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# Myerson **Employment**

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**Our guide to settlement agreements**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our Employment Solicitors offer clear and confidential advice to businesses facing employment issues.

As a Top 200 UK Law Firm, we are also proud to be ranked as **'Top Tier'** in the prestigious international directory **The Legal 500**, and commended by The Times **'Best Law Firms 2023'**. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Employment Team** by clicking [here](#).



# Our settlement agreement service

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Even in uncertain financial times, employers are still willing to offer exit packages that exceed the minimum entitlement to employees who are leaving a business.

Depending on your circumstances, you may also wish to try to negotiate an exit package with your employer.

These exit packages are almost invariably accompanied by a settlement agreement to stop future claims. They are being used so frequently that we have put together this guide to explain how they work.

## What is a settlement agreement?

A settlement agreement is a legally binding agreement between an employer and employee (usually a departing employee), whereby the employee is financially compensated in return for waiving their rights to make legal claims against the employer.

## When can a settlement agreement be used?

A settlement agreement is usually offered in circumstances where an employer wants to end your employment. They are usually used if there is a dispute between the parties but they can also be used if enhanced redundancy payments are being offered or if the employer is suggesting this as an alternative route from the usual disciplinary or redundancy procedures.



There are, however, no limits as to the scenarios where a settlement agreement can be used, and this can include a mutually agreed parting of the ways.

## Can I ask my employer for a settlement agreement?

Although it's more usual for an employer to first approach an employee to offer a settlement agreement, anyone in employment can approach their employer about leaving with a settlement agreement. If this is off the back of a dispute or grievance then an employer may be attracted to the 'full and final' nature of such an arrangement.

It is, however, important first to consider the likelihood of success of making the request, as well as the potential repercussions if the request is declined. Additionally, any such conversation should be on a 'without prejudice' basis and you should therefore take legal advice before having this conversation.

## What should I consider before engaging in settlement discussions with my employer?

The first step is to do your research and make sure you understand your legal rights and whether you have a potential case that would justify asking for or negotiating an exit package.

You also need to be clear about how much you should ask for and how much you could expect to receive. There may be commercial or practical factors, as well as legal factors, that affect how much your employer may be prepared to pay. This could include, for example, saving salary cost or avoiding differences of approach or disruption.



You should also carefully plan your approach, ensuring you have clear reasons to put to your employer as to why it is in their interests to explore an exit arrangement. This will ensure you go about things in the best possible way to increase the likelihood of a positive outcome.

Gathering all relevant and useful documents, alongside any evidence that will help you make your case to the employer, is important too.

## Can I negotiate a settlement agreement?

Until there has been a final acceptance of an offer and a settlement agreement signed, it can be varied or withdrawn at any stage. In some situations, there is scope for negotiation.

Usually, the parties will wish to discuss and negotiate the offer on a 'without prejudice' basis. This means that, in most cases, the discussions cannot be relied on in any future litigation if the negotiations break down.

Seeking legal advice at the outset helps you prepare for this situation and understand whether the offer is appropriate. It is crucial to have in mind how much you are willing to accept and how much you would ideally like to secure. In considering this figure, think about what is reasonable:

- What are you giving up?
- What is the strength of your case?
- What could you be awarded by a Tribunal or court?
- How long may it take you to secure a new job on a comparable salary?
- Have you been treated unfairly or have you suffered any discrimination?
- How much can the company afford?





Also consider if there are any non-financial factors that are important to you, such as:

- continued benefits;
- retention of property;
- outplacement support; or
- reputational protection through an agreed reference or announcement.

The timing of the end of your employment and the timing of payments to you may also be important.

## Do I need to get a solicitor to look through the settlement agreement?

It may be that you approach a solicitor after you have already negotiated the terms and offer yourself.

Alternatively, you may wish for a solicitor to assist you in the negotiations initially.

In any event, the settlement agreement is not legally binding unless you receive independent legal advice on the rights you are waiving before signing. Your solicitor will also sign the agreement to confirm that the advice has been provided.



# What will a settlement agreement usually include?

As a minimum, a settlement agreement should set out the date your employment will end (if this is relevant), and the payments and benefits that you are contractually entitled to such as notice, accrued holiday, bonus etc.

The agreement should also compensate you for the rights you are waiving. You should understand how and when such payments will be paid and whether any of the compensation falls within the £30,000 tax-free allowance permitted by HM Revenue & Customs.

The settlement agreement should make it clear the claims that you won't be able to bring in the future as a result of signing the agreement, as well as those that you could still bring.

Other clauses that might be included are confidentiality and non-derogatory comment clauses to ensure that the existence and details of the agreement are kept confidential and that no damaging statements are made, as well as clauses detailing how any company property should be returned and by when.

Where your employment contract contains restrictive covenants (to stop future competition etc), you are likely to be asked to re-confirm your compliance with these. Depending on your circumstances, there may be an opportunity to negotiate the removal or reduction in the scope of some or all of these. If your employment contract doesn't contain post-termination restrictions, your employer may use the settlement agreement as an opportunity to seek your agreement to these.

Finally, as your employer will be aware that you have to take advice from a solicitor for a settlement agreement to be enforceable, it is likely that they will offer a contribution towards some or all of your legal fees. Details of this contribution and how this will be paid should be included in the agreement.



# Can a settlement agreement be withdrawn?

A settlement agreement can be withdrawn at any point before both parties have signed.

While this may cause pressure to accept the terms, it is helpful to remember that the employer would not have made or agreed to an offer if the terms were not also favourable to them.

Similarly, the employee can choose not to enter into the settlement agreement at any point before signing although, where an offer has been made as an alternative to redundancy or investigation into disciplinary issues, the employer is likely to continue with the formal process should the settlement agreement not be agreed.

However, once the settlement agreement has been signed, you can't generally back out of a legally binding agreement. It's therefore really important that you get proper and thorough advice on the implications of signing a settlement agreement.

## How can Myerson help?

We are experienced in advising employees and senior executives on how best to plan for and negotiate mutually agreed exits as well as advising on the terms of settlement agreements.

We always look to secure the best possible financial package whilst also incorporating reputational protection.





# You're in safe hands!

If you would like further information about how we can help you with your **settlement agreements**, or if you have any questions, please don't hesitate to contact a member of our **Employment Law Team** today.

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Call: 0161 941 4000

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