

SETTLEMENT AGREEMENTS

In some instances an employer and employee may agree to go their separate ways. This generally happens when the relationship has broken down and it is agreed the employee will leave and find alternative employment. In some circumstances, an employer may be concerned about future claims and offer the employee a settlement agreement to avoid this scenario.

What is a settlement agreement?

A settlement agreement is a legally-binding agreement between an employer and an employee. Generally, the employee accepts a sum of money in return for agreeing not to commence proceedings against the employer for any employment-related issue.

To protect the employer, not the employee, such agreements are not enforceable unless they meet certain criteria. Part of that is ensuring the employee has received independent legal advice before it is signed. This is required to ensure the employee fully understands the terms and conditions of the agreement and the effect it may have on them.

For more information on settlement agreements see [here](#) on the Acas website.

What is required in a settlement agreement?

There are very specific terms which must be contained in a settlement agreement before it can be enforceable in law. Generally these requirements are that:

- the agreement must be in writing.
- the agreement must relate to a particular complaint or proceedings.

- the employee must have received advice from a relevant independent adviser, such as a lawyer or a certified and authorised member of a trade union.
- the independent adviser must have a current contract of insurance or professional indemnity covering the risk of a claim by the employee in respect of loss arising from the advice.
- the agreement must identify the adviser.
- the agreement must state that the applicable statutory conditions regulating the settlement agreement have been met.

When negotiating a settlement agreement you should be given a reasonable amount of time to consider the proposed conditions of the agreement. The Acas Code of Practice specifies a minimum of ten calendar days unless the parties agree otherwise.

Settlement agreements are voluntary and parties do not have to agree to them or enter into discussion about them. There can be a process of negotiation during which both sides make proposals and counter proposals until an agreement is reached or both parties decide no agreement can be reached.

If a settlement agreement is not reached, resolution may be pursued through a performance management, disciplinary or grievance process or mediation, whichever is the most appropriate. It is important that if this is the case, your employer follows a fair process and uses the Acas Code of Practice on Discipline and Grievance procedures.

The role of your lawyer

The responsibility of your lawyer is to explain to you the terms of agreement, how it will work and what the effect on you will be. It is a requirement that

your lawyer is suitably insured to act in this way and usually they will sign to say that relevant advice has been provided.

It is not technically part of the lawyer's remit to advise whether the terms of the agreement are good for you i.e. it is not their role to give advice on the merits of any case you may have against your employer. However, it is likely that advising you will cover part of this, although this advice may have to be paid for separately by you.

Does the employer have to pay the employee's legal costs?

It is usual for your employer to pay for you to take independent legal advice on the terms of the settlement agreement. The purpose of the advice is to explain the nature of the agreement and to ensure you understand what is being signed and the effect it will have on your circumstances. Amounts can vary but it is usual for the sum to be in the region of £250-£400 plus VAT.

This sum is not to cover any advice you request on the merits of any claim. The costs of that advice will have to be met by you directly. If you would like to see a model settlement agreement from Acas click [here](#).

When is a settlement agreement used?

We are often asked about settlement agreements when the employer/employee relationship appears to have broken down. It is often a way for an employer to agree an employee leaves their employment (often in return for a payment/reference) and an agreement not to take any action for compensation.

Generally a settlement agreement is only used/ offered when an employer feels it has something to gain. This could be saving time in a redundancy process or perhaps resolving a problem/issue with an employee. The decision to adopt this process is often a mix of commercial decision making and expediency.

Sometimes an employer will use this settlement agreement as part of a redundancy process to facilitate a quicker outcome. As such this can be used where the employer does not want to engage in consultation and wishes to deal with small scale, one-off redundancies swiftly.

Tax on Settlements

From 6 April 2018 payments in lieu of notice (whether contractual or not) are be taxed as standard but settlement agreements can include several different payments – some of which may be taxable automatically, some of which are tax free and others which may be taxable but can be offset against the £30k limit. For example, if you are paid any unpaid wages, holiday pay or bonuses within a settlement agreement these will be considered earnings and tax and national insurance will be payable. You will not pay tax on any legal costs related to a settlement or any termination payment related to an injury, disability, or illness. There is potential that tax is not to be paid on the first combined £30,000 of statutory redundancy payments, enhanced redundancy payments and any non-cash settlements made by your employer – but this is a complex area, and specific tax advice should be sought. For more information regarding this please see the detailed guidance here: [Tax on termination payments: What you pay tax and National Insurance on - GOV.UK](#).

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