

Employees guide to Settlement Agreements – everything you need to know



This Legal Guide explains what a settlement agreement is, the circumstances in which you might need to talk about one with your employer, what they cover and what the legal implications are both now and in the future.

Generally, they are used to solve problems between you and your employer and often to avoid the stress, cost and hassle of an Employment Tribunal but you are under absolutely no obligation to enter into one. They are entirely voluntary.

But crucially, if you think you may have an Employment Tribunal case and don't want to enter into a settlement agreement, it is important to act quickly. There is a three month time limit for bringing most Employment Tribunal claims so taking legal advice at the earliest opportunity is key.

What is a Settlement Agreement?

A Settlement Agreement is a legally binding agreement, usually between an employee and an employer, when the parties want to set out the terms and conditions reached when a contract of employment is to be ended or a dispute to be resolved (when the employment contract is not being terminated).

They can be used in a number of different circumstances including redundancy, disciplinary proceedings, dismissal, and seeking to settle an Employment Tribunal claim.

What is a dismissal?

When an employer ends an employee's employment this is referred to as a 'dismissal'. This can be done summarily or with notice depending on the seriousness of the matter. You 'fairly' dismissed if it's based on your own misconduct or lack of capability. Employees can have claims in the Employment Tribunal if the manner of their dismissal makes it 'unfair'.

What is redundancy?

Redundancies are a form of dismissal and can happen when an employee's job no longer exists. This may be due to an employer needing to reduce their workforce, close the business or if certain work is no longer needed. Sometimes staff are invited to apply for voluntary redundancy if the employer needs to reduce the number of its staff.

Why are you being asked to sign a Settlement Agreement?

At the point a settlement agreement is offered, the employer has usually decided that it wants to dismiss the employee in question or wants to settle a claim being brought by an employee following a dismissal. In short, the employer is offering a sum of money to the employee to drop all claims they may have against the employer. It acts as a clean break and draws a line under the employment relationship.

The purpose of the Agreement is to provide certainty for both parties. The settlement agreement will stand in the place of the previous contracts of employment/staff policy documents and govern the relationship between employer and employee going forward.

What are the implications of signing a Settlement Agreement?

The most important thing to understand is that in signing the agreement and accepting the settlement terms, you are waiving the right to bring a future claim against your employer in a Court or Employment Tribunal

It's a legal requirement that you receive independent advice from someone professionally qualified, usually a Solicitor or Trade Union advisor. In most cases the employer will pay or contribute towards the cost of this.

If you are owed any wages, benefits, redundancy payments, bonuses or accrued but untaken holiday pay, it all needs to be dealt with in the agreement.

Are there any exceptions to this?

Yes – but only three specific instances:

- If your employer breaches the agreement, for example not paying you the agreed compensation, you could make a breach of contract claim;
- Claims in respect of latent personal injury (where the employee was not aware that they had a claim at the time of signing the settlement agreement) are usually still allowed. The symptoms of these injuries usually only appear after the settlement agreement has been signed. Some of these may be excluded - for example when the reason for termination was due to sickness absence for stress or depression;
- In respect of accrued pension rights.

Will you have to pay tax on the compensation payment?

It is complicated and depends on how the payment is made up but generally, there is a clear divide.

Tax free:

- The first £30,000 of a payment made as compensation for loss of employment;

Taxable:

- Payments in lieu of notice;
- Benefits such as continued use of a mobile phone, company car or healthcare until the notice period is over;
- The balance of payments above £30,000 although these are treated as damages and not pay and are thus not subject to National Insurance;
- Wages and holiday pay.

However, it's important to remember that even if the payment is being stated as made to you tax free, the agreement normally makes it clear that if the Inland Revenue says tax or national insurance is payable, you will be responsible for paying it, not the employer.

Can you tell anyone about the Settlement Agreement?

Confidentiality clauses in settlement agreements usually require the employee to keep the terms and circumstances surrounding the termination of employment confidential except to their spouse, immediate family, professional advisors and the authorities on the strict condition that all those people keep the matter confidential. If a settlement agreement is offered to you it is best to keep it confidential until you have received legal advice about the confidentiality clauses.

Will the employer give you a good reference?

There is generally no legal obligation on an employer to provide a reference but it is possible to incorporate a reference into the agreement. Most references contain the job role and the period of service only.

Who pays for your legal advice?

Generally, your employer will make a contribution to the cost of your legal advice if they are offering you a settlement agreement. If the situation is simple, this contribution may cover the whole cost. However, if the agreement is attempting to settle a complex claim, you may have to pay an amount to your lawyer over and above the contribution.

How can Wards Solicitors help?

One of our experienced employment solicitors will consider the terms and conditions of your proposed Agreement and provide you with advice.

The documents we will need from you include the following:

- The draft of the proposed Settlement Agreement;
- Any correspondence, emails, notes explaining the circumstances leading to the proposed Settlement Agreement, such as a disciplinary or redundancy process;
- Your contract of employment and any variations during the years of your employment;
- Details of any benefits in kind, such as pension and life insurance schemes, healthcare and company car provision and bonus schemes whether discretionary or contractual;
- Recent payslips, and any annual statements setting out the value of benefits in kind;
- The contact details of your employer, including an email address;
- Your own contact details including private email address (bear in mind if you are still at work your employer can usually access your emails even though you may regard them as private)

Once the wording of your agreement is agreed and accepted, arrangements will be made for it to be signed by you and by your solicitor then forwarded to your employer for their signature to complete the agreement and deal with any final arrangements for your departure, the return of any company property and any announcements to work colleagues.

This guide is not intended to comprise legal advice and discusses these types of agreements in general terms. It is a statutory requirement to obtain legal advice before signing the settlement agreement.

If you would like further information about Settlement Agreements please contact one of our employment team on **0117 9292811**

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