



A-Z OF EMPLOYING

ILLEGAL CONTRACTS ACT

1970

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ILLEGAL CONTRACTS ACT 1970

Issues under the Illegal Contracts Act 1970 very rarely occur in the employment relations context.

An “illegal contract” is defined as a contract which is illegal by its creation or performance, and includes a contract that contains any illegal provisions. However, a contract that is lawfully entered into will not become illegal merely because its performance is in breach of any law, unless the law expressly provides so. The Act expressly covers restraint of trade provisions in contracts; refer to the A-Z Guide on Restraints of Trade for further guidance.

Section 6 of the Illegal Contracts Act states that illegal contracts shall have no effect, it also protects third parties who have acted in good faith and without knowledge of the circumstances making the contract illegal. The Act provides for the granting of relief by way of:

- ▶ Restitution (recompense)
- ▶ Compensation (damages)
- ▶ Variation of the contract
- ▶ Validation of the contract in whole or part; or
- ▶ Any other method that the Court in its discretion thinks just.

When considering what, if any, relief should be granted, the Court takes the following matters into consideration:

- ▶ The conduct of the parties; and
- ▶ If an enactment has been breached, what the objective of that enactment was, and the gravity of any penalty that has been provided for such a breach; and
- ▶ Any other matters it thinks appropriate.

The Court will not grant relief if it considers doing so would not be in the public interest. The Court also has the power to grant relief to a person who enters into a contract or commits an act knowing that it is illegal. In this situation, the Court must take into account the person’s knowledge that what they were doing was illegal. The Employment Relations Authority has the power to make an order under the Illegal Contracts Act in any matter relating to an employment agreement. The Authority can only make an order cancelling or varying the terms of an individual employment agreement (not a collective agreement), and only after directing the parties to attempt to resolve the problem in good faith and through mediation.

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