

# Settlement Agreement Frequently Asked Questions for Employers

## What is a Settlement Agreement?

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A Settlement Agreement is a legally binding agreement between you and an employee. It is usually needed on termination of an employee's employment, but its general purpose is to aim to resolve a dispute between you and an employee. In a Settlement Agreement, you will usually offer a monetary figure to the employee, which may include a payment in lieu of notice and/or a redundancy payment.

In return for the severance payment, the employee agrees not to pursue any claims against you 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 on the employee.

A correctly drafted Settlement Agreement, that meets certain statutory requirements, can waive an employee's right to common law claims (such as breach of contract or negligence) 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 you cannot waive an employee's 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?

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

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

- The independent adviser must have a current contract of insurance, or professional indemnity insurance, covering the risk of a claim against them by the employee in respect of the advice they have given;
- The Settlement Agreement must identify the adviser;
- The Settlement Agreement must state that the conditions regulating Settlement Agreements in the applicable pieces of legislation have been met.

## Why might you ask an employee to sign a Settlement Agreement?

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Settlement Agreements can be used for a number of reasons. Primarily their purpose is to resolve a dispute with your employee, but generally they are used on termination of that employee's employment.

Additionally, Settlement Agreements can be used in redundancy situations. If you are looking to downsize your business, close it altogether or the employee's job role is no longer required, a Settlement Agreement is a good way of ensuring an amicable end to the employee's employment.

Settlement Agreements can also be used where you have taken steps towards dismissing an employee as a result of poor performance or misconduct.

## Can you refuse to pay for your employee's independent legal advice?

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There is no statutory obligation to pay your employee's independent legal advice fees in respect of the Settlement Agreement. This will not affect the validity of the employee's waiver of claims either.

However, it is usual for an employer to make a contribution towards the employee's legal fees. This amounts to a gesture of goodwill, especially if you are also terminating the employee's employment. [You can offer to contribute a sum of your choosing, but please note that whilst legal fees depend on a variety of factors such as locality, it is usual to contribute upwards of £200.](#)

Your employee may also negotiate higher contribution towards fees with you, depending on the circumstance.

## Does a Settlement Agreement mean my employee might have a claim against me?

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The purpose of a Settlement Agreement is to waive your employee's right to make a claim against you. By dismissing your employee, they may have a claim against you. An employee may have a claim in the following situations:

- If you are dismissing your employee, they may be entitled to make a claim for unfair dismissal;
- If you are making an employee redundant, your employee may be entitled to bring a claim for unfair dismissal, a claim for a statutory redundancy payment or a contractual redundancy payment;
- Depending on the situation, your employee may have a claim under the Equality Act for discrimination.

It is therefore important that your employee signs a Settlement Agreement, if you think they have a strong claim against you on dismissal or termination of their employment contract. By signing the Settlement Agreement, your employee will not be able to make these claims against you.

## Do I have to give my employee a reference?

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There is no obligation for you to provide a reference for your departing employee, however, your employee may try to negotiate a provision into the Settlement Agreement that you will provide them with a reference. It is up to your negotiations with the employee whether to agree to this.

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

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Until the Settlement Agreement has been signed, you can change your mind, but you should be aware that this might have negative consequences on you. Your employee may have incurred legal costs already, and they may try to recover these costs from you if the matter was to progress to an Employment Tribunal or Court.

If you have signed the Settlement Agreement, it constitutes a full and final settlement of the claims 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.

## Do I still have to pay my employee their bonus?

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You can specify in the Settlement Agreement the payments the employee is not to receive. However, your employee may want to contend this point and you may find yourself in negotiations in order to reach a compromise.

You should also note that if the employee is still classed as employed at the bonus payment date, it is likely that their employment contract will provide for their eligibility to qualify for the bonus payment if they are still employed on this date.

By making your employee redundant or dismissed at the same time you make a payment in lieu of notice, you can avoid this.

## Does the Settlement Agreement invalidate the employee's employment contract?

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The Settlement Agreement will not invalidate the employee's employment contract. You may wish to place your employee on garden leave (where you enter into a Settlement Agreement with the employee some months before the termination of their employment contract). In this situation, the employee is still bound by the terms of their employment contract until the period of garden leave is over and their employment is terminated.

## How much settlement should I pay my employee?

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This will depend on the potential strength of your employee's claim against you. You may want to offer a higher amount of settlement if you believe your employee has a strong claim, to deter them from making that claim. Your employee will want to be compensated fairly for the rights they are giving up.

If your employee's employment contract allows for it, they may be entitled to payment in lieu of notice. This will need to be factored into your settlement offer, as well as any other benefits afforded to the employee that are covered by the contract of employment.

Also note, if your employee has not taken all of their accrued holiday, they will be entitled to payment of this under the Settlement Agreement.

## What happens if I do not pay my employee the settlement payment?

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If you do not honour any provision of the Settlement Agreement, including the settlement payment, then your employee is entitled to claim breach of contract and damages in the County Court or High Court.

## How much do solicitors charge for Settlement Agreements?

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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. You are not obliged to contribute towards your employee's fees, but it is common to do so.

## Does my employee need a solicitor to review the Settlement Agreement?

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If you want your employee to waive their statutory employment rights claims, the Settlement Agreement will only be valid in this regard if your employee has received independent legal advice on the effect of the agreement, particularly their ability to bring a claim against you. Therefore, it is imperative that your employee has independent legal advice on the Settlement Agreement.

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

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If you have a solicitor acting for you, they will negotiate on your behalf with your employee's solicitor in respect of the Settlement Agreement.

- Your solicitor will want to understand the reasoning behind you offering a Settlement Agreement to your employee, as it will enable them to draft the Settlement Agreement accordingly, for example, by including specific restrictions on your employee.
- Your employee's solicitor will review your offer of settlement, and you should expect to enter negotiations in respect of the compensation you are offering to your employee.
- You will also want to be satisfied that your employee's solicitor has explained the ramifications of signing the Settlement Agreement to your employee.

This includes explaining your employee's waiver of any right to claim against you. You should therefore require a certificate from the employee's solicitor that confirms this has been complied with.

This will satisfy the statutory requirement for the Settlement Agreement and ensure it is valid in law.

## Can a solicitor negotiate a settlement offer?

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A solicitor acting on behalf of your employee is able to negotiate the settlement offer you have provided. Solicitors will endeavour to secure the best outcome for their client, so there will be back and forth during the initial stages of settlement.

It is for you, or your solicitor, to negotiate with your employee's solicitor and reach an agreement that is agreeable to both of you.

## Is my employee obliged to take my first offer of settlement?

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Your employee is not obliged to accept your first offer of settlement. Including the words 'full and final' and 'non-negotiable' will not affect your employee or their solicitor's ability to negotiate a higher sum. You should also be aware that your employee may have a genuine claim against you.

**It is therefore within your discretion to negotiate with your employee and perhaps offer them a higher settlement offer, or risk a claim against you.**

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Are you ready to proceed? Call us on 020 3475 6751 or via email at [info@carterbond.co.uk](mailto:info@carterbond.co.uk)

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