



Settlement Agreements

A Legal Service

We know that if you are offered a Settlement Agreement, this can often be a difficult and stressful time in your life. At Cubism Law, our team of experienced and specialist employment solicitors, can guide you quickly and efficiently through the process, ensuring you secure the best possible outcome. We advise employees, at all levels and in all sectors. And unlike many employment lawyers, we act for employers as well, giving us a tactical advantage.

What is a Settlement Agreement?

A Settlement Agreement, formerly known as a Compromise Agreement, is a written contract between an individual and their employer. The Agreement will normally be issued around the termination of employment and is used to record the terms of departure.

In return for additional compensation and/or other advantageous terms, the employee agrees not to bring a claim at an Employment Tribunal or Court against their employer.

Why do I need a lawyer to advise me?

In order for the Settlement Agreement to be binding and for there to be an effective waiver of certain claims, you must receive advice from a relevant independent adviser, such as an employment solicitor, on the terms and the effect of the agreement. At Cubism, we can advise you on your potential claims against your employer and whether the offer of settlement represents a fair deal in the circumstances.

We can negotiate the best possible deal for you, ensuring that you are properly protected and compensated.

What am I settling?

The main, and most important, effect of a Settlement Agreement is that once signed the agreement prevents you from bringing a claim at the Employment Tribunal or Court against your employer.

The list of claims set out in the agreement is often very long and will normally include:

- Claims for breach of your employment contract, such as failure to pay your salary, notice pay or holiday;
- Claims under common law, such as personal injury or defamation, which derive under the law generally; and
- Claims which derive under UK law/ statute, such as: the right not to be unfairly dismissed and the right not to be discriminated against on grounds such as gender, disability, sexual orientation, religion/belief etc. and can only be waived under a Settlement Agreement

“The main effect of a Settlement Agreement is that once signed, it prevents you from bringing a claim against your employer.”

Do I have to sign the Settlement Agreement?

You do not have to enter into the Settlement Agreement; prior to signature, the Settlement Agreement is only an offer. The Agreement will normally be marked 'without prejudice and subject to contract'.

This means that the Agreement is 'off the record' so it is not admissible as evidence at the Employment Tribunal or Court, and the contract is not binding until it has been signed by all parties. So one consequence of trying to negotiate the terms of the Settlement Agreement, is that the Employer could withdraw the deal.

If a Settlement Agreement is not signed, then your employment may still terminate, but you are free to pursue your rights at the Employment Tribunal or Court. If negotiated properly, a Settlement Agreement is an effective way of concluding an employment relationship, without the need to bring a formal claim against your employer, which can be expensive and time-consuming, and could attract potentially damaging publicity.

What else do I need to know?

Either at our offices in the City of London or over the phone, we can take you through each term of the Agreement. Before we do so, there are some important issues to consider:

- Confidentiality – you may be asked to keep the Settlement Agreement confidential and often you will be required to warrant or promise that you have not breached this term before signing the Agreement. Therefore, you should be careful to resist the temptation to talk to colleagues or friends about your Agreement
- Deductions for tax – generally the first £30,000 of any compensation payment. Following a change in the law in April 2018, any pay in lieu of notice (PILON) monies, will be subject to income tax and national insurance contributions. Similarly, any payments which are made as a result of your employment contract, such as salary, holiday pay, bonus pay, payment in lieu of holiday etc., will be paid less income tax and national insurance contributions. As a term of settlement, you will have to agree to indemnify or repay the employer any tax, national insurance contributions, costs etc. that they are required to pay on your behalf

- Employment Contract – you should carefully check your employment contract as there may be some clauses which you remain bound by on termination, such as restrictive covenants, confidentiality, a requirement to return property etc.
- Entire Agreement Clause – in most Settlement Agreements there will be a clause which means that any agreement between you and your employer, must be recorded in the agreement or it will not be binding. For example, there may be some terms that you want to ensure survive the termination of your employment, such as payments under a bonus or pension scheme or payment in lieu of holiday. If they are not recorded in the Agreement, then they will fall away
- Insurance – if you are covered by medical insurance or life assurance via your employer, then your policy is likely to lapse on termination of your employment. You should speak with the insurance provider before termination of your employment if you wish to continue the cover. Under a household insurance policy, you may have redundancy protection insurance. If this is the case, the Agreement may need to be amended appropriately to ensure that it reflects the reasons for your dismissal so there are no issues in getting payment under the cover if it is due

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- Legal fees – if you enter into the Settlement Agreement, then normally the employer will agree to pay your legal fees, generally up to £350-£500 plus VAT. If you choose to negotiate the terms of the Agreement, then it is likely that the employer's contribution will not cover the entirety of your legal fees. If you incur additional fees, or do not enter into the Agreement, then you will be responsible for paying those fees. You may hold Legal Expenses Insurance as part of your household insurance policies, which could cover the additional fees, although this type of policy is rare
- Reference – your employer does not have to provide a reference, glowing or otherwise. Therefore, we normally suggest that an agreed, factual reference is included in the Settlement Agreement, together with a clause preventing the company from speaking badly of you or expanding on the reference
- Warranties – under the Settlement Agreement, you will be required to provide various warranties. A warranty is like a promise and is taken very seriously in contract law. If you wrongly give a warranty/promise or later breach the warranty, then the employer will be easily able to recover considerable damages from you

Please note: Employment Tribunals have very strict time limits. Generally, you must submit your claim or put in a request to Acas for early conciliation within 3 months of the act complained of.

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Cubism Law is an entrepreneurial law firm. A 'Super Boutique'. A disruptive business model that combines the values and agility of the small firm with the might and resource of the larger; without the downsides of either.

We call ourselves **Cubism**. That one word pays homage to who we are and what we do, imaginative and agile problem solvers, relentless in the pursuit of excellence and the search for answers clients seek. We set the bar high because that is what we expect of ourselves and our clients expect of us.