

Getting an Injunction against an Employee or Employer *

An Injunction is an Order from the Court which either prevents a party from doing something or forces a party to do something. In employment law cases they are normally taken by or against an executive or senior manager.

An injunction will only be granted where:

- It is just and equitable to grant one;
- The party asking the Court to grant the Injunction acts quickly and does so showing that they have conducted themselves properly and legitimately; and
- Financial compensation would not be an adequate remedy

There are two types of Injunctions. There are those obtained “on notice” and those without notice known as “Ex Parte”.

The on Notice Injunction is where the party seeking the Injunction informs the other party of the application including where and when it will be heard.

A without Notice Injunction is one where the party seeking the Injunction does not inform the other party of the application. It is referred to, when you are reading cases often as an “ex parte Injunction application”; in such cases the Court will only grant the Injunction where there is good reason for not giving notice to the other party.

Normally without notice Injunctions are sought where the party believes, and argues, that if an employee or employer was made aware of the application he/she or they might destroy, copy or move evidence or assets or that the risk is so great to the employer’s business, such as where customers may be contacted by a competitor that the application is critically urgent.

In applications by executives or senior managers it is one where the party applying believes, and argues that a threat of dismissal is imminent or that a dismissal has taken place and it is crucial that the status of the employee is maintained.

Injunctions against Senior Employees including Executives

The four most common cases for seeking an Injunction against an employee are;

- Where the employee has or is believed to have unlawfully taken and/or used confidential data such as a customer or client list from the employer or may be about to do so or has passed or the employer believes will pass information onto a competitor.
- Where the employee has or is believed to have used proprietary information such as trade secrets or may be about to or has passed that information to a competitor
- Where the employee is a senior employee such as an executive or senior manager, that there are restrictive covenants in the employment contract and that the employee is unlawfully seeking to approach or poach clients, customers, or, employees of the employer.

The most common scenarios for seeking an Injunction against an employer are;

- Where a senior executive or senior manager believes that an action will be taken, by their employer, to terminate their employment unlawfully or in breach of their contract.
- Where the employer has terminated the contract of employment of a senior executive or senior manager unlawfully or in breach of their contract.
- In cases where an employer has made untruthful statements about a former employee with the intention of having a negative impact on their career or job opportunities.

Interim or Temporary Injunctions

Interim or temporary injunctions will only be granted in circumstances where the party making the Injunction application undertakes to pay the other sides costs for expenses and loses should an interim injunction be granted but be unsuccessful at the ultimate hearing of the case.

Balance of Convenience Test

There are additional principles that have to be considered before the Courts will grant an employment Injunction and this is known as the

balance of convenience test. The Court will take the following factors into consideration when granting the Injunction namely;

1. The actual or potential damage to the party making the application
2. The inconvenience to the party against whom an application will be granted being financial or others.
3. Whether an undertaking has been given to abide by contractual provisions that are now being enforced or prevented from being breached.
4. That the only relief which is being sought is that which is strictly necessary.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

***In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**