



Settlement agreements: business briefing

This business briefing sets out the key issues a business should consider before entering into a settlement agreement with an employee.

What is a settlement agreement?

A settlement agreement (formerly known as a compromise agreement) is a legally binding agreement between a business and an employee under which the employee agrees to settle their potential claims and in return the employer will agree to pay financial compensation. Sometimes the agreement will include other things of benefit to the employee, such as an agreed reference letter.

In what circumstances will a settlement agreement be appropriate?

- An employee can make a claim against a business under both their contract of employment and under statute. These claims may arise:
 - on recruitment;
 - during employment; or
 - when their employment has been terminated.
- In many cases, a business may want to make a payment to an employee in return for an effective waiver of their potential claims. Businesses can enter into an agreement with an employee to settle potential claims when they are still working for the business, but in most situations, their employment will have ended (or be about to end).

What are the legal requirements for a valid settlement agreement?

For a settlement agreement to be legally binding, there are a number of conditions that must be met:

- The agreement must be in writing.
- The agreement must relate to a particular complaint or particular proceedings.
- The employee must have received legal advice from a relevant independent adviser (for example, a qualified lawyer or union official) on:
 - the terms and effect of the proposed agreement; and
 - its effect on their ability to pursue any rights before an employment tribunal.
- The independent adviser must have a current contract of insurance (or professional indemnity insurance) covering the risk of a claim against them by the employee for the advice.
- The employee's adviser must be identified.
- The agreement must state that the conditions regulating settlement agreements have been

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satisfied.

Possible content of a settlement agreement

Other than the legal requirements listed above, the contents of a settlement agreement are largely at the discretion of the business and the employee involved. Examples of common clauses include:

- Compensation for loss of employment.
- Contribution to legal fees.
- Waiver of claims by the employee, including warranty that the claims listed are the only claims which the employee has against the employer.
- Re-assertion or modification of existing restrictive covenants.
- Indemnity from employee in relation to tax and National Insurance Contributions.

Confidential information

Protecting confidential information is usually crucial to a business and therefore settlement agreements often contain confidentiality provisions, for example, the employee agrees:

- Not to use any confidential information.
- Not to disclose any confidential information to any person, company or other organisation.
- To keep the terms and existence of the agreement confidential.
- To not make any derogatory comments about the employer (or any individuals employed by it) to a third party.

Which types of claim can be settled by a settlement agreement?

A large number of statutory claims can be settled by a settlement agreement, for example claims for:

- Unfair dismissal.
- Pregnancy or maternity-related discrimination.
- Discrimination, victimisation or harassment related to sexual orientation.

Which types of claim cannot be settled by a settlement agreement?

There are a number of statutory claims that cannot be settled by entering into a settlement agreement, including some types of:

- Personal injury claims.
- Pension claims.
- Claims following the transfer of a business.

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please email

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