

An Employee's Guide to Settlement Agreements

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WHAT IS A SETTLEMENT AGREEMENT?

If you have been made redundant or you are in the process of losing your job it is possible that your employer will ask you to sign a Settlement Agreement.

A Settlement Agreement is an agreement between you and your employer to stop you bringing any claims against them in the Employment Tribunal in connection with the termination of your employment, in return for a payment by the employer.

Essentially, a Settlement Agreement is a 'clean break'.

Any issues outstanding between you and your employer must be resolved when the Settlement Agreement is negotiated.

So you will need good advice to make sure that you are getting a fair sum in settlement of your claims, and that the Settlement Agreement covers all the issues it should.

A compromise agreement will follow certain formalities in order to be valid.

Section 147 of the Equality Act provides that:

- The agreement must be in writing and must relate to the particular complaint being settled (this requirement is fertile ground for errors on the part of employers)
- The employee must, before entering into the contract, have received advice from an independent adviser, being us as your solicitor, about the terms and effect of the agreement and in particular on its effect on the employee's ability to pursue any



rights he or she would otherwise have before an employment tribunal (basically, the settlement agreement is intended by the employer to remove those rights)

- The adviser (us, as your solicitor) must have particular insurance covering you for loss in the event that a claim was made that our advice was wrong
- The adviser (us, as your solicitor) must be stated as such in the agreement
- The agreement must confirm that the conditions regulating settlement agreements are met.

We, as your solicitors, will ensure that your settlement agreement complies with and meets all legal requirements.

We can turn around your settlement agreement fast and usually at no cost to you. Often clients simply wish to sign the agreement as it is. However, we can and do negotiate agreements for clients if they wish to instruct us to do so; which usually happens where a lot of money is involved or particular terms are required, so that the employee is prepared to pay some money themselves to ensure that all the 'i's are dotted and the 't's crossed.

This booklet will explain some of the matters that are often considered, but of course it is just an introduction and could not replace specific tailored legal advice, and nor is it intended to do so.

Please call us today to discuss signing your settlement agreement fast and efficiently.

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WHAT IS THE EFFECT OF A SETTLEMENT AGREEMENT?

If you sign such an agreement you will usually give up any rights you have to claim for matters such as unfair dismissal, redundancy, disability discrimination or sex, race and age discrimination.

The Agreement will also cover other key matters, such as: what reference you will get, settlement of any claims your employer may have against you, what will be told to other staff about your departure, whether you will be held to any restrictions on your future employment, and whether certain matters must be kept confidential.

WHAT IS THE BENEFIT OF A SETTLEMENT AGREEMENT?

A Settlement Agreement will cover the key matters in connection with the termination of your employment.

In particular it can allow you to specify what settlement monies you receive and what reference will be given to a prospective employer, release you from any restrictions on your future employment, settle any claims your employer may have against you and ensure that certain matters are kept confidential.

CAN I REFUSE TO SIGN THE SETTLEMENT AGREEMENT?

Yes. There is no obligation on an employee to sign a Settlement Agreement.

Please speak to one of our employment lawyers today if you are considering bringing an Employment Tribunal claim.

There are many different types of employment claim that you might be considering. Most claims fall into the following categories:

- Unfair dismissal.
- Redundancy.
- Disability discrimination.
- Sex and race discrimination.
- Unpaid wages and breach of contract.



However, there are a large number of other potential claims, from discrimination on grounds of religion and belief, or sexual orientation, to breach of ‘family friendly’ employment legislation.

Please do not delay in contacting us, though. Although substantial amounts of compensation can be awarded in the Employment Tribunal, there are strict time limits for bringing claims and only limited exceptions. There is normally a three month deadline for claiming.

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WHAT IF I AM HAPPY TO ACCEPT A SETTLEMENT IN PRINCIPLE BUT I DO NOT AGREE WITH ALL THE TERMS OF THE AGREEMENT?

This is a common situation. Where this occurs if we are specifically instructed to do so we can attempt to re-write the agreement to remove the more unreasonable clauses that employers initially propose.

This is very often achievable and we are also skilled negotiators and often achieve a higher settlement than was originally proposed by the employer. However that is unlikely to be possible within the very limited contribution to legal fees offered by your employer, so it is a question of whether you want to 'punt' an extra amount to hopefully get everything you want out of the agreement.

You need good advice to make sure that you are getting a fair sum in settlement of your claims, and that the Settlement Agreement covers all the issues it should. This is what we do, and we have advised on literally thousands of Settlement Agreements over the years.

In addition, in many cases we are able to reduce the tax payable on the settlement package and deal appropriately with pension issues. Over the years we have acted for a very large number of employees, of all types and levels of seniority, in negotiating the terms of Settlement Agreements with their employers.

WHO PAYS FOR THE SETTLEMENT AGREEMENT?

As stated above, an employer will normally make a contribution towards the employee's legal fees for seeking advice on the Settlement Agreement.

However, it is just that. In most cases the employer's contribution will cover our legal fees of advising you and signing the agreement fast.

Naturally, though, where specific instructions or lengthy negotiations are required obviously the fees may exceed the employer's contribution and

that will be a decision for you to take. We can confirm the costs position as soon as we have reviewed the text of your draft Settlement Agreement.

DO I NEED TO COME TO YOUR OFFICE?

No, not at all.

There does not need to be any delay or inconvenience to you. We are modern people operating in a modern way and we try to do things as efficiently as possible, which means using the latest computer software and hardware and – where we can – emailing and using phone and videoconferencing rather than waiting for post to arrive or making you wait in a long line of chairs outside a stuffy solicitor's office.

Nor does it matter where you are, as we advise clients requiring Settlement Agreements throughout the country and wherever you happen to be will be able to advise you on the settlement agreement promptly.

Just one exception to that, we only advise on the laws of England and Wales so we cannot for example advise on agreements made under Scots law or Jersey law.

As we say, there is no need for you to attend our offices as we can conduct our service by telephone and e-mail. However, if you would prefer a face-to-face meeting this can obviously be arranged.

We will normally arrange for a specialist employment lawyer to contact you within 4 hours during business days.

In practice, we're often in contact within minutes of your enquiry reaching us, if it's in the working day.

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I'VE GOT THE AGREEMENT IN FRONT OF ME AND I WAS WONDERING WHAT SORT OF THINGS I SHOULD BE LOOKING FOR?

Obviously in principle that's for us to worry about, that's why you're paying us – you don't want to have to do a law degree!

Nor do we propose to explain every type of clause in the agreement, particularly as many of them are self-explanatory. Indeed, there would be no point as settlement agreements vary widely and there is normally no such thing in practice as a 'plain vanilla' or 'standard' settlement agreement.



However, there are certain things that you might want to look out for, that crop up time and time again. The rest of this booklet will highlight these:

- Parties and recitals – are the names and addresses of you and the employer correct, and is it even your employer's proper name?
- Also, are the recitals true – for example, does it say that you were dismissed for gross misconduct when that clearly was not the case? It is amazing how many times employers try to slip such contentious matters into recitals.
- Do the recitals state that the company is entering into the agreement on behalf of itself and any group company? If so, you should be aware that this would allow any group company to also enforce its rights pursuant to the agreement.

- What is your final date of employment? Normally you will receive your normal remuneration and benefits until that date. First, that should include your proper notice period (we can calculate this for you) but secondly you should not anyway make the date earlier than the signing of the agreement (or later if notice takes it to a later date) if at all possible because obviously the agreement does not take effect (and normally you remain an employee) until it is signed by both parties.
- What claims does the agreement try to stop you bringing? Generally in properly drafted agreements there should be one or two main types of claims settled, but there is often a long list of additional claims some of which you would not normally give up voluntarily – such as personal injury claims unconnected with discrimination and of which you are unaware. Why should you settle those cheaply or for no benefit within a settlement agreement?
- Generally if you wish to specifically negotiate your agreement, and it is in the context of a hotly contested dismissal or following events that could lead to a discrimination or other employment claim, there can be quite a lot to discuss in order to ensure that you are getting a fair settlement for the rights you are giving up.
- When will you get the settlement and on what terms? It will usually only of course be in enough time for a cheque or BACS transfer to be made after the Settlement Agreement is signed by each of employer, employee and adviser.
- How much, if any tax, are you paying on what you are given? Tax is a complicated issue on which specialist advice is often

required, but in general terms notice pay should be taxed but (broadly) 'compensation' for giving up potential claims could in principle be tax free up to £30,000. Is this reflected in your agreement?

- What expenses do you get, and in what timescale?
- What do you agree to do in the future for the company, such as participating in legal proceedings? And on what terms?
- Are there restrictive covenants that will or might affect your ability to work in the same or similar job as that you are leaving? For what time period are they effective and in what geographical areas?
- Such covenants are a specialised area of law and we are experienced in drafting them down to what is legally required as a minimum; or of course on advising you to leave them in if they are actually clearly unlawful and will prove ineffective anyway because your employer has not sought proper legal advice!
- What reference are you getting? Are you happy with it? Is it enough? There is normally no legal requirement to provide any form of reference at all (a fact that takes most employees by surprise) but we can advise you on the usual route to make it most likely you get a fair reference, whether your employer wants to give you that or not.
- Likewise, what are you and the employer allowed to say about each other in the future other than any reference? This is often a highly contentious subject and potentially the cause of future litigation in many high-value employment disputes.

As we say above, though, in principle you don't need to be concerned about the issues above and a myriad of others that your Settlement Agreement could present. That is because we, as your solicitors, will ensure that your compromise agreements complies with and meets all legal requirements.

We can turn around your settlement agreement fast and usually at no cost to you, whether you simply wish to sign the agreement as it is or whether you wish to instruct us to negotiate the agreement on your behalf; especially where a lot of money is involved or particular terms are required.



We hope that this booklet has given you a good grounding in what a Settlement Agreement is and what some of the issues are that it might raise. We reiterate that the booklet is just an introduction of course and could not replace specific tailored legal advice, and nor is it intended to do so, but we're friendly and approachable people and we're at the end of a phone to discuss your particular agreement today.

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