

# Settlement agreements

Settlement agreements (which used to be known as 'compromise agreements') are frequently used by employers to ensure that employees who sign them cannot bring any claims against them in the court or tribunal, now or in the future.

In return for giving up your rights to most claims, you will receive a compensation payment and certain additional benefits. If you did not sign the agreement, it is likely your employer would not pay you as much.



## CONTACT US

Clear, professional advice from a friendly and approachable firm

☎ +44 (0)1242 514000

✉ [law@willans.co.uk](mailto:law@willans.co.uk)

Find your lawyer online at  
[www.willans.co.uk/people](http://www.willans.co.uk/people)

### Why do I need to have the agreement signed by a lawyer?

A settlement agreement is only legally binding if, before you sign, you have received advice from an independent lawyer on its terms and the effect it has on your employment rights.

### I am not happy with the compensation package on offer. Can I negotiate for more?

When we meet, we will advise you briefly about any potential claims that you may be giving up by signing the agreement. You can renegotiate the financial amount and any other terms, either directly with your employer or with our assistance.

If negotiations are not successful, you may decide to take the matter further to an employment tribunal. However, you should bear in mind the costs associated with bringing a tribunal claim (which, generally speaking, cannot be recovered even if you are successful) and the risk that you may not win. Please note that we can never guarantee that negotiations will be successful and your employer will not generally agree to cover the cost of these negotiations (see below) as it would not be in their interest to pay for the fees of negotiating against them.

### Will I have to pay for Willans' advice?

For advising on settlement agreements, we charge a minimum fee of either £500 (+VAT) or £750 (+VAT), depending on the seniority of the legal advisor. This will usually cover the time spent in a meeting, where we will give you independent legal advice on the terms of the agreement and the effect on any employment claims you may have.

We would also advise you briefly on the potential claims you may have and may wish to investigate further, and deal with the formalities associated with the signature of the agreement.

If you are required to 'reaffirm' the agreement at a later date, we charge a minimum fee of £750 (+VAT) – varying depending on the seniority of the legal advisor. This will usually cover the above, plus a further meeting to give you independent legal advice on the terms of the reaffirmation agreement/letter.

Our fees will often be paid partly or entirely by the employer as part of the settlement agreement terms, depending on the amount that your employer is willing to contribute.

Our charges will exceed the minimum fee if the agreement is less straightforward, if there is considerable correspondence between us, if you ask us to consider other documentation, or would like us to negotiate an improved compensation package.

If you would like a detailed assessment of any potential employment tribunal claims and likely compensation you could receive, this would also increase the legal fees. In these circumstances, we will charge you at our normal hourly rates (£190–£310 +VAT), varying depending on the seniority of the lawyer dealing with your case.

As part of negotiations, we can ask for your employer to increase their contribution, however they do not always agree. If so, the balance of our fees over the employer's contribution will be your responsibility.

Your employer will only pay their contribution if the agreement is signed, and not if you change your mind after we have advised you on the terms of the agreement. Therefore, if you decide not to proceed with the agreement after we have advised you, you will be responsible for our fees at our normal hourly rates.

Please note that we need to verify the identity of all of our clients before we can act for you. The fee for this is £30 (+VAT) which would be payable

## Settlement agreements

directly by you, unless your employer agrees to cover this administration fees, as well as the contribution to the legal fees for the advice on the terms and effect of the settlement agreement.

### Are there any claims that I will still be able to bring if I sign the agreement?

You can still bring a claim against your employer if they breach any term of the agreement (eg. if they do not pay you the money they have agreed) and there may be other claims relating to personal injury and accrued pension rights, which we will advise you of during our meeting.

### Can I tell anyone about the agreement?

Most settlement agreements will contain a confidentiality clause. You may, therefore, decide not to tell anyone about the agreement until you have seen and been advised on the terms of the settlement agreement by an independent advisor.

It is important to understand the extent of your obligations, because if you breach this clause, your employer can sue you for breach of contract and recover the compensation payment in addition to any losses suffered as a result of the breach.

### Can I say what I want about my employer now?

As with confidentiality, most settlement agreements contain what is known as a 'non-derogatory comment clause'.

This basically prevents you from bad-mouthing your employer, its officers or employees either directly (eg. in person or on social media) or indirectly (eg. by telling others who then bad mouth the employer).

You should therefore be very careful about what you say about your employer, especially during negotiations to avoid your comments being reported back. However, your employer cannot prevent you from blowing the whistle or reporting potential criminal or other unlawful activity to the police or relevant authorities. Again, we will advise you specifically on the obligations set out in your agreement.

### Will I have to pay tax on the money that I receive under the agreement?

Generally, an employer can pay a leaving employee up to £30,000 free of income tax and national insurance. Whether tax is payable depends on how the payment is made up. You will have to pay tax and national insurance on any contractual sums, such as wages, notice pay and holiday pay. Redundancy payments and all payments genuinely made for loss of employment or to settle a claim are potentially tax-free up to the £30,000 cap. Payments in lieu of notice will be subject to income tax and national insurance.

However, the HM Revenue & Customs always has the last word. Your agreement will usually state that if HMRC decides that tax is payable, you must indemnify your employer accordingly for that tax.

Please be aware that we cannot provide specific tax/pension or share advice regarding any payments made under the settlement agreement or otherwise. If you require advice under these areas, please obtain this from a financial advisor or accountant, and we would be happy to make a recommendation should you require it.

### My reference seems a bit brief. Can I negotiate a better one?

There is no legal obligation for an employer to provide a reference. Any reference given must be true, accurate and fair otherwise the employer may be liable for negligent misrepresentation.

Many employers (particularly the larger ones) are therefore reluctant to provide detailed references and often make it their policy only to give out basic information about job title, dates of employment and reason for leaving.

If you would like us to try to negotiate a reference for you, we are happy to try. Please note that there is likely to be an additional charge for this negotiation. ■



### HOW CAN WILLANS HELP?

Our highly rated employment law & business immigration team works with multi-national companies, SMEs, owner-managed businesses and third sector organisations, offering expert guidance to keep your business on track.

Please telephone or email to arrange an appointment.