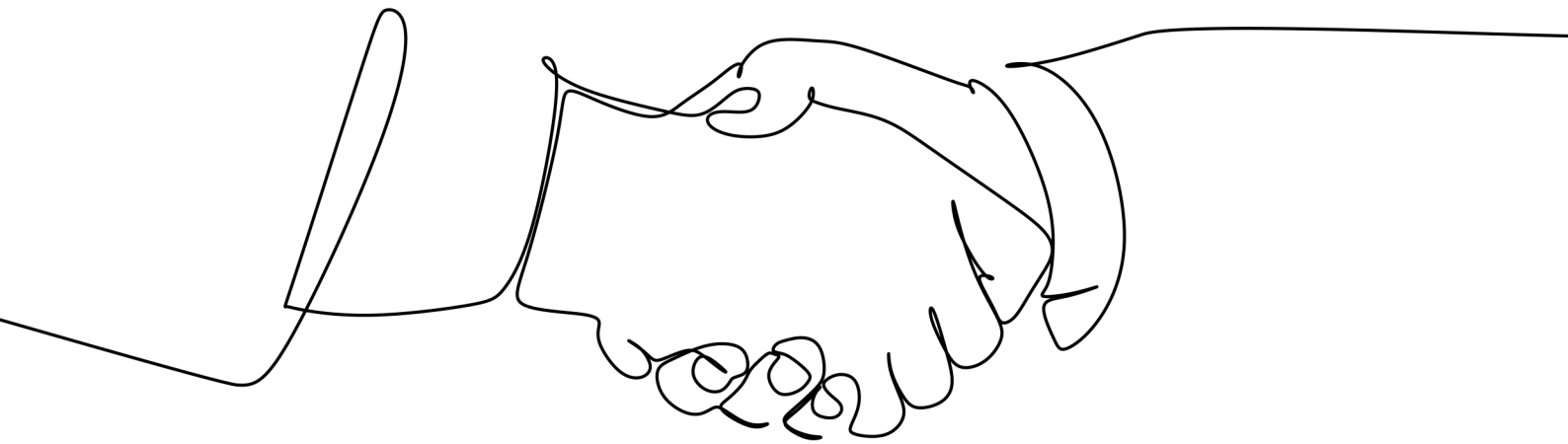


SUMMARY OF THE LAW ON SETTLEMENT AGREEMENTS



INTRODUCTION

This leaflet provides a summary of the common terms in settlement agreements and the effect they have on your legal rights. In particular, it describes the Employment Rights which employees being asked to sign a settlement agreement will need to give up as part of that agreement.

If you wish to discuss any of the information contained in this agreement please email settlementagreement@thompsons-scotland.co.uk or call us on 0141 221 8840.

If your employment is based in England & Wales and you wish advice on English Law, please email our sister firm at settlementagreement@thompsonslaw.co.uk

IMPORTANT NOTICE

Personal Injury Claims

If you think that you have suffered a personal injury within the last 3 years you should immediately notify us in writing. You may be entitled to raise a personal injury claim and signing any Settlement Agreement could impact on that claim. Please note that most Settlement Agreements will not prevent you from raising any personal injury claims which you are **not** yet aware of, also known as a latent personal injury claim.

Professional Regulatory matter

If you have been referred to a professional regulatory body such as the NMC or the SSSC please immediately notify us in writing. The solicitor advising you on this Settlement Agreement will be able to advise you on whether this is relevant to your agreement.

SETTLEMENT AGREEMENTS : AN OVERVIEW

Key points about settlement agreements

- Settlement agreements are legally binding contracts that waive an individual's rights to make a claim covered by the agreement to an employment tribunal or court.
- The agreement must be in writing.
- They usually include some form of payment to the employee and may often include a reference.

- They are voluntary.
- They can be offered at any stage of an employment relationship.
- An offer of a Settlement Agreement can be withdrawn by an employer at any time prior to being formally accepted.

Reaching a settlement agreement

For the settlement agreement to be legally binding 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 advice from a relevant independent adviser, such as a lawyer or a certified and authorised member of a trade union.
- The independent adviser must have a current contract of insurance or professional indemnity covering the risk of a claim by the employee in respect of loss arising from the advice.
- The agreement must identify the adviser.
- The agreement must state that the applicable statutory conditions regulating the settlement agreement have been met.

The legal effect of the agreement

The main effect of signing a Settlement Agreement is that most of the legal rights you have against your employer are lost. The rights you will need to give up are set out in this leaflet. Please be aware that by signing a Settlement Agreement you agree to waive almost all legal claims against your employer.

YOUR RIGHTS

Where it is proposed by your employer that your employment is terminated you have certain rights which you might be able to insist on. However, you can waive these rights by signing a Settlement Agreement. That is what is proposed by your employer in this case.

In this leaflet, we set out some of the more common rights which are usually waived by settlement agreements. Employment Law is complex and we cannot cover every possible employment right you might have in this leaflet. Any right you wish to preserve, whether mentioned in this leaflet or not, should be expressly reserved in the Agreement. You will need to instruct your adviser to propose a change to the draft to do so.

If you are in receipt of a draft agreement, you should read it carefully as it identifies the rights sought to be waived by the employer.

Some of the rights we refer to below arise from statute or common law. Some arise from the particular terms of your contract of employment.

You should be aware that your adviser will not know what the particular terms of your contract of employment are. If there are particular terms you wish to retain then please let your adviser know.

NOTICE

You have a right to receive notice of termination of employment. The terms of your contract of employment may provide for this right to be '*bought out*' by an equivalent payment in lieu of notice. You are entitled as a minimum requirement to receive one week's pay for every year of service up to a maximum of 12 weeks. Your contract could provide for a greater entitlement to notice than the minimum. Any such payment would be subject to normal deductions in terms of tax and National Insurance.

CONTRACTUAL ENTITLEMENTS TO PAY, OTHER PAYMENTS AND CONTRACTUAL BENEFITS

Your contract of employment may entitle you to various payments. Some of those payments could be outstanding as at the date of termination of employment. Examples of the kinds of payments we are referring to are:

- monthly salary;
- pay for overtime;
- holiday pay;
- expenses;
- car, travel or accommodation allowances;
- bonuses; or
- payments under long term incentive plans or profit sharing schemes.

There can be other kinds of contractual payments provided for. It is important that you ensure that any outstanding contractual payments have been paid separately to you before you enter any Agreement or that the sums paid under the Agreement include any such sums due to you. If you do not do so you are unlikely to be able to recover the sums due after you enter the Agreement.

HOLIDAY PAY

There has been recent case law which suggest that many employers have been wrongly calculating holiday pay. This generally applies where the worker works overtime or is entitled to commission or other payment connected to work such as bonus or on call allowances.

In many cases the employer has not taken these payments into account when calculating holiday pay. We do not know if you have such a claim but raise the matter for you to consider.

If you want advice about whether or not you may have such a claim you should ask your adviser.

TOIL

You might be entitled to time off in lieu of work you have done over and above your contracted hours (often called "TOIL"). You should make sure that you have taken that time off before you enter any Agreement if you want to benefit from that entitlement.

THE RIGHT TO CLAIM UNFAIR DISMISSAL

Employees have a right not to be unfairly dismissed from employment. As well as the ordinary situation where the employer ends the contract, "dismissal" can, in certain circumstances, include a situation where the employee terminates the contract of employment because of the conduct of the employer (this is referred to as "constructive dismissal"). It can also include the end of a fixed or limited term contract.

In order to bring most claims for unfair dismissal you would require two years' service with the same employer. However, there are some special circumstances where this does not apply (for example, if you were dismissed because you were pregnant).

If you enter into a settlement agreement you will not be able to raise a claim for unfair dismissal. If you have already raised such a claim, signing a settlement agreement means you will have to withdraw it.

REDUNDANCY PAY

If a termination is by reason of redundancy (and you have had more than two years' service) you are entitled to receive a redundancy payment.

The amount of statutory redundancy pay an employee is entitled to depends on his or her age, length of service and pay.

The employee is entitled to:

- one and a half weeks' pay for each complete year of service after reaching the age of 41
- one week's pay for each complete year of service between the ages of 22 and 40 Inclusive, and
- half a week's pay for each complete year of service below the age of 22

The amount of a week's pay is capped at a level which changes every year. There is also a cap on the number of qualifying years' service (currently 20 years). The maximum amount of redundancy pay you can get is capped at **£21,570** for the 2025/2026 period.

REFERENCES

There is generally no obligation on an employer to provide a reference. Any reference that is provided should be true, accurate and fair. If not, the employer may be guilty of negligent misstatement. It is possible to incorporate proposed wording for a reference into a settlement agreement. Unless you specifically request this, your adviser will not ask for a reference to be incorporated.

Even if the wording of a reference is agreed between you and your employer, in some circumstances the employer will be obliged by law to reveal information to certain public authorities. That might apply where the employee worked with young or vulnerable people and had been accused of acting inappropriately. An employer might have to tell the police or a professional body about the allegations.

Some sectors such as the Financial Services have specific requirements around the provision of references. Employees in such sectors should notify their adviser.

OTHER RIGHTS

In some cases, departing employees have other rights which could be relied upon to raise a claim against the employer. These include claims for discrimination:

- on the grounds of age,
- disability,
- race,
- religion or belief,
- sex; or
- sexual orientation.

Also included are any rights in respect of:

- the provision of information and consultation with employees,
- the minimum wage,
- unlawful deduction of wages,
- working time,
- data protection,
- accrued holiday pay and
- equal pay regulations.

You should speak to your adviser if you think you might have one or more such claim.

FUTURE EMPLOYMENT WITH THE SAME OR ASSOCIATED EMPLOYERS

You should carefully review the terms of the agreement that relate to future employment with your employer or any associated employers. Certain employers, particularly in the public sector, will include terms which restrict you from working for them or for associated employers within a set period of time after the termination of your employment and receipt of your termination payment.

PENSION ENTITLEMENT

Although we cannot give specific financial advice in relation to pension entitlement, we should draw your attention to the fact that, if you are contemplating make an application for a retirement pension, you should bear in mind that the termination of your employment may impact on your pension entitlement. You should check this with your pension provider.

SETTLEMENT NEGOTIATIONS AS EVIDENCE IN A LATER CASE

Settlement Agreements are offered on a confidential basis. That means that if the Agreement was offered and not concluded then the fact of the offer cannot usually be used as evidence in an unfair dismissal. There are very limited circumstances where this general rule does not apply. If you decide not to accept the offer and take legal action against your employer then this is something that can be raised at that point.

TAX ISSUES

National Insurance and Income tax may be deducted from some of the payments you receive under the agreement. This will depend on what the payment is for. Where the you receive a redundancy (or equivalent) payment of less than £30,000 then this may be paid tax free. This tax free exemption will not apply to payments which are due to you as a result of a provision in your contract of employment, such as wages or a payment in lieu of notice.

We do not give you detailed advice about tax but simply raise these issues for you to consider. If you have any queries you should discuss them with an accountant or tax expert.

ADDITIONAL POTENTIAL CLAIMS AND TIME LIMITS

If you decide not to enter the Agreement and you want to bring a claim then there are important time limits you need to be aware of.

The following general information may apply to your case. However, if you have a particular claim you want to bring you should ask for individual advice on the applicable time limits. The following information does not cover every possible situation or kind of claim.

The vast majority of claims which can be brought in the Employment Tribunal must be lodged with the Central Office of Employment Tribunals in Glasgow **within 3 months minus one day** of the date of the act complained of.

All new claims taken to the Employment Tribunal are subject to payment of tribunal fees.. In some of the more complex cases the fees can add up to £1,200. Most trade unions agree to loan their members the tribunal fees if they consider that their claim has a reasonable prospect of success. If the claim is successful then the fees can be recovered from the employer.

Prior to lodging a claim in the Employment Tribunal, a claimant needs to engage in the ACAS Early Conciliation scheme. This must be done within the normal 3 month time limit as set out above. A claim will not be accepted by the Tribunal until the Early Conciliation process is completed and ACAS has issued a Certificate to this effect. Although it is possible that this may extend the time limit for lodging a claim in the Tribunal, we would recommend that you engage in Early Conciliation as early as possible so that you can complete this process and lodge your claim in the Tribunal within the normal 3 month time limit.

Time limits also apply to any person who wishes to pursue a claim for personal injury. Specifically, any person who wishes to pursue such a claim needs to do so within **3 years of their accident**. If you think you might have suffered a personal injury within the last 3 years please let your adviser know as soon as possible.

You should also be aware that there are timescales within which any person who wishes to pursue a claim for breach of contract requires to raise an action in Court. Specifically, proceedings must be raised **within 5 years** of the date of the alleged breach.

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For more information visit:

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The information contained in this booklet is not a substitute for legal advice. You should talk to a lawyer or adviser before making a decision about what to do.