

# Can't enforce IT freshers' 'non-competes': Experts

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Bengaluru: A non-compete clause woven into Indian IT companies' contracts for freshers can at best act as a deterrent, legal experts said, as campus hires are being coerced into signing agreements that are unenforceable in India.

Tech employers are using their bargaining power to impose such restraints at junior levels and in many cases, legal experts said it doesn't go beyond serving a legal notice.

TCS, Infosys, Wipro and HCLTech and Tech Mahindra have non-compete clauses ranging from 6-12 months baked into their contracts that are not legally enforceable. Some firms disallow freshers to join competitors and customers within a stipulated time.

Industry body Nasscom said the Indian IT sector is expected to add 2.5-2.7 lakh freshers in the 2023-24 financial year compared to 3.7-3.8 lakh in the previous fiscal. The subdued business environment has forced clients to pull back discretionary spending and pause non-critical projects. This has reduced fresher intake drastically.

Last year, TOI had reported that Infosys introduced a non-compete clause that forbade employees from working on the same customer's projects across five named competitors and their subsidiaries for six months after leaving the firm. It named TCS, IBM, Accenture, Wipro, and Cognizant as competitors that employees cannot join if they are put on a project of the same customer as the one they were working for at Infosys.

Wipro's employment contract also has a similar non-compete clause. It prohibits employees from accepting any offer from a customer or client with whom the employee has interacted or worked during the six months

preceding the date of separation. An email sent to TCS, Infosys, Wipro, HCL and Tech Mahindra didn't elicit a response till the time of going to press.

The Indian Contract Act, 1872, prohibits any agreement that is in restraint of trade. Therefore, any obligation of non-competition that extends beyond the term of employment is void and not enforceable. Pooja Ramchandani, partner for employment, labour, and benefits at law firm Shardul Amarchand Mangaldas, said non-compete obligations are enforceable only during the term of employment but not once the employment comes to an end. "An employee cannot be restrained from leaving employment and joining a competitor. However, where monetary compensation is paid to an employee in consideration of non-compete, it may be possible to claim a reasonable part of the monetary benefit in case of loss occurred due to violation of the non-compete obligation."

Sayantani Saha, leader, HR law in legal firm Nishith Desai Associates, said post-employment non-competes are not enforceable in India except in connection with the sale of goodwill of a business. "Where an employee leaves an employer and joins a competitor, the ex-employer may apprehend loss of confidential information. This is the most common reason for employers to execute non-compete agreements. Non-competes are often executed to deter attrition through poaching of talent by competitors," she said.

Ramkumar Ramamoorthy, partner at tech growth advisory firm Catalincs, said the best way to retain employees is by creating an open culture in which they learn and grow. "If employees trust their careers with their employers, it's only natural to expect employers to trust their employees and create the foundation for a shared purpose and vision. Over decades, I have seen the best of talent gravitate to companies with a culture of openness and trust, all else being equal." Saha said employers are considering novel approaches to incentivise compliance with post-employment non-compete agreements. "We've come across employers who make staggered conditional payments to separated employees during the term of the non-compete restriction, to encourage compliance."