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SOLICITORS

Settlement Agreements

1. What is a settlement agreement?

A settlement agreement is a legally binding agreement entered into by an employer and employee setting out the agreement reached between them when a contract of employment is to be terminated or a dispute is to be resolved. In return for a payment (usually), the employee agrees to waive their statutory employment rights.

2. What is the effect of a settlement agreement?

The effect of signing a settlement agreement is that, in exchange for a termination payment and any other benefits the employer agrees to provide, the individual will waive most, if not all, of their employment-related statutory and contractual rights. Once the agreement is signed, the individual will not be able to bring any claims in respect of their employment or its termination; this includes an unfair or wrongful dismissal claim, any form of discrimination claim, any breach of contract claim, a claim for unlawful deduction from wages or any claim for annual leave, expenses, bonuses or commission payments due. The effect of signing a settlement agreement is to draw a line under the employment relationship and agree that there is no going back.

3. Does a settlement agreement have to be in a specific form?

For a settlement agreement to be valid the following conditions must be met:

- the agreement must be in writing;
- the agreement must relate to a particular complaint or proceedings;
- the employee must have received legal advice from a relevant independent adviser on the terms and effect of the proposed agreement and its effects on the employee's ability to pursue any rights before an employment tribunal;
- the legal adviser must have a current contract of insurance, or professional indemnity insurance, covering the risk of a claim by the employee in respect of the advice given;
- the agreement must identify the legal adviser; and
- the agreement must state that the conditions regulating the settlement agreement have been satisfied.

4. What else does a settlement agreement typically cover?

If the employment is terminating, the agreement will usually specify a termination date, set out the arrangements which will apply up to the termination date, deal with a return of property belonging to the employer, specify any obligations after termination and it is common for an agreed reference to be provided.

5. How much does it cost?

The employer usually makes a contribution towards the cost of the employee taking independent legal advice. Dean Wilson LLP have a minimum charge for advising on the terms and effects of a Settlement Agreement of £500 plus VAT, or £750 plus VAT if a reaffirmation certificate is required.

In addition the employer will be responsible for its own legal costs if it instructs a solicitor to act for it in the drawing up and/or negotiation of the settlement agreement.

6. Tax

It is possible to treat up to £30,000 of an ex-gratia/redundancy payment made under a settlement agreement as exempt from income tax if the payment comes within section 401 Income Taxes (Earnings and Pensions) Act 2003.

Acas also produce information on settlement agreements which can be found at:
<https://www.acas.org.uk/settlementagreements>



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