

An employee's guide to settlement agreements

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Employees typically leave their jobs by serving notice and resigning, usually to start a new job elsewhere. However, an employer may decide to terminate an employee's employment contract, or the employee may resign amidst a dispute. In these scenarios, it is more than likely that a settlement agreement will come into play.

What is a settlement agreement?

Settlement agreements (formerly known as compromise agreements) are legally binding documents where an employee waives their employment rights and agrees to set aside any potential claims they may have against their employer in return for compensation.

As the document waives the employee's rights to pursue claims against their employer, they must seek independent legal advice on the document and its terms before they sign it.

Once both parties have signed the agreement and a legal adviser has certified that the employee received independent legal advice, the agreement becomes legally binding and enforceable.

Why do I need a lawyer?

There is a statutory obligation for employees to obtain independent legal advice on any settlement agreement to ensure its terms are understood and that an employer fairly compensates any employee for any offset of their rights. If you do not seek independent legal advice, then the terms of the settlement agreement are not legally binding, and the agreement is rendered unenforceable.

The fact that the law mandates the requirement for independent legal advice demonstrates the severity of unquestioningly agreeing to the terms of a settlement

agreement and the value of obtaining legal advice. It reflects the case that often the employee is in the position of David, whilst the employer is seen as Goliath.

What should the settlement agreement include?

If you're giving up your employment rights, the terms upon which you do so must be clear. The agreement should include any payments you are to receive and any arrangements put in place until exit and beyond.

Typically, payments would include:

- Payment in lieu of notice (if applicable)
- Accrued salary up to the termination date
- Any bonus payment (if applicable)
- Pro-rata benefits up to the termination date
- Accrued untaken holidays up to the termination date
- A compensation payment (if applicable)
- A redundancy payment (if applicable)

Settlement agreements often cover other aspects, including the obligations of both parties, after you leave. For instance:

- An agreed form of reference
- A statement informing colleagues of your departure
- An agreement not to make any disparaging remarks
- The return of any company property
- Clarity around any post-termination restrictions that survive your employment ending

Your lawyer will consider these clauses, advise if they are reasonable, and point out what is missing or how you could improve the agreement.

Who pays for my legal fees?

Your employer will usually include a contribution to your legal fees under the terms of the agreement. However, this will only cover advising on the terms and effects of the agreement and highlighting any critical issues. It does not generally extend to negotiating any amendments.

There is usually some scope to ask for an increase in the contribution towards legal fees under the agreement. However, no statutory requirement obligates an employer to agree to any increase.

For the best chance of success, your lawyer will need to justify the request for an increased contribution adequately, and this will turn on how much time they have invested in taking your instructions and understanding the documents.

What should I expect from my lawyer?

Your lawyer will want to understand the background and circumstances of your case and will likely ask for various documents to identify potential claims, or lack thereof, and consider what award you might achieve if you pursue a claim against your employer rather than settling.

Your lawyer will advise you on the meaning and effect of the agreement and what may happen if you do not reach an agreement. However, if you do agree to settle, they will provide you with a signed adviser's certificate, which confirms that they have given you independent legal advice on the proposed settlement agreement.

Can I get more money or better terms?

As this is a negotiation between you and your employer, there is no right or wrong figure necessarily. It will turn on the circumstances of why your employer is offering you the agreement and the strength of any claim you might have. The stronger the potential claim, the better the negotiating hand.

We can advise on the merits of potential claims and on pushing back for an improved offer. If you instruct us to negotiate on your behalf, fees will increase, so negotiating for improved terms must be proportionate. We will consider the specific facts of each case and its merits and guide you through the process, including representing you in any negotiations.

How long do I have to think about my settlement agreement?

Your employer should give you a reasonable period to consider the proposed terms. There is no statutory minimum, and it will vary depending on the facts. However, you can expect around ten calendar days to consider the agreement and take legal advice. This timeframe accords with the [ACAS Code of Practice](#).

What if we can't reach an agreement?

Your employer will likely want to continue with any proposed internal action, such as a disciplinary or redundancy process. You will need to understand your rights and any applicable timescales in these circumstances, as you might need to raise a grievance in line with your employer's internal policies, which we can assist with, or make a referral to ACAS for early conciliation in contemplation of bringing a claim. Such referral is usually a mandatory step prior to being able to commence a claim in the Employment Tribunal.

If you have been offered a settlement agreement or are in the early stages of negotiating an exit package, you should seek independent legal advice as soon as possible to protect your position. Speak to employment solicitor [Patrick Simpson](#) today.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

