



Employment Services – Settlement Agreements

The law in England and Wales protects most employees from being unfairly dismissed or made redundant and contains complex provisions and procedures regarding notice periods, payments in lieu of notice, redundancy consultations and/or compensation etc. To avoid breaching this law an employer may enter into a Settlement Agreement with the relevant employee if the employer wishes to:

- dismiss without notice or with shorter notice than the employee's contract requires; or
- terminate a fixed term contract early; or
- avoid complex redundancy consultations with one or more employees; and
- avoid any risk of the relevant employee seeking redress via the Employment Tribunal or the courts.

What is a Settlement Agreement?

Settlement Agreements are legally binding contracts which are used to terminate the employment relationship on agreed terms. Their main feature is that they waive the employee's right to make a claim to an Employment Tribunal or Court on the matters that are specifically covered in the agreement. They usually include some form of payment to the employee by the Employer and may also include an agreed form of Employer's reference.

Must a Settlement Agreement be in writing, and what else will it contain?

Whilst the initial proposal to offer a Settlement Agreement may be oral, one of the requirements for a Settlement Agreement to become legally binding is that it must be put into writing. It is essential for the employee to have legal advice before entering into the Agreement, and for the adviser to sign a certificate to that effect in the Agreement, to ensure that it will be legally binding on the employee and cannot be overturned by the Tribunal or the Court.

Where a proposed Settlement Agreement based on the termination of employment is accepted, the employee's employment can be terminated from the date specified in the formal Agreement. The details of any payments due to the employee and their timing should be included in the Agreement.

What terms apply to any payment and benefits under a Settlement Agreement?

Any statutory redundancy payment and ex gratia payment up to £30,000.00 can be paid free of tax. Any amount over and above that is subject to tax and national insurance.

Can you act for me if you already act for my Employer?

We will need to check at the outset the identity of your employer to ensure that we do not already represent them. If we do act for them, then we cannot represent you as there would be a conflict of interest. In cases where an Employer is looking to make a group of employees redundant and to reach Settlement Agreements with them all the Employer may recommend to them a specific lawyer or firm of solicitors with the appropriate expertise in Employment Law, and may have agreed a fee arrangement with that firm (see below). This is perfectly acceptable, provided the recommended firm is independent and does not act for the Employer. However each employee is free to consult their own solicitor.

How will my legal costs be paid?

The Employer will usually contribute an agreed amount towards the employee's legal fees for obtaining advice on the terms of the Agreement and for the employee's adviser to sign the adviser's certificate. If you require any further advice beyond the initial meeting with us to discuss the terms of the Agreement or if you wish to instruct us to negotiate the severance package, the cost of this will exceed the contribution from the employer. In this case, we will provide you with an estimate of our charges.

At the conclusion of the matter, we will raise an invoice addressed to you but expressed to be payable by the Employer to the extent that the Employer is making a contribution. However at all times the liability for payment of our invoice remains with you, as our client.

The Process

If you instruct us to act for you in a Settlement Agreement with your Employer we will take the following steps on your behalf:

- We will confirm our legal charges for the services you wish us to provide subject to the Employer's agreed contribution to your costs;
- We will advise you on the terms and implications of signing the Settlement Agreement;
- If you wish us to do so we will negotiate any new or additional terms with your Employer;
- We will arrange for you to sign the Agreement and we will sign the advisor's certificate in that document, to confirm that you have received proper advice before signing it.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.