

Settlement Agreements

What do employees need to know?



If you've left your employment, are planning to leave or you've been made redundant from your role, you may have been offered a settlement agreement.

In this factsheet we look at what this means and what you, as the employee, need to be aware of before deciding whether to accept it.

What is a settlement agreement?

A settlement agreement (formally called a compromise agreement) is a legally-binding document that sets out the terms of a settlement between you and your employer.

By signing a settlement agreement, you're agreeing to certain conditions, such as not pursuing a tribunal or court claim against your employer in return for a financial settlement.

Whilst they're most commonly used in redundancy situations, settlement agreements can also be used as a means of handling an amicable exit strategy or settling a grievance, such as long-term sickness, misconduct or poor performance.

Why use a settlement agreement?

The main benefit to using a settlement agreement is to provide certainty to both parties and a clean, amicable break with your employer.

As an employee, you'll typically receive a tax-efficient settlement under the terms of the agreement. The clauses within the agreement will also provide you with additional protection, for example, in relation to your post-termination obligations, confidentiality and potentially getting a more favourable reference agreed.

In turn, your employer will safeguard themselves against possible future claims in an employment tribunal.

Do I need to see an employment solicitor?

Quite simply, yes. The law states that a settlement agreement isn't legally binding unless an independent solicitor or adviser has advised you about the terms of the agreement.

If you're offered a settlement agreement, it goes without saying that it's important you understand what that means. A settlement agreement is a complex legal document with a host of implications for employees. Your solicitor will make sure you understand what you're signing and may be able to help you agree more favourable terms.

Who pays your fees?

In many cases, your employer will pay all or some of your legal fees for advice about a settlement agreement. If they don't, we offer fixed fee packages, dependent upon your needs. You should speak to a solicitor for further information.

What information will my settlement agreement contain?

Your settlement agreement is likely to contain a number of clauses, including:

Payment breakdown

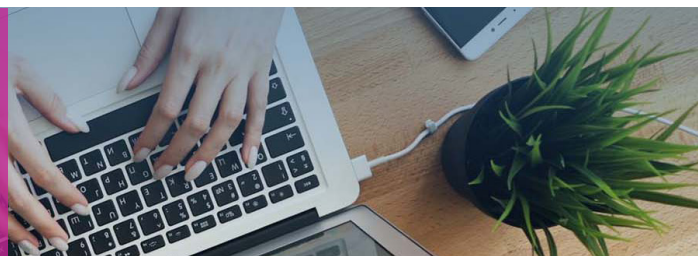
The settlement agreement will provide a full compensation breakdown and details of how the payment will be treated for tax.

Broadly speaking, payments of up to £30,000 can be paid free of tax under existing tax rules. However normal contractual payments, such as pay in lieu of notice (PILON) or accrued holiday, are taxed normally as income. Most agreements contain a clause stating that tax payable on PILON or other contractual benefits is the responsibility of the employee.

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Settlement of claims

Settlement agreements usually include a non-exhaustive list of claims that you could bring in a court or employment tribunal. However, by signing the agreement you waive your right to bring a future claim against your employer.

Most agreements state that if you do bring a claim after signing the document, you will have to repay all monies paid to you under the agreement.

Confidentiality

Many agreements have a confidentiality clause which stops you discussing the terms of your agreement with anybody other than your immediate family, solicitor and the Inland Revenue.

If you do, you may be in breach of the agreement and your employer may seek to recover part, all or damages in excess of the termination payment from you.

Warranties

This is where the employee warrants (or guarantees) that they have not done anything, not already disclosed to the employer, which would constitute gross misconduct.

It also means that the employer will no longer be obliged to pay you if they later discover that you're guilty of gross misconduct.

References

It's a good idea to agree the wording and format of any reference that your employer will pass to prospective employers.

We can try and agree a clause which requires the employer to use this reference or one which is no less favourable, even in respect of oral and/or pro forma enquiries.

What will happen if I don't sign the agreement?

Your solicitor will be able to advise you on the consequences of not signing the settlement agreement. One of these may be that your employer terminates your contract. Your employer can also refuse to cover your legal costs if you don't sign the agreement. This means that you'll become responsible for all of our legal fees.

If you're choosing not to sign the agreement so that you can pursue a claim against your employer, your solicitor will be able to advise you of the process.

Your decision

Of course, it's not up to us to tell you whether – or not – to sign your settlement agreement. What we can do is review the package you've been offered, highlight any potential issues and, if we can, negotiate a better package for you and your circumstances.

Further information

If you need advice regarding a settlement agreement or any other employment matter, contact our specialist team on **0117 325 2929** or visit **barcankirby.co.uk**.

BEDMINSTER 25 North St, Bristol BS3 1EN
BISHOPSTON 60 Gloucester Rd, Bristol BS7 8BH
BRISTOL CITY CENTRE Prince House, Bristol BS1 4PS

KINGSWOOD 111/117 Regent St, Bristol BS15 8LJ
THORNBURY 36 High St, Thornbury BS35 2AJ

Barcan+Kirby

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📞 0117 325 2929 ✉ hello@barcankirby.co.uk 🌐 barcankirby.co.uk