



Matt Gingell™

Making sense of employment law

Settlement agreements: A guide for employees

WHAT ARE SETTLEMENT AGREEMENTS?

Settlement agreements are agreements usually 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.

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?

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

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 where the employee has a clause in their contract allowing the employer to pay them off instead of them serving their notice (PILON) and the employer exercises the right. In such circumstances there will be tax and NICs to pay on the sum corresponding to earnings the employee would have received for notice.

It's expected from April 2018 that whether or not the employee has a contractual PILON clause in their contract which the employer exercises, a sum corresponding to earnings for notice will be subject to tax and NIC deductions. It's also expected from April 2019 that employer NICs will also be due on the balance of any non-contractual termination payments over £30,000.

A FEW OTHER THINGS TO CONSIDER

- Is a reference being provided? Often agreed references are annexed to the agreement
- Are there restrictive covenants, relating to competitive activity, in the employment contract which will continue to apply? Could they be waived as part of the settlement agreement?
- Do there need to be any provisions for bonuses including any deferred awards? 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.

**This guide is intended for *guidance* only and should not be relied upon for specific advice.
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For Employment Law Advice Contact