

Settlement Agreement FAQs

Over the years, it has become more and more common for employers to offer their employees settlement agreements (previously known as compromise agreements) when an employment relationship comes to an end.

We regularly receive calls from employees who have been offered a settlement agreement and are wondering which way to turn. If you find yourself in this situation, then these FAQs will give you the information you need in order to understand why you have been given a settlement agreement, what it means and what you should be doing with it.

Q: What is a settlement agreement?

A: A settlement agreement is a formal contract between you and your employer. At its heart is a promise from you to your employer that you will not bring any claims against them in relation to your employment or its termination. In return, your employer will normally agree to pay you a sum of money as compensation for the termination of your employment.

Q: I haven't received a settlement agreement, but my employer has asked me to attend a 'protected conversation'. What does this mean and should I go along?

A: Before your employer gives you a settlement agreement, they may ask you to attend a 'protected conversation'. The purpose of this meeting is to have an 'off the record chat' about your employment. In particular, your employer may wish to discuss with you their proposals for the agreed termination of your employment. It is called a 'protected conversation' because, if conducted in the right way, neither you nor your employer would normally be able to refer to it in relation to any unfair dismissal claim that you might bring against your employer.

If you and your employer are interested in taking your discussions further, your employer will normally follow up on the 'protected conversation' by confirming their proposals in writing. Typically, this will involve providing you with a draft settlement agreement for your consideration.

You are not obliged to attend a 'protected conversation'. However, if your employer wants to discuss with you the agreed termination of your employment, you may have to be realistic about your career prospects with this particular business!

Q: I have been given a draft settlement agreement. Why is it so long?

A: Although they vary, an average settlement agreement is between 10 and 15 pages long. This might seem a bit 'over the top', but there are a number of boxes that the agreement needs to tick. A typical settlement agreement will seek to do the following, as a minimum:-

- confirm the date on which your employment will terminate and any payments due to you in relation to your employment;
- set out the compensation to be paid;
- settle any potential claims that you may have against your employer;
- deal with any tax issues that arise;
- restrict your ability to discuss the deal or bad-mouth your employer; and
- require you to return all company property and delete all company information.

Q: How much compensation can I expect to receive?

A: This is a very hard question to answer without knowing more about your particular circumstances. Much will depend on (i) the reason(s) why your employer wants to terminate your employment, (ii) whether you have a strong claim against them in relation to your treatment and (iii) how much financial loss you are likely to suffer as a result of losing your job. If you want to discuss this issue in more detail, please get in touch.

Q: If I am not happy with how much I have been offered, can I ask for more?

A: You are not obliged to accept your employer's offer. So yes, you can ask for more. However, whether you have good grounds for doing so will depend on your precise circumstances. You should also bear in mind that there is always an element of risk associated with making a counter-offer. By making an offer of your own, you are effectively rejecting your employer's offer. Your employer isn't obliged to re-table its offer once you have turned it down. So if they don't accept your offer, then the discussions could collapse without a deal being reached.

Q: Will I have to pay tax on my compensation payment?

A: Currently, payments made as compensation for the termination of an employee's employment can normally be paid tax-free, as long as they do not exceed £30,000. However, much depends on the precise nature of the payment being made to you. For example, if any part of the termination payment represents a payment in lieu of your entitlement to notice, that part of the payment is highly likely to be taxable.

If in doubt, it's worth discussing with your solicitor whether you need to take specialist tax advice.

Q: My employer has told me to take legal advice on the draft settlement agreement, but can I choose not to?

A: In reality, no. Settlement agreements will not be fully binding unless you have taken independent legal advice on the terms and effect of the agreement. As a result, your employer is likely to insist that you take legal advice from a qualified solicitor. In addition, they will almost certainly ask for proof that you have taken this advice. Proof normally takes the form of a certificate, signed by you solicitor, confirming the advice they have provided.

Q: Can any solicitor advise me on my settlement agreement?

A: In theory, yes. But it is sensible to make sure that the solicitor advising you on your settlement agreement specialises in employment law and has plenty of experience of advising on settlement agreements.

Q: How much legal advice do I have to take?

A: Your solicitor will need to advise you on the terms and effect of the settlement agreement you have been offered. This typically involves the lawyer going through each clause of the agreement with you, making sure you understand what you are signing up to. In particular, your lawyer should ensure that you are clear as to the effect the agreement will have on your ability to bring claims against your employer.

In addition to the basic advice outlined above, you may want to understand what other options are open to you and whether the financial terms on offer represent a 'good deal' in the circumstances. Before we take on a case of this nature, we will discuss with you your precise needs and how much advice and support you require.

Q: Who pays for the legal advice I am required to take and how much will it cost?

A: Whilst it is not compulsory, employers almost always offer to contribute toward the cost of their employees taking legal advice on the terms and effect of a settlement agreement. The level of contribution varies, but is normally somewhere between £350 and £600 plus VAT.

We understand that our clients are often keen to ensure that they do not incur legal fees greater than the contribution offered by their employer. Where this is the case, we do our best to work with the budget we've got. In any event, we aim to establish at the outset how much advice and support you require. We will then let you know if, for whatever reason, we believe your employer's contribution might not cover all our fees.

Q: My employer has included sections in the settlement agreement that require me to keep the agreement to myself and to avoid saying anything bad about the company. Is this normal?

A: Yes. As mentioned above, almost all settlement agreements contain provisions of this nature. You may need to consider, however, whether the agreement places similar restrictions on your employer. If it doesn't, do you want it to?

Q: Will my employer be obliged to provide me with a 'good' reference as part of the deal?

A: It is a common misconception that former employers are obliged to provide a reference and cannot say anything bad about you. A former employer *can* sometimes provide a bad reference and can *certainly* choose to provide no reference at all. So if you want to know exactly what your employer will say about you, it makes sense to ensure that this is covered off in the settlement agreement. You can do this by asking your employer to contractually agree to provide you with a reference and by attaching the wording of the reference to the settlement agreement.

Q: I am being given a settlement agreement as a result of a redundancy situation and I intend to make a claim on my payment protection insurance (PPI) policy? Is this a problem?

A: Many people take out PPI policies to cover the cost of their mortgage (or other loan repayments) in circumstances where they are made redundant or otherwise lose their job.

Whether you can claim on your PPI policy will depend on the precise circumstances of your case and the terms of your insurance policy. If you want to discuss this issue further, please let us know and we can advise you on what, if any, steps you need to take in order to understand your position.

Q: What should I do now?

A: If you need help with any of the issues covered in this guide, please get in touch. We can swiftly assess your circumstances, discuss your objectives and then advise you on how we can take your case forward.

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