

Employment Law

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Settlement Agreements

(previously known as Compromise Agreements)

Employment Law Updates



A settlement agreement is the formal name given to a termination agreement between an employer and an employee. Although marked "Without Prejudice" (ie off the record), once signed the agreement becomes binding upon you and your employer.

The effect of you signing a settlement agreement is that in exchange for a termination payment and any other benefits which your employer agrees to give you, you will be giving up most, if not all, of your employment-related legal rights. This means that once you have signed the agreement, you will not be able to bring any claim in respect of your employment or its termination in an Employment Tribunal, County Court or High Court.

For example, you cannot bring an unfair or wrongful dismissal claim, any form of discrimination claim, any breach of contract claim or claim for unlawful deduction from wages or any claim for annual leave, expenses, bonuses or commission payments due to you.

The only claims that are normally (although not always) excluded from the scope of a settlement agreement are claims in respect of personal injury and accrued pension rights and enforcement of the settlement agreement itself.

If, therefore, you believe you have any potential claims against your employer you will need to provide us with full details of the circumstances so that we can consider carefully whether you should be signing the agreement at all and/or whether your employer has offered you an appropriate level of compensation in comparison to what you could have potentially been awarded if you had issued proceedings before an Employment tribunal and won.

Services for individuals:

- Residential Property
- Wills & Probate
- Contentious Probate
- Tax & Estate Planning
- Family, Matrimonial
- Mediation
- Employment
- Accident & Personal Injury Claims
- Litigation & Dispute Resolution
- Agricultural Law
- Town & Country Planning Law
- Elderly Client Services

Services for businesses:

- Company & Commercial Services
- Commercial Property
- Civil Litigation
- Employment Law
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First Steps

The first step that we will take is to meet to discuss the situation surrounding your employer's decision to offer you a settlement agreement. The meeting will provide you with an opportunity to ask questions and it will also enable us to explore the background to the proposed settlement agreement with you in more detail. It will assist if you bring the following documents to this meeting (if you have them):

- a copy of your contract of employment;
- copies of any correspondence between you and your employer relating to the compromise agreement or the circumstances leading up to it; and
- any other documents which you feel may be relevant;
- identification documents - a passport or driving licence and a utility bill is usual.

Typical provisions in a settlement agreement

A settlement agreement will typically cover such key matters as:

- the date when your employment terminated or will terminate;
- if you have any company property, where and when that must be returned;
- the range of claims the agreement is intended to settle;
- the sum of money to be paid to you and when it must be paid;
- who will be liable for any tax due on the termination payment;
- what level of contribution to your legal fees will be met by your employer;
- what happens if you do in fact bring an employment-related claim against your employer;
- what will be told to other staff about your departure (if anything);
- whether you must observe any restrictions after the employment has terminated;
- whether certain matters must be kept confidential; and
- what reference (if any) you will get.

In addition, if you are a director of your employer (or a group company) you will typically be required to resign that directorship as part of the settlement. If you hold any shares in the company or a group company you may also be required to transfer these back to the company.

Tax treatment of termination payments

It is possible to treat up to £30,000 of a termination payment made under a settlement agreement as exempt from tax and national insurance contributions where it is made as compensation for the loss of the right to be employed in the future.

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However, where part of the termination payment is a payment in lieu of notice and/or of other benefits deriving from the employment relationship, that proportion of the payment is likely to be taxable. A contract will often provide for the right to a payment on termination of employment. This commonly takes the form of a payment in lieu of notice clause whereby the employer may opt to make a payment in lieu of notice rather than have the employee work out their notice period.

We will provide you with limited guidance on whether we feel that the termination payments set out in the settlement agreement are structured in a tax efficient way. However, we are not qualified to give specific tax advice and it may be appropriate for you (following our meeting) to instruct an accountant to provide you with specialist advice in connection with the taxable status of the termination payments generally.

Your obligations under the Settlement Agreement

It is important that you familiarise yourself with the provisions in the settlement agreement because if you were to breach any of them, there is a risk that your employer will seek to recoup the sums of money paid to you under the agreement.

You must look out in particular for clauses that:

- Require you to return any items of company property that you still hold (this can include such easily overlooked items as security passes to access the employer premises) within a set timeframe;
- Require you not to disclose to anyone the fact that you have been offered a settlement agreement and / or the sums of money on offer to you;
- Require you not to try to poach any staff away from the company after you leave, or to approach your employer's customers or suppliers (or even potential customers or suppliers); or
- Prevent you from setting up in competition with your employer.

Employers will also typically want you to agree not to make any written or verbal statements about it or any of its officers or employees. In return we would generally expect employers to agree not to make any derogatory comments about you.

The requirement for independent legal advice

In order for a compromise agreement to be legally binding, you must have independent advice from a lawyer or other appropriately qualified adviser on the terms of the agreement and the implications for you of signing it (you will see that the agreement requires your adviser to certify that you have received the necessary advice). Employers will therefore typically contribute to an employee's legal costs in taking that advice.

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Costs and expenses

The basis of our charges is fully explained in our terms of business letter which we will issue to you.

The settlement agreement will usually confirm that your employer will make a contribution of up to a specified sum (plus VAT) towards your legal costs in the event that the agreement is signed. For the avoidance of doubt if our costs exceed the amount of the agreed contribution then we will need to invoice you directly in respect of that additional amount. Similarly, if you decide not to sign the agreement after considering the advice given to you then you should be aware that your employer will not be under an obligation to make any contribution towards your legal fees and you would then be fully responsible for paying our costs.

It is often difficult at the outset of a matter like this to provide you with an accurate estimate of likely costs. The reason for this is because the amount of work that we will be required to undertake depends on whether the settlement terms set out in the settlement agreement that your employer is proposing are agreed. If the terms of the settlement agreement are relatively straightforward and there is little, if any, negotiation required then our costs are likely to be in the region of between £500 and £750 (plus VAT). However, if the terms of the proposed Settlement Agreement are not acceptable to you and/or we are required to enter into detailed negotiations on your behalf then our final costs will reflect the additional work that we have undertaken on your behalf. It is not uncommon for costs in such circumstances to be in the region of £750 - £1,500 (plus VAT) depending on the amount of work involved.

Ware & Kay

good on paper, even better in person

Contact us

For further advice on your employment issues contact **Gill Wilkinson** on 01904 716050 (gillian.wilkinson@warekay.co.uk).