

Settlement agreements: A guide for employees

Settlement agreements are agreements between employers and employees, which settle certain employment claims. The vast majority of employment claims can be settled in this way, although there are a few exceptions.

Usually the employee waives the ability to bring employment claims on the basis that the employer pays the employee a discretionary termination payment. [This could be in the form of an enhanced redundancy payment.](#)

[Settlement agreements are particularly common, for example, in the financial sector. Many of the banks and other financial institutions offer redundant employees enhanced packages on the proviso that they sign settlement agreements.](#)

Independent legal advice

It's a legal requirement that the employee receives independent legal advice on the terms and effect of the settlement agreement and its effect on the employee's ability to pursue rights before an employment tribunal. The rationale for this is that if there was no such requirement it would be much easier for employers to put pressure on an employee to waive claims. The independent legal adviser must have a policy of insurance or indemnity covering the risk of a claim by the employee.



What are the other legal requirements for settlement agreements?

- The settlement agreement must be in writing.

- The settlement agreement must relate to particular complaints.
- The settlement agreement must state that the conditions for regulating such agreements under the relevant statutory provisions have been satisfied.

The Advisory, Conciliation and Arbitration Service ([Acas](#)) has produced a useful [guide](#) on settlement agreements, which also sets out the legal requirements.

Negotiation

It is important to assess the amount of money that the employee is receiving and whether a bigger

sum could be negotiated. This will involve considering any potential claims against the employer, the prospects of success and the value of such claims. A broad estimate of potential costs in pursuing any claims should also be taken into account. Usually each party must pay for their own costs in the employment tribunal. The time taken for a claim to be heard in the tribunal also needs to be taken into account. All these factors need to be weighed up against the offer - to determine if the offer is a reasonable one. The independent legal adviser should be able to advise on whether the deal is a good one.

[In some cases it may well be possible to negotiate a higher settlement sum.](#)

Tax

Generally, the first £30,000 of a termination payment is free of tax and national insurance contributions (NICs) with the balance subject to tax (but not employer or employee NICs). However, there are a number of exceptions. One of the exceptions is [a sum corresponding to earnings for notice is subject to tax and NIC deductions.](#)



Legal costs

Normally the employer contributes towards the employee's legal costs for obtaining legal advice on a settlement agreement. There is no legal requirement for the employer to contribute but it is common practice. A contribution could, for instance, be in the region of £300 to £750 plus VAT but there is no set fee.

References

A [reference](#) could be agreed and annexed to the settlement agreement. The employer would then normally be obliged to provide the agreed reference to any prospective employers. In many

sectors, including the financial sector, it is standard practice only to provide a factual reference with dates of employment and job title. A factual reference could nevertheless be annexed to the settlement agreement. In some cases it may also be sensible to agree an internal announcement.

Confidentiality

Usually employees will be required to agree to confidentiality obligations. A typical clause (sometimes known as a [gagging order](#)) could prevent the employee from disclosing the terms of the settlement agreement and the circumstances of their departure with third parties except for immediate family, professional advisers and as required by law. The employee might also be permitted to disclose their employment history and the reason for leaving to prospective employers and recruitment consultants.

Restrictive covenants

Any [restrictive covenants](#) relating to competitive activity in the employment contract could continue to apply, and could be referred to in the settlement agreement. An employee may be prohibited for a certain period of time from joining a competitor or setting up in competition. An employee may also be precluded for a certain period of time from soliciting clients, dealing with clients and poaching staff. The employer might agree to waive or change some of the restrictions as part of the settlement agreement.

Bonuses

If the employee is expecting to receive a [bonus](#) an appropriate clause ought to be included in the settlement agreement. Sometimes an employee may have received a previous bonus award which would vest at a later date. This could be in the form of cash, stock or options. Often when employees are made redundant they are treated as good leavers and awards continue to vest on the usual vesting dates or are accelerated. This is not always the case though.

There could be other issues to consider too, and each case will be different.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **settlement agreements** please do not hesitate to [contact](#) me on [0203 797 1264](tel:02037971264). I am able to advise at a face-to-face meeting in London or by telephone.