



Thought of the Week

Some time back, I read a story / write-up, clearly explaining that there will be rear-view mirror, always available in any vehicle, but the driver will occasionally view through the mirror or few drivers never view at all (you could have seen youngsters would have removed such rear view mirrors in their two-wheelers). They only concentrate the front-view and drive.

The moral of that story is not to always lament | worry, by looking back into your past, but to look forward to the future. Besides, if you frequently look back, you cannot drive your vehicle safely & move forward.

One need to understand what is the purpose/objective of the rear view mirror. It will guide you, if there is any challenge on the road | negotiating in a voluminous traffic | during overtaking etc.

Similarly when there is a roadblock, in your actions | thought process | decision, you should reminisce how you had overcome similar situation. This is pertinent to your workplace too. Where you come across challenge, look back for appropriate solutions from your experience, else..... Just go ahead, drive for a successful day.

Life is a Travel.....And you decide your Destiny..... Do not (or rarely) Look Back.....All the best.....

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Confidentiality Clause / Non-disclosure agreement

Why?

Employer has the right to Protect his Trade Secrets and Confidential dealings in his Business.

How?

Any Employer would like to protect his interest and in the Contractual agreement – i.e. in the Offer letter or Appointment Letter he will include a specific clause restricting or prohibiting the Person engaged (on-roll or consulting roll, etc) from sharing such information, while working, or after separation.

What?

An employer needs to be carefully list the information which he thinks are confidential – Customer data, Customer pricing, Product details, R&D data, Finances, HR Cost, Marketing strategy, Pricing strategy, Formula, Software programs, Technical information, IPRs, and any other commercially valuable information, etc.

Non-disclosure of information – Historical, In progress (during the engagement of the individual) or any date for Future which are protected in the Business Interest of the Employer. Even if something is discovered | created | developed by the individual while in his/her engagement, it becomes Proprietary of the Employer.

When?

Confidentiality clause applies, while you are engaged, without limit. Where you leave the Organization, it is limited. The clause cannot / doesn't prohibit, your employment, but sharing any information, which impacts the business interest of the previous employer, will attract the provisions of the clause (criminal breach of trust). This includes self employment/consultation, post separation.



Non-Compete Clause

What?

It is a clause in an employment contract (Offer or Appointment Letter) restricts a current employee from competing with their employer in the same or similar area of Business.

Example:

I work as a Payroll Solution Specialist in a Payroll Processing company, and simultaneously run a consultation company which also provides Payroll services.

I worked as a Operations Manager in a Security Company. Immediately or after some months upon separation, I start a new company which provides Security Services. It will attract Non-compete clause.

As per the above, this restriction of non-compete is not limited only to the duration of employment but also for a specified period after the employment is concluded.

In the above situations, I can be sued for Breach of Trust.

Non-Solicitation Clause

What?

Any Poaching during or after separation with the Employer.

There are two kinds of Poaching..... (1) Poaching the Employees (colleagues / peers, etc.), (2) Poaching of Clients (clients of the Employer who engaged the person).

Example:

1. I work as a Payroll Solution Specialist in a Payroll Processing company, and simultaneously run a consultation company which also provides Payroll services (or) start a similar company after resigning.
 - In both situations, I shall not Poach the Persons engaged in the business of the Employer.
 - And, in both situations, I shall not Poach the Clients of such Employer.
2. I work as a Payroll Solution Specialist in Payroll Processing company, and join a competitor after separation
 - I shall not Poach the Persons engaged in the business of the Employer.
 - And, I shall not Poach the Clients of such Employer

In both situations, I can be sued for Breach of Trust.



We ensure the client Focus on their Core



Our Strength is Updated Knowledge

Our Motto is Empowering Clients

Our Vision is Protection of Employers' Brand

Our Commitment is Quality

(Probable) Reasons for non-compliance of (a) Payment of Wages, (b) PF & ESI, (c) Bonus and Gratuity, by the Contractors

Major Reasons:

1. Every Principal Employer is having their own set of Procurement Policy | Vendor Policy and Payment Cycle | Payment Protocol
2. It is usually 60 days to 90 days
3. Where the Project team | Stake Holding team engaging contractors, do not mind whether the Monetary compensation and social security benefits are paid or not, they are bothered only about operations
4. Principal Employers Rarely does assessment of Vendors (or) does only once in a year

Where a Vendor engages Manpower, who needs to pay wages, and immediately pay PF and ESI, has to depend on the Invoice clearance from the Principal Employer. Where the Contractors has to raise the Invoice after completion of calendar month or project, they have to wait for 60/90 days, to get to pay for labourers.

Most of the Contractors, enthusiastically comply this in the initial months of business (by taking loans or otherwise). But later they struggle and make a delayed disbursement of wages and on the PF & ESI part they delay or pay partially or pay only when they are insisted upon.

Principal Employers do not realize the big challenge - if the Vendor/Contractor is “letter pad contractor” or “fly-by-night contractor”, or otherwise, who did not comply, then the entire financial liability will fall on them (Principal Employer). They are slapped with a notice to pay a Huge Sum.....

If your company is one amongst such company.... Please change.... To know the reason, see the next page...

How Labour Code Rules and RPFC are going to ensure COMPLIANCE from Principal Employer?

Where the Payment of Wages ensures Timely Payment of wages including contractual employees..... The Code on Wages and the Rules of Respective States went ahead in protecting the interest of the Contract employees:

1. **Timely Payment of Wages.-** Where the employees are employed in an establishment through contractor, then, the company or firm or association or any other person who is the proprietor of the establishment shall pay to the contractor the amount payable to him or it, as the case may be, before the date of payment of wages so that payment of wages to the employees shall be made positively in accordance with the provisions of section 17
2. **Responsibility for payment of minimum bonus.-** Where in an establishment, the employees are employed through contractor and the contractor fails to pay minimum bonus to them under section 26

Notwithstanding the EPFO, through a separate notification (on 27th April 2022) has stated that the Regional offices to collate actionable information from the respective district offices of the State Labour Department to improve the progress of registration of the contractors through their PEs and vice versa over the Unified Portal and consequently lead to improved compliance under the Act and thus ensure extension of Social Security to the eligible workforce.

So whether the Principal Employer does the Compliance through Unified Portal or the Contractor complies by paying the PF contribution or not, the RPFC are going to monitor both through the CLRA Licenses....

Wake up, before RPFC issues a notice to you (PE | Contractors) & Labour Code is notified (PE)