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Garden leave: HR guide

Description

Introduction

In this guide I discuss key issues relating to **garden leave**.

What is garden leave?

When an employee resigns or an employer decides to terminate their employment, the employer may wish the employee to stop carrying out their normal duties and keep them away from any competitors The employer could therefore retain the employee for their notice period but ask them to remain at home on **garden leave**.

When is the employer permitted to put an employee on garden leave?

The safest course for the employer is to rely on an express term of the employment contract allowing the employer to put the employee on **garden leave** and setting out the scope.

In the absence of an express term permitting **garden leave** an employee, in certain cases, may be able to rely on an implied term giving them a right to be provided with work. This may particularly be so if the employee is in a senior position or in a specialist role. Where there is such an implied term requiring the employer to provide work the employer would have no legal basis for **garden leave**.

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Even where there is an express garden leave clause are there circumstances when garden leave would not be permitted?

The employer needs to show that the period of **garden leave** goes no further than is reasonably necessary to protect its legitimate business interests (such as confidentiality and business connections).

The Courts may not, for instance, grant an interim injunction stopping an employee working elsewhere if the employer placed the employee on **garden leave** for twelve months but a three month period of **garden leave** would have adequately protected the employerâ??s business interests. The Courts though would consider various factors including the circumstances of the departing employee and the public interest in employees being held to contracts that they have entered into. Depending on the circumstances, the Courts might grant an injunction, refuse one or reduce the period of **garden leave**.



What is the employee entitled to during garden leave?

As the employment is continuing, the employer would be required to pay the employee their usual salary and provide all contractual benefits.

Entitlement to a bonus or commission will depend on the wording of the employment contract or any relevant scheme rules.

Restrictive covenants

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In determining whether a restrictive covenant is enforceable, the Courts may take into account the period that an employee is on **garden leave**.

It is therefore common for employers to state when drafting restrictive covenants that the restricted period shall be reduced by any period that the employee is placed on **garden leave**.



Common garden leave provisions

Common **garden leave** provisions could include, for instance, that the employee shall:

- continue to comply with all relevant express and implied terms in their contract of employment, together with complying with policies and procedures applicable to their employment.
- comply with any reasonable requests by their line-manager.
- not attend the premises of their employer without written consent.
- not have access to the employerâ??s IT systems without written consent.
- not contact any employee, director or officer of the employer or its suppliers, customers or clients without written consent.
- not carry out any duties for their employer without written consent. The employer may require the employee to do different duties or carry out only some of their duties. The employer may assign another person to carry out their duties.
- not undertake any employment with a new employer or provide services as a contractor or otherwise be interested in any other organisation.
- cooperate with any required handover.
- keep the employer informed of their whereabouts.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need advice on **garden leave** or have other employment law queries please do not hesitate to contact me on: 020 3797 1264.

Do check mattgingell.com regularly for updated information.

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