

EMPLOYMENT

Settlement Agreements

The employer's side of ending employment on agreed terms, including the statutory conditions for a valid waiver.

What a settlement agreement does

A settlement agreement is a contract in which an employee agrees to leave and to give up claims they might bring against the employer, usually in return for a payment. Employers use it to end a relationship on agreed terms, avoid a contested dismissal, and obtain a clean break.

Without a valid agreement, an employee cannot generally sign away their statutory employment rights. The Employment Rights Act 1996 allows it only if specific conditions are met (section 203).

The statutory conditions

For a waiver of statutory claims to be valid, in outline:

- the agreement must be in writing
- it must relate to a particular complaint or particular proceedings, not a general waiver of all rights
- the employee must have received advice from an independent adviser on its terms and effect
- the adviser must be covered by insurance or an indemnity for the advice
- the adviser must be named in the agreement
- the agreement must state that the conditions are satisfied

If any condition is missed, the waiver may fail, and the employee could bring the claim despite the agreement. These conditions are set by statute and must be followed exactly.

Independent advice is the employee's own

The adviser must be independent of the employer. The employee must take their own advice. MTM acts for the employer side only. An employee who is asked to sign should be told that they need their own independent adviser, for example a solicitor, a trade union officer or an adviser at a law centre.

Employers often agree to pay a contribution towards the cost of that advice, which is commonly written into the agreement.

When settlement is considered

An employer might consider settlement where a relationship has broken down, where a dismissal process carries risk, where there is a redundancy or restructure, or where an employee has raised a complaint.

Key points

- A settlement agreement ends the employment and waives claims.
- A waiver is valid only if the statutory conditions are met.
- The employee must get independent advice from their own adviser.
- MTM acts for the employer and does not advise the employee.
- Treat the discussion as a protected conversation where the law allows.
- Check tax treatment of any payment with your client's tax adviser.

What the agreement should contain

- **Termination date** and what the employee is paid up to it, including holiday pay and notice.
- **Settlement payment**, how it is made and whether it is paid in instalments.
- **Tax treatment**. Which parts are taxable and which fall within the exemption for termination payments, with an indemnity if tax is later due.
- **Waiver**. A list of the claims being settled, with the statutory ones named, and any exclusions such as accrued pension rights.
- **Confidentiality and non-disparagement**. The limits on what the employee can say. There are restrictions on what can lawfully be covered, for example reporting wrongdoing, speaking to regulators or the police and certain harassment complaints.
- **References**. An agreed form of reference.
- **Return of property** and handover of passwords.
- **Restrictive covenants** continuing after exit, or being released.
- **Legal costs contribution** and the identity of the adviser.
- **Governing law** of England and Wales.

Before you start

- Why is the employment ending?
- Are there live or likely claims?
- Is the offer to be a protected conversation?
- Who pays the adviser's fee, and how much?
- What tax treatment is intended?
- Are there covenants to release or keep?

Protected conversations

Discussions about an offer to end employment may be protected from use in a later unfair dismissal claim, if there is no improper behaviour (section 111A). The protection is limited and does not apply to discrimination claims. Use a clear process and keep a record.

Where MTM can and cannot help

MTM supports and advises the employer on the documents, and does not conduct litigation. The employee signing must take advice from their own independent adviser. If a claim is likely, the employer should take advice from an employment solicitor.

Process and timing

Before offering terms, decide who will lead the discussion, what the offer is and what the fallback is. Put the offer in writing, marked as a protected conversation or without prejudice where appropriate. Give the employee a reasonable time to consider it and to take advice, and avoid pressure. ACAS guidance suggests a minimum period of ten calendar days to consider terms.

How MTM can help

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We prepare settlement agreements for employers, from a first draft to the final signed version, including the schedule of claims, tax clause and agreed reference. We act for the employer only, and we do not conduct litigation. The employee must take independent advice, and where a dispute is live, the employer should involve a solicitor.