

Managing employee departures effectively is crucial for protecting your business interests. Garden leave represents one of the most strategic approaches available to employers, particularly when dealing with senior staff or those with access to sensitive information. At Tick HR Solutions, we frequently guide businesses through implementing garden leave provisions effectively.

## What is Garden Leave?

Garden leave sometimes called "gardening leave" is a practice where an employee who has resigned or been given notice remains on the company payroll but is instructed not to attend work during their notice period. The employee continues to receive their regular salary and benefits while being prohibited from commencing employment with their new employer until the garden leave period expires.

## Key Features of Garden Leave

### Legal Standing

Garden leave must be explicitly provided for in the employment contract to be enforceable. Without a specific clause, employers may face challenges implementing this arrangement unilaterally.

### Full Pay and Benefits

Unlike some other exit arrangements, employees on garden leave remain entitled to their full salary and contractual benefits throughout the period.

### Restricted Activities

During garden leave, employees typically:

- ✓ Cannot work for competitors
- ✓ Must remain available to the employer if needed
- ✓ Are prohibited from contacting clients or colleagues for business purposes
- ✓ May be required to return company property and credentials

### Duration Considerations

Garden leave typically aligns with the employee's contractual notice period, though in practice, this can range from a few weeks to several months depending on seniority and role.

### Benefits for Employers

Implementing garden leave strategically offers several advantages:

1. **Protection of Confidential Information:** Creates distance between the departing employee and sensitive business information, allowing it to become outdated.
2. **Client Retention:** Provides time to introduce clients to new relationship managers before the departing employee can establish contact from their new position.
3. **Team Stability:** Allows for managed communication about departures and provides time to restructure responsibilities without the departing employee's influence.
4. **Competitive Edge Preservation:** Prevents immediate transfer of strategies, pricing information, or business methodologies to competitors.

### Potential Challenges

While valuable, garden leave isn't without complications:

1. **Cost Implications:** Employers must continue paying full salary and benefits without receiving work in return.

2. **Employee Relations:** Poorly communicated garden leave can damage workplace morale and company reputation.
3. **Legal Enforceability:** Courts may scrutinise excessively long garden leave periods or those that prevent employees from earning a livelihood.
4. **Administrative Oversight:** Requires monitoring to ensure compliance with restrictions.

### Best Practices for Implementation

To maximise effectiveness while minimising risks:

1. **Clear Contractual Provisions:** Ensure employment contracts contain well-drafted garden leave clauses that specify obligations and restrictions.
2. **Proportionate Duration:** Align the length of garden leave with legitimate business protection needs rather than punitive measures.
3. **Consistent Application:** Apply garden leave policies consistently to avoid discrimination claims.
4. **Communication Planning:** Develop protocols for announcing departures to clients and colleagues that protect business interests while maintaining professionalism.
5. **Exit Interviews:** Conduct thorough exit interviews to assess risk and remind departing employees of ongoing obligations.

### Alternative Approaches

Depending on circumstances, alternatives to garden leave might include:

- Pay in Lieu of Notice PILON : Immediately terminating employment while paying out the notice period
- **Restrictive Covenants:** Enforcing post-termination restrictions such as non-compete or non-solicitation clauses
- **Phased Handovers:** Allowing the employee to remain at work under supervision to transition responsibilities

### Conclusion

Garden leave represents a valuable tool to the employer for managing departures strategically. When properly implemented through clear contractual provisions and thoughtful execution, it balances legitimate business protection with fair treatment of departing employees.

At Tick HR Solutions, we help businesses navigate these complex employment matters, ensuring you have robust policies and contracts that protect your interests while maintaining legal compliance.

Contact us to discuss how we can support your business with effective garden leave provisions and other essential HR solutions.