a challenge. Speak to us before you need to enforce one, because by then it is too late to fix the contract.