

Settlement Agreement Frequently Asked Questions for Employees

What is a Settlement Agreement?

A Settlement Agreement is a legally binding agreement between you and your employer. The purpose is to resolve a dispute between you and your employer; however, a Settlement Agreement is usually entered into on termination of your employment.

In a Settlement Agreement, you will usually be offered a monetary figure from your employer, which may include a payment in lieu of notice and/or a redundancy payment. In return for the severance payment, you agree not to pursue any claims against your employer in an Employment Tribunal or a Court of Law. The Settlement Agreement will also aim to preserve any existing duties of confidentiality and restrictive covenants that you are subject to.

A correctly drafted Settlement Agreement, that meets certain statutory requirements, will waive your rights to common law claims (such as breach of contract of your employment contract or negligence of your employer) as well as certain statutory employment rights and discrimination claims.

It is important to note that certain statutory employment rights claims can only be settled through ACAS conciliation, and your employer cannot waive your right to claim for accrued pension rights or for personal injury that might be caused in the future.

What are the statutory requirements for a Settlement Agreement?

For a Settlement Agreement to meet the statutory requirements, it must:

- Be in writing;
- Relate to a particular complaint or particular proceedings against you or your employer;
- You must receive legal advice from an independent adviser on the terms and effect of the Settlement Agreement, particularly its effect on your ability to pursue a claim against your employer before an Employment Tribunal or the Courts;

- Your independent adviser must have a current contract of insurance, or professional indemnity insurance, that covers the risk of a claim you may take against them in respect of the advice they have given you;
- The Settlement Agreement must identify the person who advised you;
- The Settlement Agreement must state that the conditions regulating Settlement Agreements in the applicable pieces of legislation have been met.

Why has my employer asked me to sign a Settlement Agreement?

There can be a few reasons why your employer has asked you to sign a Settlement Agreement. Primarily their purpose is to resolve a dispute with your employer, but generally they will be used on termination of your employment.

One reason your employer might present you with a Settlement Agreement is because of a redundancy situation. It may be that your employer is downsizing the business, closing it all together, or there is a diminished requirement of the business for your job role.

Another reason for the Settlement Agreement may be that the employer has taken steps towards implementing your dismissal as a result of poor performance or misconduct. Your employer would have to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures in respect of any allegations of poor performance or misconduct.

Can my employer refuse to pay for my independent legal advice?

Whilst it is usual for your employer to make a contribution towards your legal fees in respect of the Settlement Agreement, they are under no statutory obligation to do so. The amount of the contribution (if any) will not affect the validity of your waiver of claims either.

Legal fees will depend on a variety of factors, including locality and complexity of the reason for the Settlement Agreement. However, you can negotiate with your employer to provide a higher contribution towards your fees if necessary.

Does a Settlement Agreement mean I might have a claim against my employer?

Being offered a Settlement Agreement means you might have a claim against your employer. Below is a non-exhaustive list of claims you may be entitled to, depending on your situation:

- If you are being dismissed, you should check whether you are entitled to make a claim for unfair dismissal;
- If you are being made redundant, you may be entitled to bring an unfair dismissal claim, a claim for a statutory redundancy payment or a contractual redundancy payment;
- You may have a claim under the Equality Act for discrimination.

It is therefore important that you review your situation with a solicitor before signing a Settlement Agreement, as you may have a strong claim against your employer.

Will my employer give me a reference?

There is no obligation for your employer to provide you with a reference. It is up to you and your independent legal advisers to negotiate with your employer to include this as a provision in the Settlement Agreement.

What happens if I change my mind about entering the Settlement Agreement?

Until the Settlement Agreement has been signed, you can change your mind, but you should be aware of the consequences. If the matter ends up progressing to an Employment Tribunal or the Court, you may be liable to pay for your employer's costs. However, if you believe you have a claim against your employer, it is important to discuss this with your solicitor. Ultimately, it is a matter for you to decide whether to pursue the claim or enter into the Settlement Agreement.

If you have signed the Settlement Agreement, it constitutes full and final settlement of any claim you may have and is legally binding on both parties. It cannot, therefore, be revoked. If you do break any of the terms after signing, you will be in breach of contract.

Will I still receive my bonus?

The Settlement Agreement may include any bonus or commission payment as part of your termination payment. Your employer may also include the payments you are not to receive. Your solicitor can negotiate with your employer if you wish for this to be included.

Does the Settlement Agreement invalidate my employment contract?

The Settlement Agreement does not invalidate your employment contract. You may be placed on garden leave by your employer (where you enter into a Settlement Agreement some months before termination of your employment contract). In this situation, you are still bound by the terms of your employment contract until the period of garden leave is over and your employment is terminated.

How much settlement should I receive?

This will depend on the potential strength of your claim against your employer. You may want to negotiate a higher settlement sum if you have firm evidence that you have a strong claim against your employer.

If your employment contract allows for it, you may also be entitled to payment in lieu of notice. This should be factored into your employer's settlement offer, as well as any other benefits afforded to you that are covered by your contract of employment. You should also note, if you have not taken all of your accrued holiday, your employer should provide for payment of these untaken days under the Settlement Agreement.

What happens if I do not receive my settlement payment from my employer?

If your employer does not honour any provision of the Settlement Agreement, including the settlement payment, then your employer is in breach of contract. You are entitled to claim for breach of contract and damages in the County Court or High Court.

How much do solicitors charge for Settlement Agreements?

There is no standard set fee that all solicitors charge for advising on a Settlement Agreement. It will largely depend on a variety of factors including, locality, seniority of solicitor and complexity of your dismissal.

For a general guide, you can expect rates as high as **£750 per hour**, but fees are usually between **£300 to £500**. For terminations at board level, particularly where the transfer of shares is involved, a solicitor may charge a higher fee.

Do I need a solicitor to review my Settlement Agreement?

For a Settlement Agreement to validly waive your statutory employment rights claims, you must receive independent legal advice. It is particularly important that a solicitor reviews your Settlement Agreement before you sign, as they will explain the effect of the Settlement Agreement on your right to bring a claim against your employer.

Additionally, a solicitor will assist you with negotiating settlement with your employer. They will review your severance pay and the terms of the Settlement Agreement to ensure you are receiving the best possible offer of settlement from your employer.

What does a solicitor do when they review a Settlement Agreement?

- A solicitor will first want to understand the situation you are in, and particularly why you are being offered a Settlement Agreement.
- They will then explore the options that are available to you, such as your ability to make a claim.
- The solicitor will also review the settlement offer from your employer, and ensure you are being offered the correct amount of compensation.

It is therefore expected that your solicitor will want to review your employment contract, as this will include details of your notice period and any benefits you are afforded.

If you decide to go ahead with the Settlement Agreement, your solicitor will review the terms of the agreement with you and enter negotiations with your employer, in order for you to receive the most favourable outcome.

The most important advice the solicitor will provide you with is explaining the ramifications of signing the Settlement Agreement.

It is important that you understand you are waiving your right to claim against your employer, and you may also be entering into other restrictions in the form of warranties which you must adhere to on signing the Settlement Agreement.

Can a solicitor negotiate a settlement offer?

A solicitor acting on your behalf will endeavour to receive the best outcome for you, so they are able to negotiate your employer's settlement offer. They will liaise with you first, provide you with advice and act on your instructions to negotiate with your employer.

There will be back and forth with your employer or their solicitor in the early stages of settlement, but this is to be expected, as both parties' solicitors will negotiate to reach an agreement that is acceptable to you both.

Do you take the first offer to settlement?

There is no obligation on you to take your employer's first offer of settlement. Sometimes your employer or their solicitor may inform you that the settlement offer is 'full and final' and 'non-negotiable', but that does not mean you should accept it without trying to negotiate for a higher sum.

If you think you might have a genuine claim against your employer, it is within your discretion to either negotiate a higher settlement sum or reject the Settlement Agreement altogether.

If you would rather sign the Settlement Agreement, discuss the terms and settlement offer with your solicitor first. They can negotiate on your behalf for a higher settlement offer with your employer.

Are you ready to proceed? Call us on 020 3475 6751 or via email at info@carterbond.co.uk
