

Settlement agreements between employer and employee

Settlement agreements, formerly known as compromise agreements, are usually used as a way of ending an employment contract (although they can also be used to settle other employment issues). They are usually, but not always, instigated by the employer. They can be a quick, efficient and relatively stress free way of ending an employment relationship rather than taking a claim to a tribunal.

They essentially involve the employer making a payment to the employee to settle an issue between them and possibly providing a reference, in return for the employee waiving his or her rights to bring the matter to a court or tribunal at a later date.

A settlement agreement must be in accordance with the Employment Rights Act 1996 which means that it must:

- Be in writing although it will normally follow a period of negotiation.
- Relate to a particular employment issue which must be specified in the agreement.
- Contain details of an independent adviser for the employee and before the date of the agreement that advisor must have advised the employee on the terms and effect of the agreement and its effect on the employee's ability to pursue the matter in a court or tribunal. The advisor must hold valid professional indemnity insurance.
- Contain a statement that the statutory requirements have been met.

by section 11a Employment Relations Act of 1996 negotiations towards ending the employment are confidential so that if talks fail, these negotiations can generally be used in evidence in later proceedings in a court or tribunal. There are exceptions for example in the cases of whistleblowing, union membership or asserting a statutory right, also where the case is other than unfair dismissal and where there has been improper conduct. The law around this provision is detailed and complex and professional advice should be sought if this point is at issue.

Other points typically covered in the agreements include:

- The termination date and details of any contractual (and therefore taxable) payments due up to that date.
- The payment offered including details of which sums are likely to be free of tax.
- Any agreement relating to employers and employee's property and its return or safeguarding.
- Confidentiality clauses binding either or both employer and employee.
- Warrantees by the employee. If these are untrue the employer may be able to recover any sums paid under the agreement.

As with any agreement parties should check the wording carefully before signing and take such advice as they need. Also, bear in mind that the employer should give the employee reasonable time to consider the terms offered. It is also advisable for both employer and employee to consult the Acas Code of Conduct relating to settlement agreements before finalising.

For further information please visit the Acas website www.acas.org.uk alternatively feel free to contact our office and ask to speak to either Alison Fielden or Richard Watson.

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