

Settlement Agreements

13 February 2024

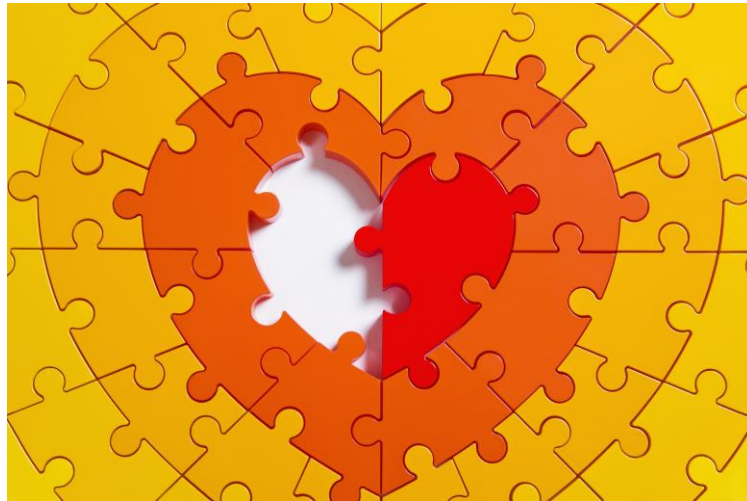
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Today's webinar

Breaking up is hard to do





What protection does a
Settlement Agreement
offer?

Settlement Agreement basics

- Employees may have claims against their employer under their contract, statute or common law rights.
- Pure contractual claims can be settled in a binding agreement in which the employee receives valuable consideration for the waiver of their claims.
- To settle statutory claims (such as unfair dismissal or discrimination), the parties need to either agree a settlement agreement or a COT3 agreement (via ACAS).

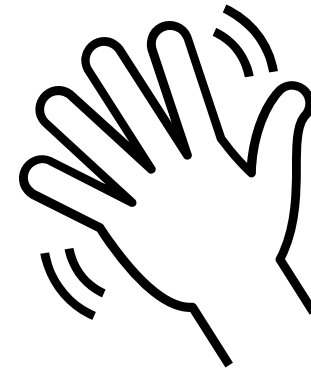
Settlement Agreement basics


For a Settlement Agreement to be valid, certain conditions must be met:

- In writing
- Must relate to a "particular complaint" or "particular proceedings"
- Advice from an independent legal adviser
- Insurance for the advice and identify the adviser
- Must state conditions for a valid settlement agreement have been satisfied

Settlement Agreement basics

- Not all claims can be waived under a settlement agreement
- The following claims cannot be waived:
 - accrued pension rights
 - certain personal injury claims
 - some statutory claims





The meaning of 'Without Prejudice' and 'Protected Conversation'

Without Prejudice/Protected Conversation

- Discussion with the employee
- Initial conversation should be without prejudice / a protected conversation
- What is 'without prejudice'?
 - Is there an outstanding dispute?
- The risk of claims for constructive or wrongful dismissal

Without Prejudice/Protected Conversation

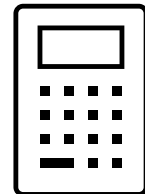
- An alternative approach – having a protected conversation under s 111A Employment Rights Act 1996:
- No need for an existing dispute
- Only applies to unfair dismissal claims
- Limiting elements on conducting these discussions
- Without prejudice discussions are therefore still the preferred route



Preliminary considerations

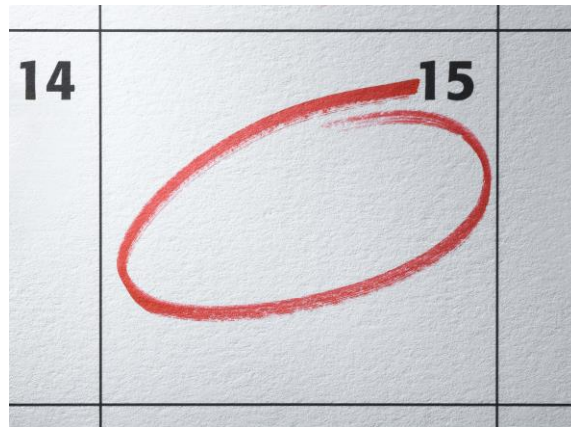
Preliminary considerations

- Payments
 - Calculate what the employee is entitled to under their contract of employment
 - Calculate the amount of accrued holiday
 - Consider whether any bonus payments are due
 - Calculate any statutory or enhanced redundancy pay due
 - Decide on the amount of an ex gratia payment



Preliminary considerations

- Termination date and deadline for acceptance
 - Consider setting a deadline for acceptance
 - Consider when the employee's employment will end and whether you wish to rely on the notice period or garden leave
 - Do you need the employee to do any work or hand over before they leave?



Preliminary considerations

- Plan the practical arrangements for the meeting
- Start with an open conversation telling the employee that their employment **may** be terminated
- Move to 'without prejudice conversation' and confirm the alternative option of a settlement agreement
- Consider what will happen to the employee immediately after the meeting – work/access to systems





Key clauses

Key clauses

- Tax
- Termination / compensation payment of up to £30,000 is usually tax free
- Payments subject to usual tax and NI contributions:
 - Normal pay + benefits
 - PILON
 - Holiday
 - Confidential information payment
- Tax Indemnity

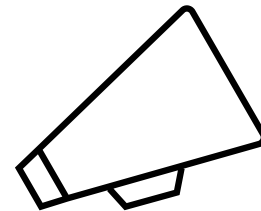
Key clauses

- Legal fees
- Return of property and information - consider what company property the employee has and how this should be returned, particularly important for company car
- Reference
- Waiver of claims



Key clauses

- Employee warranties - do you want to ask the employee to confirm they have not accepted other employment?
- Confirmation that the employee has not committed any repudiatory breach of their employment contract
- Confidentiality – confidential information and agreement
- Non-derogatory comments
- Announcements
- Pensions



What if agreement is not reached?

- Consider increasing the amount offered
- Return to open conversations



Thank you for listening

