



Your Guide to Settlement Agreements

EMPLOYMENT SERVICES



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GUIDE TO SETTLEMENT AGREEMENTS

When the employment relationship breaks down the Employment Team at Geoffrey Leaver Solicitors is on hand to help and advise you during this difficult time.

What is a Settlement Agreement?

A Settlement Agreement is a legally binding document that concludes claims or potential claims that you may have, provided that certain conditions are satisfied. You will usually receive a lump sum termination or severance payment that is in effect compensation for your employment being terminated. In return you agree not to bring legal proceedings against your employer.

Settlement Agreements are common and often used in redundancy situations where the employer is making an enhanced redundancy payment in return for the guarantee that you will not bring any claims against them.

What Conditions have to be met for the agreement to be valid?

You will only validly contract out of your statutory employment rights if the agreement satisfies 6 key conditions:

1. The agreement must be in writing;
2. The agreement must identify the particular claims you are giving up;
3. You must have received advice from a relevant independent adviser such as a solicitor as to the terms and effect of the agreement and, in particular, its effect on your ability to pursue your rights before an Employment Tribunal;
4. The solicitor must have insurance (which we have) covering the risk of a claim by you in respect of loss arising in consequence of the advice;
5. The agreement must identify the solicitor;
6. The agreement must include a specific form of words to state that the conditions regulating Settlement Agreements under the relevant legislation are satisfied.

What rights can be waived under a Settlement Agreement?

Virtually all statutory rights and all contractual claims can be validly waived by a Settlement Agreement.

The most common include:

- Unfair dismissal (including constructive dismissal)
- Wrongful dismissal
- Redundancy payments
- Claims for breach of contract
- Discrimination claims
- Unlawful deduction of wages

What does without prejudice or subject to s.111A mean?

Any offer from the employer will usually be stated to be without prejudice so as to prevent the terms of the offer being used as evidence in later proceedings in the event that you choose not to accept the agreement. It may also state it is subject to section 111A of the Employment Rights Act 1996 which provides similar protection but only in respect of some potential claims.

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What can be included in a Settlement Agreement?

A Settlement Agreement can include:

- Payment in lieu of notice and accrued holiday pay
- Payment of compensation
- Continuation of benefits
- An agreed reference
- Provision of outplacement support
- Confidentiality
- Return of company property
- Restrictive covenants
- Contribution towards legal costs

An agreed reference may be negotiated as part of the settlement terms. This can often be added as an appendix to the agreement.

A standard confidentiality clause in a Settlement Agreement will usually state that you agree to keep confidential the existence or terms of the Agreement and will not disclose those terms to any person except your advisers, relevant tax authorities or as required by law. Confidentiality issues will normally extend to trade secrets and confidential information. We are often able to negotiate with the employer that they should be subject to reciprocal obligations.

What is the tax position?

The starting point is that all payments relating to employment are taxable and subject to National Insurance Contributions as employment income under Section 6 of the Income Tax (Earnings and Pensions) Act 2003. Typical examples of fully taxable employment income are:

- Salary payments
- Contractual bonuses and commission payments
- Payments in lieu of notice
- Garden leave payments
- Consideration for restrictive covenants

However, compensation for unfair dismissal, discrimination, redundancy or other statutory claims are viewed as damages. Genuine compensatory payments paid on termination benefit from an exemption that the first £30,000 of such a payment is not chargeable to Income Tax or National Insurance. Income Tax will be payable on the balance (if any) over £30,000.

Payments in lieu of notice are taxable and subject to tax and national insurance.

Why is there a tax indemnity?

Although there is a tax exemption it is common to include an indemnity. If HM Revenue & Customs decide any Income Tax or National Insurance is payable, they will typically try to recover this from the employer. The indemnity will mean that if this happens, you are responsible to your employer for any such payment.

Who pays for my legal advice?

There is no legal requirement for the employer to pay your legal fees in taking advice on a Settlement Agreement and therefore you are primarily liable for all fees. However, in practice employers will normally contribute towards some or all of the legal costs. It is often possible for us to negotiate an increase in the contribution so that there is no cost to you at all.

We will always ensure you authorise additional costs before they are incurred and keep you informed if costs are likely to exceed the estimate we have given.

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What information will I need to bring to the meeting?

You will be asked to give background information in relation to your employment and what has happened to lead to the agreement being offered to you. You should bring all papers relevant to the agreement together with your contract of employment and handbook if you have them.

Other relevant information includes:

- Date of commencement of employment and your age;
- Remuneration package – salary, bonus, commission, company car, pension, healthcare, share options or other benefits;
- Notice period and any restrictive covenants;
- Any disciplinary action or other process followed by the Employer. It can be useful to bring a chronology of events which will save time and allow the solicitor to form a view more quickly, thus reducing costs.

What will happen at the meeting?

The solicitor will normally:

- Identify the costs contribution from the employer and agree the costs position with you.
- Discuss with you the legal formalities required for a Settlement Agreement to be valid and discuss your relevant employment background which has resulted in the proposed Settlement Agreement.
- Consider your entitlements under your contract of employment and any statutory rights that apply upon termination; the merits of your potential employment claims; the value attaching to each and the likely cost of legal proceedings together with an assessment of your future financial expectations in light of any other employment you may obtain.
- Examine the terms proposed by the Employer and evaluate the merits of the Employer's offer in conjunction with the information regarding your potential employment claims and future financial expectations.
- Advise whether the Settlement Agreement offered represents a good deal.
- Explain the meaning of the terms and conditions of the Agreement by running through it with you.
- In circumstances where the settlement offer is less than what you are likely to recover from an Employment Tribunal claim, you may be advised to re-negotiate terms of settlement subject to commercial considerations. If you want changes made then we can negotiate with your employer on your behalf.
- If all is in order the Agreement can be signed in the meeting.

What happens once the agreement is signed?

We can send the signed agreement to your employer on your behalf.

Once the agreement has been signed by all parties, it becomes a legally binding document.

What happens next?

Your employment will come to an end and you will receive the compensation payment in accordance with the terms of the agreement.

Helping you look to the future

We appreciate that this can be a stressful and difficult time. We can put you in touch with Outplacement Specialists who can provide an initial free meeting to discuss your career options and job search process.

Also, you may wish to obtain financial advice regarding the lump sum payment you have received and we can provide you with details of independent financial advisers.

The information in this Guide is for general purposes only and does not constitute legal advice. Appropriate advice should be sought about your specific circumstances before any action is taken.