



## **Settlement Agreement Guide**

So you have been offered a settlement agreement – you now need to take advice on what this document means.

This guide sets out the basis points that you need to be aware of before signing the agreement that has been offered to you.

### **What is a settlement agreement?**

Essentially, a settlement agreement is a legally binding agreement between you and your employer in which you agree to accept a financial payment for the termination of your employment in return for you waiving your rights to bring a claim against your employer.

They used to be called compromise agreements.

### **What can I expect to see in the agreement?**

It will usually set out the full terms that you and your employer have agreed, and this may cover points such as:

- What money they are going to offer you to waive your rights, which may also include any redundancy entitlement (if this applies)
- What holiday pay is due to you
- Whether you will be paid in lieu of your notice period
- Whether a bonus payment is due to you
- Any pension contributions that may be paid
- An agreed reference
- Any internal announcement that will be made to your colleagues

### **Do I need to see a lawyer?**

Yes, a settlement agreement is a legally binding contract which is recognised by law. To be a valid agreement, you have to take advice from an independent lawyer.

Your employer will usually contribute towards the fees you will incur in going to see a lawyer – we will endeavour to ensure that you do not have to pay anything above your employer's contribution.

### **Why should I sign an agreement?**

There will be a whole range of reasons leading up to you being offered a settlement agreement. What a settlement agreement gives both sides is certainty – it gives you as the employee the guarantee of a financial payment, some or all of which may be tax free. It gives your employer the security that they will not be sued by you.

It can avoid long and drawn out processes such as disciplinary and performance procedures which can often be stressful and upsetting.

We can advise you as to whether what has been offered is adequate compensation for the situation you are in and if we need to negotiate any more with your employer.

### **Will I get a reference?**

This is sometimes offered as part of the overall package which will help you when you start looking for a new job.

### **Why is it marked 'Without Prejudice and Subject to Contract'?**

You might see this on the agreement and/or any covering letter that came with the agreement. It is entirely normal.

Without Prejudice basically means that anything to do with the settlement agreement cannot be referred to in any tribunal or court proceedings should a deal not be reached. It just helps both sides understand that they have a degree of freedom when speaking to each other to reach a final arrangement that both sides are happy with.

Any agreement you reach will always be subject to final wording being agreed by both you and your employer – this is why you will see the words 'subject to contract' included on the agreement.

### **What will the settlement agreement look like?**

You will usually find sections of the agreement that will cover the following points:

Why you are leaving: the agreement may include an overall summary of why you are leaving before it then sets out the details of the agreed terms.

When you are leaving: it will set out the date that your employment will come to an end. This could be in a short space of time or it could be a few months later. It will clarify whether you are being paid in lieu of your notice period or if you are expected to work your notice period. Do not worry if the suggested end date has passed – this often happens but we can work with you quickly to advise you on the agreement.

How much you will get: the agreement will separate out the financial package that you have agreed to. It may comprise of a sum for your notice pay, payment for any accrued but untaken holiday and what additional money they are offering you as your 'carrot' for signing. You may see this additional money referred to as an 'ex gratia sum' or 'compensation for loss of your employment'

This additional sum is most likely to be tax free up to £30,000 which is usually going to be the most important part of the package for you.

Tax: you might see a clause that places the responsibility on you for any additional tax that HMRC think is due. We will advise you on whether you face any tax risk before you sign the agreement. This type of clause is very normal.

Any money offered to you in lieu of your notice period will be taxed at your normal tax rate. Any other benefits: the agreement will set out if you are being offered any other benefits. These may things such as health cover, bonus or commission that is due, outplacement support, stocks and shares, continued use of a car. This will of course depend on what you are entitled to under your contract and we will check this with you.

Settling your claims: there will be wording that makes it clear to your employer that you are settling all your claims against them and will not sue them. Your employer will want this assurance from you as this is one of the key reasons why they will be wanting you to sign the settlement agreement. You may be surprised at the long list of claims that are set out in the agreement which are being settled - we will go through these with you.

There are three types of claim that the agreement cannot settle – any claim to sue on the settlement agreement should your employer fail to pay (this is highly unlikely), any claim for personal injury that you were not aware of at the time your employment ended and any claim relating to your pension rights.

Promises: you might see something in the agreement referred to as ‘warranties’. What this means is that you will be asked to make statements that certain things are true such as that you have had independent advice, that you have not acted in a way that might be looked on as gross misconduct and that you are not aware of any personal injury issue.

Sometimes you may be asked to warrant that you have not secured new employment. This can prove difficult in some circumstances as it is entirely normal, if you think your employment is going to come to an end, that you would go and find another job. We can deal with this if this type of wording is included in the agreement.

Reference and announcement: you do not have a right to a reference but sometimes an agreed reference may have formed part of your negotiations. A reference may be purely factual, or you may have negotiated a more detailed and personal reference.

There may also be an agreement to provide an announcement to your colleagues - ideally you should have had some input into this wording.

Other additional clauses: your agreement may include wording that holds you to any restrictive covenants in your contract, clauses to prevent both sides from bad-mouthing the other and wording that will allow your employer to try and recover its costs if you decide to sue them after signing this agreement.

## **Summary**

Whether the reason for you being offered a settlement agreement is amicable or difficult, it is never an easy step to think about your job ending.

We will work closely with you and support you every step of the way to make sure that you understand what you are signing and what this means to you.

If you would like to arrange a time to discuss your settlement agreement, please call Karin Henson, Aeris Employment Law Limited on 07980 837148 or send an email to [Karin.henson@aerisemploymentlaw.co.uk](mailto:Karin.henson@aerisemploymentlaw.co.uk)