

ISSUE

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RECENT RULINGS BY THE LABOUR APPEAL COURT ON RESTRAINT OF TRADE AGREEMENTS

Balancing Interests in Restraint of Trade

When determining the enforceability of a restraint of trade agreement, the courts employ a value judgment to balance the employer's interests with the employee's right to practice their trade freely, a right protected by the Bill of Rights.

Remedies for Employers

Businesses facing competition from former employees bound by a restraint can seek an interdict or file for damages under the common law of delict against the employee and new employer. These damages are calculated based on the actual loss suffered due to the breach, aiming to restore the employer's position as if the breach never occurred.

Calculating Damages in Restraint of Trade Cases

The Labour Appeal Court (LAC) recently issued two significant rulings regarding the reasonableness of restraint of trade agreements. These rulings highlight the criteria used to assess the enforceability and duration of such agreements.

In *Sadan and Another v Workforce Staffing (Pty) Ltd*, the LAC deemed a two-year restraint preventing the appellants from working with competitors across South Africa to be unreasonable and contrary to public policy. It reduced the restraint period to one year, considering the lack of compelling reasons justifying the original duration. The court emphasized that the duration of a restraint should protect the proprietary interest without unnecessarily rendering the employee unemployed.

In *Beedle v Slo-Jo Innovations Hub (Pty) Ltd*, the LAC upheld a two-year restraint in the beverages industry, finding it reasonable given the company's nationwide operations and the need to protect proprietary interests during the product development lead time. The

company demonstrated that it took 24 to 36 months to develop products, justifying the restraint period.

These rulings underscore the need for employers to provide compelling reasons for the duration of a restraint. The courts adopt a conservative approach, ensuring the restraint is reasonable and balances the employer's need for protection with the employee's right to work.

Practical Advice

When drafting separation or settlement agreements, ensure specific exclusions for certain undertakings like restraint of trade, confidentiality and intellectual property agreements to avoid ambiguity about ongoing rights and obligations.

By understanding these rulings and their implications, businesses can better navigate the complexities of restraint of trade agreements and protect their interests effectively.

Always consult a legal practitioner to ensure that your rights and interests are fully protected.

A handwritten signature in black ink that reads "Judy Ward". The signature is written in a cursive, flowing style. The first name "Judy" is written with a large, looped 'J' and a small 'y'. The last name "Ward" is written with a large, looped 'W' and a small 'd'. The signature is centered within a white rectangular box.

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