

SPEAKOUT

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Attendees viewing works by W Wanambi (left) and Gunybi Ganambarr (right).

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CAN I QUIT AND TAKE MY CLIENTS WITH ME?

Understanding Restraint of Trade Clauses in Employee Employment Contracts and Independent Contractor Agreements

Employment contracts play a crucial role in defining the relationship between practice owners and employees. Speech pathologist employment contracts commonly include **Restraint of Trade** clauses, designed to protect the legitimate business interests of practice owners, which they have invested significant resources to develop and grow their client base.

Independent contractors run their own business and generally sign an independent contractor agreement with the private practice. These agreements may also include Restraint of Trade clauses. Again, these are designed to protect the private practice's legitimate business interests.

Employment contracts are legally binding and it is important that all parties understand their responsibilities before signing any contract.

Restraint of Trade clauses have important implications and can become a notorious source of angst upon termination. The issues often stem from the employee or independent contractor either not reading, not understanding, or not taking seriously the Restraint of Trade clauses in their contract or agreement before signing.

WHAT IS A RESTRAINT OF TRADE CLAUSE?

A Restraint of Trade clause is a legally binding provision that limits an employee or independent contractor from engaging with any clients they have met while either working in or providing a service to the practice.

Restraint of Trade clauses may include non-compete terms and non-solicit terms, aimed to prevent employees or contractors from engaging in competitive business, or soliciting clients, staff or suppliers.

KEY CONSIDERATIONS FOR EMPLOYEES AND INDEPENDENT CONTRACTORS:

Know your contract

Breaking a restraint of trade clause puts you at significant legal risk.

If speech pathologists who are employees or independent contractors take only one piece of advice from this article, make it this...

Always read your employment contract carefully and ensure you understand the various clauses. Read it before you sign and before you resign!

Scope and reasonableness

Always check the time periods and extent of any Restraint of Trade clauses. Before you sign an employment contract, seek professional advice and check to make sure Restraint of Trade clauses are **reasonable**.

Leaving the practice

Before you cease employment, or provision of service in the case of an independent contractor, always review your contractual obligations.

KEY CONSIDERATIONS FOR PRACTICE OWNERS:

Reasonableness and protecting legitimate business interests

Practice owners should seek professional advice to ensure any Restraint of Trade clauses in their employment contracts are genuinely protecting their legitimate business interests without unduly restricting the employee's future career opportunities.

Consider whether the restrictions are reasonable in terms of geographical area, duration, and the specific activities covered by the clause. Overly broad or unreasonable clauses may be unenforceable or subject to modification.

Review

Regularly reviewing and updating employment contracts and independent contractor agreements can ensure that confidentiality and Restraint of Trade clauses remain relevant, enforceable and aligned with the evolving needs of the practice.

Exit interviews

Before the end of the employment relationship, conduct an exit interview to remind and advise the employee of their post-contractual obligations and any other notice period and handover requirements. It is also advisable to provide this in a written reminder.

If you need support with issues related to employment contracts or navigating any phase of the employment lifecycle, you should seek professional advice.

As the preferred national HR and IR provider for Speech Pathology Australia and its members, WorkPlacePLUS provides support to SPA members on employment matters affecting your practice including developing employment contracts and independent contractor agreements. For more information, contact Anna Pannuzzo on (03) 9492 0958 or visit www.WorkPlacePLUS.com.au

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