ISSUE 6 // WINTER 2020

myerson MAGAZINE

Leaving employment with an exit package

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Leaving employment with an exit package – what you need to know

In these uncertain times, many employers are offering 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 at present that we have put together this article to explain how they work.

What is a settlement agreement?

A settlement agreement is a legally binding agreement between an employer and 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?

In any scenario where an employee leaves an employer (usually if there is a dispute between the parties). They are also often used if enhanced redundancy payments are being offered. However, there are no limits as to the scenarios where a settlement agreement can be used and this can include a mutually agreed parting of ways or dealing with a personality clash or unresolvable workplace issues.

Can I ask my employer for a settlement agreement?

Anyone in employment can approach their employer about leaving with a settlement agreement, and an employer may be attracted to the 'full and final' nature of such an arrangement. It is important first to consider the likelihood of success of making the request, as well as the potential repercussions if the request is declined.

What should I consider before asking my employer for a settlement agreement?

Step 1 - Do your research. Make sure you understand your legal rights and whether you have a potential case that would justify asking for an exit package.

Step 2 - Be clear. Consider 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.

Step 3 - Plan your approach. Identify clear reasons to put to your employer as to why it is in their interests to explore an exit arrangement. Gathering all relevant and useful documents, alongside any evidence, is important too. This will help to increase the likelihood of a positive outcome.

What happens next and can I negotiate the offer?

A settlement offer will likely be made in writing and will detail the terms of the proposed settlement. Until there has been final acceptance of an offer, it can be withdrawn at any stage. However, there is often scope for negotiation.

The parties will wish to negotiate the offer on a 'without prejudice' basis. In most cases, the discussions cannot be relied on in any future litigation if the negotiations break down. Seeking legal advice 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? How much can the company afford?

Non-financial factors may be important to you, such as continued benefits, retention of property, or reputational protection. The timing of the end of your employment or payments 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. 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 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.

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. 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 scope of some or all of these.

Finally, your employer will be aware that you have to take advice from a solicitor for a settlement agreement to be enforceable, it is likely they will offer a contribution towards some or all of your legal fees. This 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.

Where an offer has been made as an alternative to redundancy or investigation into disciplinary issues, an employer is likely to continue with the formal process should the settlement agreement not be agreed.

How can Myerson help?

We are experienced in advising our clients 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.

Speak with one of our Employment Lawyers.

Call us on **0161 941 4000** or email **lawyers@myerson.co.uk**

Joanne Evans
Partner
Head of Employment Law

COVID-19 and Child Care Arrangements

The COVID-19 pandemic has meant that separated families have had to navigate childcare within unprecedented times. At first, hard lockdown resulted in many parents confused as to whether their children could spend time with the non-resident parent.

At an early stage, the Government issued guidance for separated parents, as follows:

"Where parents do not live in the same household, children under 18 can move between the parents' homes".

This meant that separated parents could continue to share childcare during the Stay at Home, Save Lives and Protect the NHS stage of the pandemic.

However, if either household is self-isolating, due to anyone having viral symptoms, shared care will not be possible.

In addition, if anyone in either household is considered as in a high risk or shielding category, shared care may not be possible. Even if the usual childcare arrangements are disrupted, this should not affect the "status quo" of any long-term voluntary or court ordered child arrangements. In such cases, it will be important for the resident parent to facilitate as much indirect contact as possible with the other parent, such as through Facetime or Skype calls.

If direct child contact is usually regulated by court order, and direct contact cannot go ahead, it will likely be in the child's best interests to allow for increased indirect contact, such as telephone or video call contact. It can be a great idea for the non-resident parent to help with the child's homework on video call, such as teaching them a lesson or reading them a bedtime story.

Where shared care can continue, handovers should be done at the home where possible. If the handover needs to take place in public, social distancing should be practised. A supermarket carpark for example, parked away from other cars, is a well-suited location.

A positive line of communication between parents is very important. The pandemic should not be used by parents as a tool to prevent child contact. At the same time, there should be mutual understanding that no one is placed at an unnecessary risk. Essentially, both households should comply with the most up to date Government rules on social distancing.

Some areas of Greater Manchester, including Trafford, are still subject to stricter local lockdown measures. These current measures do not affect the general rule as outlined above, that children under 18 can move between their parents' households.

If you have any queries regarding child arrangements or any other family issue during this time, our team of experts are on hand to help.

Your Quick Guide to COVID-19 and Child Care Arrangements

- Children under 18 can move between their parents' households.
- Handover should be done at the home where possible. If the handover needs to take place in public, social distancing should be practised.
- If direct child contact with one parent cannot go ahead, the resident parent should facilitate more indirect contact, via phone and video calls.

Speak to one of our Family Lawyers.

Call us on **0161 941 4000** or email **lawyers@myerson.co.uk**

Nichola Bright
Senior Associate
Family Law

CAVEATS, WARNINGS & APPEARANCES

WHAT ARE THEY?

When somebody dies, their property and finances, known as their 'Estate', need to be dealt with. The people that deal with the estate are known as the Personal Representatives or "PR's". To be able to act in this role they must send certain documents, including the Deceased's Will (if they have one), to the Probate Registry.

If the Probate Registry is satisfied with the papers submitted, they will send the PR's a sealed Grant of Probate if there was a Will or a sealed Grant of Letters of Administration if there was no Will.

In either case, the PR's then have the power to call in the Deceased's assets and pay liabilities.

However, if you have concerns about the estate and the Will and wish to prevent the estate being dealt with, you should apply for a Caveat.

A Caveat can be used when someone intends to question whether the Deceased's Will is valid. A Caveat can be obtained by completing a simple online form with the Probate Registry, currently at the cost of £3.

Once granted, the Probate Registry will not issue a Grant. The Caveat remains in place for 6 months, thereafter it will lapse unless renewed. If the PR's want to progress the estate administration the Caveat will need to be removed. The most effective, and cheapest way of doing this, is to address your concerns to the person that has entered the Caveat and invite them to remove it by consent.

However, if the dispute between the parties cannot be resolved it leaves the estate 'on hold' and in limbo such that the PR's will need to consider how to take it forward.

If you enter a Caveat, you are known as the 'Caveator' and you need to have strong reasons to keep the Caveat in place. If the reason relates to concerns regarding the validity of a Will, it is important to note that there are very limited grounds to challenge which are:

1. That the Deceased lacked testamentary capacity at the time they made their Will.
2. That the Deceased was unduly influenced to make their Will by coercion of their free will.
3. Duress.
4. Fraud.
5. Lack of knowledge and approval by the Deceased to the terms of the Will.

If you want to remove the Caveat so the estate can be dealt with, you can issue a 'Warning'. Again, this can be obtained online with the Probate Registry, free of charge. The Warning needs to be served on the Caveator. Once they have been served with this Warning, the Caveator will have 14-days to lodge an 'Appearance' at the Probate Registry. The Appearance is a written document outlining the Caveator's reasons relating to the validity of the Will.

If the Caveator fails to enter the Appearance within the 14-days, the Caveat will be removed, and the PR's are then able to obtain a Grant.

If an Appearance is entered within the 14-days the Probate Registry cannot issue a Grant without an order from the Court. This will result in either one or both parties having to make a costly probate application to the Court, to resolve the matter.

If possible, once the Caveat has been entered, both parties should seek legal advice upon the merits of any potential claim, regarding the validity of a Will and how the estate might be dealt with, including the possibility of obtaining a limited Grant which could allow the assets of the estate to be dealt with but not distributed. This is also known as a Grant Ad Colligenda Bona.

Speak to one of our Contentious Trust and Probate Team.

Call us on **0161 941 4000** or email **lawyers@myerson.co.uk**

Helen Thompson
Partner
Head of the Contentious Trust and Probate Team

Video Witness a Will Signing

The law for making and signing Wills is old and dates back to the Wills Act 1837.

During the recent Coronavirus pandemic, allowances have been made in other countries to relax the rules for the execution of Wills to allow video witnessing.

Current Law

The requirements for signing Wills in England and Wales are currently set out in **Section 9 of the Wills Act 1837** which are as follows (with some exceptions):

(a) the Will has to be in writing, signed by the testator, or by his/her direction; and
(b) the testator intended to give effect to the Will; and
(c) the signature (or acknowledgement) in the presence of two or more witnesses at the same time; and
(d) each witness either:

(i) signs the Will; or
(ii) acknowledges his/her signature, in the presence of the testator (not necessarily of any other witness).

Proposed changes

It is anticipated that the UK Government will introduce temporary legislation in September 2020 until 31 January 2022 for England and Wales, to allow people to use a video link to witness a Will being executed, if witnesses cannot be physically present.

The legislation will have a retrospective effect and will apply to Wills that have been made in this way dating back to 31 January 2020. It will not apply where probate of the Will has already been granted in the estate of a deceased person, nor where an application for Grant of Probate has been submitted and is being processed at the Probate Registry. The platform or device used for video witnessing is not important provided the testator and both witnesses have a clear line of sight of each other at each stage of the signing and attestation process.

Witnessing pre-recorded videos of the signature of the Will is not legally acceptable. The witnesses must see the Will being signed by the testator in real-time, and the testator must see each witness sign in real-time. The signing and witnessing should also be recorded, so that there is evidence of compliance with the requirements if the Will is ever challenged. As a minimum, notes or minutes of the meeting should be kept.

Potential issues

The temporary legislation is likely to present increase risks of Wills being challenged and is also an opportunity for abuse. Not only does a Will have to be executed correctly to be valid but there are lots of other factors such as fraud, undue influence, duress, mental capacity and identity theft to contend with.

If video witnessing is to be used, the following should be taken into consideration as a minimum:

1. A recording of the video witnessing with all the parties on the screen at the same time showing the testator signing the Will and declaring that s/he is signing their Will and, the witnesses declaring that they are witnessing the testator signing his/her Will.
2. The Will is circulated as soon as possible to each witness as counterpart signatures will not be accepted and the Will is not valid until each party has signed. Again, each witness declares that they are signing the Will that they previously witnessed and the testator also declares that s/he has seen the witness signing their Will as a witness.

Best Practice

There is no case law on how to witness Wills by video conferencing and therefore using this method is highly risky. If this method is chosen, it may be best to resign the Will (when possible) in the conventional way whilst adhering to social distancing rules.

The Myerson Residential Property Team hard at work

When the property market ground to a halt at the end of March this year, the Myerson Residential Property Team were still working hard to provide our clients the support and service they needed.

The team were quickly moved to working efficiently at home, with all our IT and remote filing systems in place. We were able to keep operating and progressing matters in difficult circumstances with estate agents shut and staff in other legal offices furloughed.

Coming out of lockdown we have seen the property market recover exponentially, so much so, that August saw the highest price rise in property values since February 2004. People who had been looking to buy or sell their house prior to lockdown have been keen to get on with their property moves. This has been further boosted by a Stamp Duty Land Tax holiday in a bid to revive the property market.

With some areas still restricted to local lockdown measures, people may be reassessing their long-term housing needs, taking advantage of the stamp duty holiday to step up the property ladder, or looking for a property with more room for a permanent office rather than a dining table.

What is Stamp Duty?

Stamp Duty Land Tax (SDLT) is a tax which buyers must pay when purchasing a property. Normally, a buyer will pay a charge of 2% of the value of the house between £125,000 and £250,000. If the property is over £250,000, the stamp duty will increase in bands depending on the price of the house.

SDLT also applies at a higher rate to those buying a second property. If you are buying a second property valued up to £125,000 you will pay the 'Higher SDLT rates' which starts at 3% rising incrementally in bands up to 15%.

Will I have to pay SDLT?

In a bid to boost the housing market the Chancellor announced a stamp duty holiday running from 8 July 2020 until 31 March 2021. The nil-rate threshold for residential property purchases has temporarily increased to £500,000. This means that until 31 March 2021 buyers will not have to pay any stamp duty on property purchases up to £500,000. For first time buyers and those looking to move up the property ladder, this could allow a saving of as much as £15,000.

If you are purchasing an additional property, whether that be a buy-to-let property or a second home, you will still have to pay SDLT. This means that you would pay a charge of 3% of the value of the property up to £500,000. You will then pay stamp duty of 8% on the value of property from £500,000 up to the next £425,000, and rises in bands up to 15% on the most expensive properties.
The property market has significantly bounced back with the demand for houses increasing sharply.

The changes will only apply to anyone who completes their purchase before 31 March 2021. During this busy time we have expanded our team to include a trainee solicitor. We are now a team of four and are here to guide you through every step of your transaction.

Myerson Solicitors don't deal with bulk conveyancing and manage your file personally, unlike other firms. Being a small close-knit team means that we can provide you a bespoke service and you can trust us to deal quickly with any complications that may arise. Get in touch today to find out how we can assist you.

Speak with one of our Residential Property Lawyers.

Call us on **0161 941 4000** or email **lawyers@myerson.co.uk**

Heather Adams
Partner
Head of Residential Property

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