

# Settlement Agreements

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# What is a Settlement Agreement and why have I been offered one?


**Settlement agreements are one of the only two ways that employers can settle statutory claims, such as unfair dismissal or discrimination, with their employee.**

The purpose of settlement agreements is to ensure a clean break for the employer; an employee usually receives some enhancement or additional benefit for example an extra monetary termination payment and in return the employer has the certainty that no claims will be brought against them.

Usually the settlement agreement will not settle any claims or rights that your employer has against you, whether arising from your contract of employment or otherwise. Therefore any restrictive covenants in your contract of employment preventing you from competing with the company or soliciting customers or clients will remain in force. If these are going to be an issue for you, it would be necessary to secure a release from the covenants within the settlement agreement.

## Why do I need to take advice on the settlement agreement?

For the settlement agreement to be legally enforceable employees must take legal advice on the terms of the agreement. When acting for you we will check the agreement to make sure it is standard, not unduly onerous and consider whether it is appropriate in your particular circumstances. If it is not we will look at your options in relation to the settlement agreement and recommend next steps to you.



# What is the cost of taking advice on the settlement agreement and do I need to pay those costs?

**In most cases your employer will make a contribution towards your legal costs for taking advice on the settlement agreement.**

Usually costs are between £250 and £500 plus VAT depending on the seniority of the employee and the complexity of the matter. In nearly all of cases, except the most complex or contentious, we are able to keep within the employer's contribution and will usually send the invoice to your employer directly for it to pay.

## What monies can I receive tax free?

- Settlement agreements are not mechanisms to make any settlement monies tax free. Therefore it is important to consider how the termination monies have been calculated and what they relate to so that we can see if their tax treatment looks correct
- Monies paid in lieu of notice may or may not be taxable. It is important to check your contract of employment or any other contractual documentation connected to your employment to see if the employer has the contractual right to pay you in lieu of notice. If they do, the monies are taxable. If they do not, usually the monies may be paid without deduction of tax
- Any monies offered as a redundancy or an ex gratia payment will usually be payable without deduction of tax to a maximum of £30,000
- Any remaining salary, accrued holiday pay or bonus should be paid after deduction of tax.

# What are the usual kinds of terms I can expect to see in a settlement agreement?

## Common clauses include:

- Confidentiality in relation to the existence and terms of the agreement. It is important to consider whether these kinds of clauses could cause you problems in the future. For example, could they prevent you from giving a reason or explanation for the termination of your employment to another employer?
- Obligations not to make any derogatory or defamatory statements about the employer
- Confirmation that you do not have another job offer or any expectation of one
- A tax indemnity from you to the employer which makes you ultimately liable for tax or employee's National Insurance Contributions and any other financial consequences if the correct deductions are not made by the employer from the monies payable to you under the settlement agreement. It is usually in everyone's interests to ensure the tax treatment of any monies is correct.

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