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# Employment Law – Ex-Employee Restraint Clause Unenforceable

**Date :** August 4, 2017

## Employment Law – Background

The Victorian Court of Appeal reaffirmed a decision that an employer was unable to enforce a restraint clause against an employee. The accounting firm's breach of an employment contract consequently ended its right to enforce a restraint clause against the accountant. The case highlights the importance of carefully assessing any differing views between the employee and employer in employment law.

## Employment Law – Facts

In essence:

- the employee-accountant signed an employment contract in 2012
- the contract contained a restraint clause that operated for 12 months. Notably, the terms were found to be reasonable by judges in earlier cases
- the accounting firm expanded its business over 2015-16
- the accounting firm denied the accountant certain bonuses he believed he was entitled to
- as a result, the accountant requested payment to which the employer refused
- the accountant took a week's leave. A few days after he returned, he informed the employer he considered the refusal to pay the bonuses as a repudiation of the employment contract
- especially relevant, the accountant set up his own business. Consequently, the employer sought to enforce the restraint clause

## Employment Law – Decision

The Victorian Court of Appeal:

- concluded that the accountant-employee's interpretation of the bonus clauses was correct
- held that the organisational changes could not justify the refusal to pay hence he should have been paid the bonuses
- found that in conclusion, the refusal to pay was a breach of the employment contract. Consequently, the right to enforce the restraint clause ended

## Employment Law – Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:



- review this case decision
- seek the assistance of an employment lawyer to understand the impacts of this decision
- prepare new employment contracts as required
- update employment contracts to include restraint clauses with the help of an employment lawyer
- engage an employment lawyer if there is a contested termination of employment situation
- in conclusion, ensure compliance with employment contracts

### **Employment Law – More Information**

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.