



A Step-by-Step Guide to Settlement Agreements For Employees

Here to Help



A settlement agreement (previously known as a compromise agreement) is a legally binding contract between an employer and employee that settles claims an employee might have against their employer.

This guide sets out the steps involved if you're an employee considering the offer of a settlement agreement and are looking for advice on how to navigate the process in England and Wales.

1

Understanding what a settlement agreement is

Purpose:

A settlement agreement is used to resolve employment disputes, often related to termination (though they can be used where an employee stays in employment), without having to issue a claim in an Employment Tribunal. Its purpose is to enable an employee to waive any claims they have against their employer.

Settlement Agreements are also often offered to employees where no dispute exists but an employer wishes to terminate an employee's employment.

Legality:

For an agreement to be legally binding, the agreement must meet specific legal requirements, including that the employee receives independent legal advice from a named and qualified adviser.

Contents:

Typically, there will be the payment of some form of compensation to the employee. However, contents can also include terms relating to the provision of a reference, confidentiality, and restrictions on what the employee can do next in terms of new employment. The agreement will always include a waiver of the employee's right to bring claims against the employer. That is the purpose of the agreement after all.

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Review the circumstances

There are many different reasons why an agreement might be offered, and everyone's circumstances are different. However, common reasons include redundancy, workplace disputes, or a mutual decision to part ways.

We can help by assessing your position and considering if you have any potential Employment Tribunal claims (e.g. unfair dismissal or discrimination).

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Seek independent legal advice

Requirement:

It is a legal requirement to receive independent legal advice for a settlement agreement to be valid and binding.

Choosing your Adviser:

The adviser usually needs to be a qualified lawyer but other authorised individuals can also advise on the terms of the agreement.

They must be independent to your employer and, if the adviser is a lawyer, have a practising certificate and insurance in relation to the advice that they provide.

Employer Contribution:

Usually, an employer will contribute to the cost of the legal advice you are required to take.

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Evaluate the offer

We can help you determine whether the offer is fair in the circumstances. Any offer may be made up of a tax-free payment, notice pay, holiday pay, and other benefits, or any combination of these.

Other terms which may be included in the agreement are an agreed reference, an agreed announcement, arrangements regarding the return of property, and a non-derogatory statements clause.

We will help you to understand the scope of claims you would be waiving by signing the agreement and the terms that you and your employer are agreeing to be bound by.

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Negotiating the terms

You may wish to negotiate other changes or additions to the agreement, such as better terms. This may include increasing the compensation amount or requesting a reference or an announcement.

We can advise on options and can undertake negotiations with your employer on your behalf.

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Consider the tax implications

Some financial payments are subject to deductions for tax and National Insurance contributions.

The first £30,000 of a compensation payment can usually be paid tax-free. However, tax is a complicated issue and in some cases, tax advice may be required from a specialist tax adviser.

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Signing the agreement

Before signing the agreement, you will need to ensure that you are happy to proceed, and if there have been any negotiations, you will need to review the final agreement with your legal adviser to ensure all negotiated terms are included.

Your adviser will also need to sign a certificate confirming that you have received independent legal advice from them.

Depending on the terms of your agreement, you may sometimes have to sign a second time. This is known as a reaffirmation and will require you to take a second lot of advice and sign a further waiver of any claims.

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Receive payment and other entitlements

Payment:

Once the agreement is signed, your employer will process any financial payments according to the timeline stated in the agreement.

Other Clauses:

Ensure your employer adheres to any other agreed-upon terms, such as providing a reference.

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Post-agreement considerations

Confidentiality:

It is important to adhere to any confidentiality clauses that may prevent you from discussing the terms of the agreement.

Restrictive Covenants:

You will need to be mindful of any post-termination restrictions which may continue to apply after your employment comes to an end, such as non-compete clauses, that may limit your future employment options.

Finality:

You should be aware that once the agreement is signed, this is final and you will have waived your right to pursue the claims set out in the agreement.

Final tips

- **Don't rush:**

Take your time to understand the agreement and consult with your legal adviser. The Acas Code of Practice on Settlement Agreements suggests a 10 day 'cooling off' period for employees to consider the written terms of any offer of settlement.

- **Try to be realistic:**

Consider the offer being made and the benefits of reaching a settlement, including the certainty and speed of a settlement versus any potential claims and the Employment Tribunal process and the likely costs of pursuing any claim.

- **Confidentiality:**

Keep any negotiations and details of the settlement confidential to avoid facing any legal consequences.

NOTE: This guide outlines the general process, but each situation is unique. It's essential to rely on professional advice tailored to your specific circumstances.



We know that receiving a Settlement Agreement can come out of the blue and that you may be feeling apprehensive about the future. We are here to guide you through the process, step-by-step.

Talk to Banner Jones - **We are ready to help you**



Katie Ash
DIRECTOR, SOLICITOR,
HEAD OF EMPLOYMENT LAW

EMPLOYMENT



Sara Patel
CHARTERED LEGAL EXECUTIVE

EMPLOYMENT

www.bannerjones.co.uk

0330 108 0366

Disclaimer

The information contained in this update does not constitute legal advice. It's our best assessment of the current position and is in places based on opinion. In order to bring you a comprehensive guide we have included some financial information, but this does not constitute financial advice. If you want specific advice, please contact us.