

How contractors should handle restrictive covenants: part 1 - the agencies

Many contracts between contractors and agencies include clauses called restrictive covenants: they prevent the contractor from working directly for the client and other related organisations after the contract period is over. Their purpose is to protect the agency's investment in the process of recruiting you, and they are perfectly legal and justifiable.

Agencies Must Not Abuse

But if the recruitment consultant at the agency you are dealing with abuses these clauses by using them to get you to accept either a lower fee, or conditions that you do not find acceptable, then you should take action.

"What is absolutely not legal and justifiable is the abuse of these clauses by recruitment consultants at agencies," says Ann Swain, chief executive of the London-based [Association of Technology Staffing Companies](#) which joins and regulates 80 recruitment agencies in the UK.

Swain explains the raison d'être of the restrictive covenant: "A recruitment agency spends a great deal of money on advertisements for candidates, compiling a database of candidates, and a great deal of time in interviewing and selecting a short list for the client to consider. If the contractor then goes to work for the client directly just after an initial contract, then all of that investment is lost. It just wouldn't be profitable to run a recruitment agency on this basis."

Contractors should bear this in mind when considering contracts with recruitment agencies. Don't take on a contract with an agency with the idea that you can just go direct at the end of the first contract period. This would indeed not be fair to the agency. Please see our article '[How Contractors Should Handle Restrictive Covenants: Part 2 - The Law](#)' to understand better what the law allows.

Not A Bargaining Tool

But there are recruitment consultants who take advantage of these clauses, often without the knowledge of the agencies they work for. Typically this problem arises when a contract comes up for renewal.

A recruitment consultant will tell you that you must accept a 25% cut in fee, or that you must work overtime without pay, or the consultant proposes any other contract term which was not in the original contract and which you are not willing to accept. The recruitment consultant will then remind you that you are bound by the restrictive covenant not to work for the client directly so you must accept these terms. The clause in your contract may include working for client subsidiaries or other firms that the agency works with as well, so being shut out in this way could be quite daunting.

Don't Accept It

Fortunately, you can't be shut out in this way. A restrictive covenant is not a bargaining tool, and its use in this way is pure abuse. We explain the legal side of this in [Part 2](#), but you should know that Atsco maintains that it is bad practice. "Were we to receive a complaint of this type about one of our member agencies, we would come down quite hard on them," Swain insists.

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