Northumberland County Council

Early Years

Proposed Changes to Non-Compete Clauses Bulletin

Non-compete clauses are sometimes used in Early Years employment contracts to restrict employees from working for competitors or operating similar services.

Non-complete clauses are just one type of “post-termination restriction” that an employer may agree with an employee, within the employment contract, and they have the potential to prevent a departing employee from working for a competitor or setting up their own business in competition for a defined period, typically six to twelve months. Post termination restrictions are only enforceable if they are designed to protect a legitimate business interest e.g. protection of confidential information or prohibiting employees from taking customers or staff with them when they leave.

Many non-compete restrictions are difficult to enforce unless they are carefully drafted and go no further than is reasonably necessary to protect a legitimate business interest. However, employees are often apprehensive to move to a new employer, or set up their own business, for fear of legal repercussions. As a result, employees who work in Early Years are often reluctant to move jobs, creating difficulties for other providers trying to recruit new staff.

The UK Government announced in the October 2026 Budget that it intends to introduce legislation restricting the use of non-compete clauses. This follows a consultation which concluded earlier this year. The proposed legislation could include non-compete clauses being limited to companies of a particular size—e.g. companies with more than 250 employees—or being limited to employees over a certain salary threshold, thereby restricting only senior managers. The Government may propose a complete ban of non-compete clauses. The Government is expected to respond to the consultation in early 2027.

In the meantime, we encourage providers to consider the potential impact that these clauses have on recruitment, retention, and workforce mobility, and whether alternative approaches could better protect business and sector interests.

Where these clauses are used, we urge providers to ensure that they are explained clearly

and transparently so employees understand what the restrictions mean, why they have been included, and how they may affect them going forward.

If you have any questions or queries about this, please speak to your internal HR advisors, or consider contacting ACAS for advice.