An unsigned contract is not necessarily fatal

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Mr Lacy was initially employed by FW Farnsworth Ltd ('Farnsworth') under a contract he signed in 2003 which contained no post-termination restrictions. In 2009, he was promoted to a senior management position and was given a new contract containing restrictions preventing him from working for rival businesses or soliciting customers. He looked briefly at the document then put it, unsigned, in his desk drawer. In 2012, when Mr Lacy resigned intending to join a rival company, Farnsworth applied to court for an interim injunction to enforce the restrictions and prevent him joining a competitor.

Mr Lacy argued that he was not bound by the terms of his new contract as he had never signed it. However, after being given the new contract, he had applied for benefits under it which had not been available under his old contract. These included private medical insurance and a new defined contribution pension scheme.

The court held that an employee's relationship with his employer was necessarily defined by contract and Mr Lacy's promotion meant that his relationship with his employer had materially changed. It found that the source of the benefits was contractual; Mr Lacy had read the contract and appreciated the new benefits available under it. In proceeding to voluntarily apply for the benefits not previously available to him, Mr Lacy had accepted the legal implications of the new relationship and the terms of the new contract, including the post-termination restrictions. He was therefore found to have breached the post-termination restrictions even though he had never actually signed his contract.

The court distinguished between Mr Lacy's applications for the pension scheme and the private medical insurance. Membership of the new defined contribution pension scheme referred to in the 2009 contract was a mandatory company policy at Farnsworth arising from the closure of the company's final salary scheme and was not clearly and uniquely referable to the contract. On the other hand, the private medical insurance was not mandatory. In signing up to the medical insurance, the court decided that Mr Lacy had made an unequivocal choice referable only to his having accepted the terms of the 2009 contract. He had done nothing to suggest that he objected to or was protesting against the restrictions. Therefore, he was bound by the contract, including the post-termination restrictions from the date that he applied for private medical insurance.

Myth busting

It is a myth that if the employee has not signed the contract then the restriction cannot be enforced. This myth seems to result in a large number of employees putting their contracts into a drawer of their desk rather than signing and returning them. The reality is that if an employer can show that the employee has, by his or her conduct, consented to the restriction then it will be enforced. However, employers are much better off having the certainty of a signed contract to rely on.

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