



BRIEFING Settlement Agreements

What is a settlement agreement?

A legally binding contract (formerly known as a compromise agreement) between an employer and an employee (or former employee) under which the employee agrees to settle their potential claims against the employer. The employee usually receives a payment from the employer in return for the binding waiver of their claims.

When might a settlement agreement be used?

This will depend on the specific circumstances surrounding each case but settlement agreements are most commonly used to bring an employment relationship to an end in a mutually agreed way. They can also be used to resolve a workplace dispute which does not result in an end to employment, for example a dispute over holiday pay.

Why won't an ordinary contract do?

Employees can have claims against their employer under statute, under their contract of employment, and under other common law rights such as the law on negligence. Contractual and other common law claims can be settled by entering into a basic contractual waiver. However, in order to be legally binding an agreement to settle *statutory* employment claims will be void unless it is agreed via Acas, or recorded in a settlement agreement that complies with certain more stringent legal requirements (see below).

What is the effect of entering into a settlement agreement?

An employee who enters into a valid settlement agreement loses the right to bring a claim for a breach of any of the rights identified in the agreement (subject to some very limited exceptions for example in relation to accrued pension rights which cannot be waived).

Some examples of the rights which might be waived by a settlement agreement are: rights to claim for unfair dismissal; discrimination; unlawful deductions from wages; and breaches of maternity/paternity rights.

If you are interested in advice or training then please contact the firm.

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What are the legal requirements for a binding settlement agreement?

The settlement agreement must be in writing, must specify the particular complaint being settled, and state that the legal conditions governing settlement agreements under the relevant statutory provisions have been satisfied. The employee must have received legal advice from an independent, qualified and insured adviser, commonly a solicitor, on the terms and effect of the agreement and its effect on their ability to pursue any rights before an employment tribunal. The agreement must identify this adviser.

Why is a solicitor required?

The solicitor's role is to provide the employee with independent advice about the potential claims they are giving up. The solicitor will explain the terms and outline the obligations these put on both the employer and the employee. Because the employer is getting the benefit of the binding waiver of claims, and it is compulsory for the employee to take advice, the employer will usually provide a contribution to the employee's legal fees as part of the settlement agreement.

What happens if a settlement agreement is not reached?

A settlement agreement is entirely voluntary so parties can negotiate the terms of the agreement or not enter into an agreement at all if they do not wish to. Where an agreement is not reached, none of the potential terms of the agreement will be binding. The employee may prefer to bring an employment tribunal claim against their employer, rather than sign the agreement, after hearing their adviser's advice. If an employee takes advice and then decides not to sign up to the terms any fees for legal advice incurred by the employee are unlikely to be met by the employer.

What happens if a settlement agreement is not honoured?

If any provision of the settlement agreement is not honoured by either party, for example the employer does not pay the termination payment or the employee breaches a confidentiality clause, then the usual remedy is to claim breach of contract and damages.

Is tax payable on a sum received under a settlement agreement?

The employee may be entitled to receive up to £30,000 free of income tax and national insurance contributions if any payment under the agreement amounts to damages or compensation for loss of employment. Payments for work done, for agreeing to enter into new post termination restrictions, or paid pursuant to a clause in the employment contract (such as a payment in lieu of notice clause) will be subject to deductions for income tax and national insurance contributions.

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This briefing contains a summary of various aspects of employment law. It is not intended to provide legal advice for specific cases. No liability is accepted for reliance on any of the information in this briefing. If advice is required please contact the firm.

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