

UNDERSTANDING GARDENING LEAVE

Gardening leave can offer strategic benefits for both employers and employees.

For organisations, it's a way to safeguard sensitive business interests when someone resigns. For employees, it's paid time off to rest and prepare for the next step in their career. But as straightforward as it may seem, gardening leave comes with legal, financial, and contractual considerations.

In this Jobasaurus guide, we break down what gardening leave means, when to use it, and how to manage it lawfully and effectively.

What is Gardening Leave?

When an employee resigns or is given notice, employers have a few options:

- Let the employee work through their notice period.
- End the contract early and pay in lieu of notice.
- Place the employee on gardening leave.

Gardening leave (or "garden leave") means the employee stays on full pay but does not attend work or engage in any company-related activities during their notice period. Typically, they must not:

- Contact colleagues or clients
- Access company systems
- Work for competitors

This approach helps prevent the misuse of sensitive information or client relationships.

Why Use Gardening Leave?

Employers often use gardening leave when:

- The employee is joining a competitor
- They have access to sensitive commercial or client data
- There's a risk of poaching staff or customers

It's most commonly used for senior roles or customer-facing positions.

Benefits include:

- Protecting client relationships and intellectual property
- Buying time to restructure or reassign responsibilities
- Avoiding disruption from disengaged staff.

Potential drawbacks:

- Ongoing salary costs without work output
- Risk of contract breach if not properly managed
- May not fully prevent future competition

Legal Considerations & Contracts

To implement gardening leave, it's best to include a specific clause in the employment contract. However, even without one, employers may still be able to use it—so long as full pay and contractual benefits continue.

Key legal points:

- Gardening leave can only last as long as the notice period.
- Employees are still bound by contract during gardening leave.
- Employers must uphold trust and confidence, even if the employee isn't working.

To avoid legal risk, it's always a good idea to document the decision and gain agreement with the employee.

Using Gardening Leave in Practice

When to use it:

- High-level staff or salespeople resigning to join competitors
- Employees with access to sensitive data

When to avoid it:

- No clear risk to the business
- No clause in the contract or implied right to enforce it
- The cost outweighs the potential protection

Tips for implementation:

- Include a gardening leave clause in senior-level contracts
- Clearly communicate expectations and restrictions
- Consider whether the leave period counts toward post-employment restrictions

Post-Termination Restrictions

Gardening leave can be used alongside restrictive covenants—clauses that limit what employees can do after leaving, such as:

- Soliciting clients
- Working for a competitor

To ensure enforceability, any combination of gardening leave and restrictions must be proportionate. Most contracts specify that time spent on gardening leave counts toward the restriction period.

Breach of Gardening Leave

If an employee breaches gardening leave terms (e.g. contacting clients, working elsewhere):

- Send formal notice to stop
- Request written assurance
- Consider legal action if necessary

Employers may seek an injunction or damages if there's financial harm.

Gardening Leave via Settlement Agreement

If the original contract doesn't include gardening leave, it can be added through a settlement agreement. This allows:

- Clear terms about departure
- Mutual agreement on gardening leave
- Avoidance of legal disputes

This is often used in senior exits to smooth the transition and protect business interests.

Final Thought: Protect Your Business with Smart Exit Strategies

Gardening leave, when used correctly, is a powerful tool for employers to safeguard their operations during staff transitions. As always, clear contracts, honest communication, and proper documentation are key.

Need help managing exits or updating your employment contracts? Visit www.jobasaurus.co.uk to access free hiring tools and more employer resources.

