

Gardening leave

Garden leave or "gardening leave" is the name given to a period where an employee has given, or has been given, notice of dismissal and is ordered to serve out the period of notice at home, whilst still receiving their normal salary.

Why do employers use gardening leave?

Gardening leave is more commonly used with senior employees who may have regular contact with customers or sensitive commercial information. Employers may be concerned about that employee poaching customers, misusing confidential information, or encouraging other employees to leave, if they serve their period of notice in the office. Putting someone on gardening leave removes them from clients and fellow employees, but the employee is still governed by the terms of the contract of employment, and can be brought back into work if required.

Can all employers use gardening leave?

Whether an employer can send an employee on gardening leave will depend on the terms of the contract of employment, which should contain a gardening leave clause, which may be in addition to restrictive covenants seeking to limit the employee's activities after termination of the contract. Such clauses need to be carefully drafted to ensure that they are enforceable, and care should also be taken when implementing them to ensure contractual provisions are not waived.

What rights does the employee have during gardening leave?

Employees are entitled to all salary and contractual benefits during the period of gardening leave including bonuses, but remain bound by the terms of the contract including the duty of confidentiality. The employee cannot start employment with a new employer during the period of gardening leave. An employee may want to seek legal advice as to whether a gardening leave clause is enforceable and has been correctly exercised, or as to the activities which they can properly carry on during this period.

How we can help

We can help with the drafting of contracts of employment to ensure enforceable gardening leave clauses are included, and also with advice on how to operate them when dismissal of an employee is contemplated. We can also advise employees, in negotiating acceptable contracts of employment, and in advising on what activities can be safely undertaken when on gardening leave.

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