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Settlement agreements

1 . Using settlement agreements

A settlement agreement is a document that sets out the terms and conditions for settling an employment dispute. For example, a potential employment tribunal claim.

Settlement agreements used to be called 'compromise agreements'.

A settlement agreement is:

- in writing
- legally binding
- voluntary
- reached through discussion and negotiation

The agreement can include:

- a financial payment
- an employment reference
- agreement to not make a claim to an employment tribunal
- a confidentiality clause to not share specific information

Who can make a settlement agreement

A settlement agreement can be made between an employer and:

- a worker
- a former worker
- a job applicant

Who an employer makes a settlement agreement with will depend on the type of legal claim they could make. The type of claim someone is eligible to make will depend on their employment status.

Eligibility to make certain types of claim

Some types of legal claim can only be made by someone with the legal status of employee. This includes former employees.

For example:

- unfair dismissal
- constructive dismissal
- breach of contract
- redundancy pay

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

For example, only an employee would be eligible to make a claim for unfair dismissal. The employer might offer a settlement agreement to stop them from making a claim at an employment tribunal.

Some claims, for example a discrimination claim, can be made by someone who:

- is legally classed as an employee
- is legally classed as a worker
- a former employee or worker
- applied for a job

For example, if an unsuccessful job applicant feels discriminated against in an interview, they might make a claim for discrimination. The employer could use a settlement agreement to stop them from making a discrimination claim at an employment tribunal.

For a settlement agreement to be legally valid

For a settlement agreement to be legally valid, it must meet all of these conditions:

- be in writing
- be related to a specific complaint or claim at an employment tribunal or another court
- the worker must get advice from a relevant independent adviser
- the independent adviser must be insured
- the agreement must name the adviser

A settlement agreement must state:

- that all of these legal conditions have been satisfied
- the specific legal claims that it covers

For example, a settlement agreement would not be valid if it stated that the agreement is 'in full and final settlement of all claims'.

When a settlement agreement might be used

Settlement agreements can be used to:

- settle a dispute or legal claim
- end an employment relationship

A settlement agreement can be used without ending an employment relationship. For example, if there's a dispute over a bonus, an employer might use one to mutually agree the amount.

Anyone can suggest making a settlement agreement.

An example of an employer suggesting a settlement agreement

Pat has been employed as a sales representative for 10 years with their employer. The organisation has to reduce the number of sales representatives. So Pat is offered a new administrative role in the head office.

Despite support from their manager, Pat's struggling and feels they'll never get used to the new role. This affects their performance. After discussions with their manager, the manager suggests a settlement agreement.

After considering the terms of the settlement agreement and getting independent advice, Pat accepts the offer. They leave the organisation with an agreed one-off payment and a reference. Pat agrees that they will not make a claim to an employment tribunal.

An example of an employee suggesting a settlement agreement

Kai and Ali work on the same team but they do not get along on a personal level. They are highly motivated and valuable members of the team. Despite efforts to improve relations between them, their personality clash is affecting the team's performance.

Ali feels that the situation will never improve. They meet with their manager and suggest entering a settlement agreement to end employment. Their manager does not want to lose them but the current situation is not working for anyone.

They meet to discuss and agree the terms of the settlement agreement. Ali leaves with an agreed financial payment and a reference. They agree on a leaving date so that the manager has time to recruit a replacement.

Deciding whether to use a settlement agreement

A settlement agreement can be used to:

- end an employment relationship quickly
- agree financial payment
- agree a job reference
- avoid the time, cost and stress involved in an employment tribunal claim

However, settlement agreements are not always the best way to settle a dispute or deal with problems at work.

Before offering a settlement agreement, employers should consider:

- the cost of any financial payment
- whether it's the best way to deal with a problem
- how it might impact the working relationship if a settlement is not agreed
- the effect on the wider workforce, if a settlement agreement is not used properly or used in place of good management

Employers can often resolve issues:

- with good performance management
- by following fair procedures for discipline and grievance

This is usually the quickest and easiest solution.

2. Discussing and negotiating an offer

If an employer or worker is considering a settlement agreement, they should meet to discuss it.

Settlement discussions are confidential and are sometimes called 'protected conversations'.

Having an initial meeting

In the first meeting, you should:

- explain the reasons for offering a settlement agreement
- answer any questions

As an employer, you should make it clear that:

- a settlement agreement is voluntary – the worker does not have to agree to it
- the worker can negotiate and make a counter offer
- discussions are confidential – this means they cannot usually be used as evidence when making a claim at an employment tribunal or another court
- discussions should not affect any performance management or disciplinary procedures

Use our template letters to start settlement discussions

Bringing a companion to a meeting

There's no legal right to be accompanied to a settlement agreement meeting.

But it's good practice to allow a worker to bring one of the following to the meeting:

- someone they work with
- a workplace trade union representative who's certified by their union to act as a companion
- an official employed by a trade union

Under discrimination law, employers must make reasonable adjustments for disabled workers. This might mean allowing someone to be their companion. For example, a support worker or someone with knowledge of the disability and its effects.

Protection from detriment for trade union companions

An employer cannot cause 'detriment' to a trade union representative or official for accompanying someone as part of their trade union duties.

Detriment means someone experiences one or both of the following:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- they experience bullying
- they experience harassment
- their employer turns down their training requests without good reason
- they are overlooked for promotions or development opportunities
- their employer reduces their hours without good reason

Other companions are not protected against detriment.

For example, if a worker experiences detriment for accompanying someone to a settlement meeting, they could not make a claim to an employment tribunal.

Protection from dismissal for other companions

Someone could make a claim to an employment tribunal for unfair dismissal if they are:

- dismissed for accompanying someone to a settlement agreement meeting
- legally classed as an employee

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

If a companion is not an employee, they do not have the right to make a claim to an employment tribunal for unfair dismissal.

Financial payments

The employer and worker should agree on the financial payment.

Payments might include money for different things.

For example:

- compensation – an amount of money for agreeing not to make an employment tribunal claim
- a payment for any holiday entitlement not taken

The settlement agreement should say when and how payments will be made.

It's good practice to agree to make payments as soon as possible after signing a settlement agreement.

Tax and National Insurance (NI)

The settlement agreement should show:

- a breakdown of the payments and amounts
- any deductions for tax and National Insurance

Tax and National Insurance are usually deducted from:

- wages or salary
- bonuses
- commission
- holiday pay
- payment in lieu of notice (PILON)

You do not usually pay tax or National Insurance on the first combined £30,000 of:

- compensation for giving up your right to make a claim at a tribunal
- redundancy pay

Read more about tax on termination payments on GOV.UK

This is a complex area of law. If you're not sure whether tax applies, you should contact a tax adviser or HM Revenue and Customs (HMRC).

Ending the employment relationship

An employment relationship could end because of a dismissal or by mutual agreement.

A settlement agreement does not have to give the reason for ending an employment relationship.

The reason for ending employment can affect someone's entitlement to payments and financial support.

For example:

- Universal Credit
- Jobseeker's Allowance
- payments under some insurance policies

Redundancy

If an employer offers someone voluntary redundancy and they sign a settlement agreement, this still counts as a redundancy.

If the employer is proposing multiple redundancies, voluntary redundancies must be included when checking whether collective consultation is needed.

Find out more about collective consultation for redundancy

Employment end date

A settlement agreement could end the employment relationship:

- at the end of the notice period
- on an agreed date

Job references

Employers do not have to supply a job reference.

But if they do agree to provide one, the wording should be agreed as part of the settlement agreement.

When someone asks for a written or verbal reference, the employer should use the wording in the agreed reference.

Find out more about what employers can say in a job reference

3. Making a formal offer

Before making a formal offer, both the employer and worker should:

- discuss the settlement agreement offer
- negotiate and agree the terms

The settlement discussions should make clear:

- the reasons for the settlement agreement
- what's being offered – for example, a financial payment, a job reference

- what the confidentiality clause means, if included
- that the worker agrees to give up their right to make the particular claims listed in the agreement

Putting the agreement in writing

A settlement agreement is a legal contract. It must be in writing.

Using our settlement agreement template

To help make your own settlement agreement, you can:

- use our template for writing a settlement agreement
- follow our guidance on how to use our settlement agreement template

You should follow our guidance carefully when using the template. It explains what the different clauses in the template are for and how you should amend them for your particular circumstances.

The template and guidance are not a replacement for legal advice.

If you're not sure about anything, get legal advice.

Allowing time to consider an offer

Employers should give a worker a reasonable amount of time to:

- consider the written offer
- get independent advice

What is reasonable, will depend on the situation. The Acas Code of Practice on settlement agreements recommends allowing at least 10 days to consider a settlement agreement.

Employers must make reasonable adjustments for someone who's disabled. For example, someone might need more than 10 days to get independent advice, if they need a sign language interpreter.

In some situations, if you're not given enough time to consider an offer, settlement discussions could be used as evidence in a claim at an employment tribunal.

Getting independent advice

When a worker signs a settlement agreement, they give up their right to make a claim at an employment tribunal or another court. So it's important they check and agree the terms of the written offer.

For an agreement to be legal, a worker must get advice from a relevant independent adviser on how the agreement affects their rights to make a claim. The adviser must not be employed or acting on behalf of the employer.

An independent adviser can be one of the following:

- a qualified lawyer
- a certified and authorised trade union officer, official, employee or member
- a certified and authorised advice centre worker

Settlement agreements must specify the name of the independent adviser. They must also be insured, in case the worker suffers any loss as a result of the advice they give.

The employer should consider offering to pay the cost of any independent advice. They do not have to do this. But if they do, it helps make sure the worker gets the advice they need.

Because a settlement agreement is a legal document, employers should also get legal advice.

Find out more about getting legal advice

If a settlement agreement is turned down

If a settlement offer is rejected, employers should try to resolve the underlying causes of problems at work.

For example, they could:

- provide training
- improve working arrangements
- follow their performance management or disciplinary procedures
- offer mediation

If the terms of the agreement are broken

By law, if the terms of a settlement agreement are broken it's a breach of contract.

For example:

- the employer fails to pay compensation
- the worker breaches the confidentiality clause

If there's a breach of contract, the employer or worker can make a claim to:

- county court in England and Wales
- sheriff court in Scotland

Get more advice and support

If you have any questions about settlement agreements, you can:

- speak to a trade union representative, if you have one
- contact the Acas helpline
- get legal advice

4. Confidentiality

When discussing a settlement agreement, employers and workers should be able to have open and honest conversations.

Settlement discussions are sometimes called 'protected conversations'. These discussions usually cannot be used as evidence in an employment tribunal or another court.

An employer and worker can also agree to keep specific things confidential in a confidentiality clause.

Confidentiality clauses

Settlement agreements often include a 'confidentiality clause'. This is also called a non-disclosure agreement (NDA).

Confidentiality clauses are voluntary.

As part of a confidentiality clause, an employer and worker can agree to:

- keep the fact a settlement agreement has been made confidential
- not share the details of the agreement with anyone else
- keep other specific information confidential

Agreements usually allow for some details to be shared with close family and professional advisers.

The wording of a confidentiality clause should make it clear:

- what details can be shared
- who the details can be shared with

Employers cannot use a confidentiality clause to stop a worker:

- whistleblowing
- reporting a crime to the police
- sharing information about a crime to get advice and support if they're a victim of crime in England or Wales

> Important: From 6 April 2026, sexual harassment will become a 'qualifying disclosure' under whistleblowing law. This means whistleblowers making a sexual harassment disclosure will be protected from detriment and unfair dismissal.

English universities and other higher education providers cannot use a confidentiality clause to stop workers disclosing:

- sexual misconduct, abuse or harassment
- other bullying or harassment

Our settlement agreement template includes an example of a confidentiality clause.

Using settlement agreement discussions as evidence

By law, the confidentiality of settlement discussions is covered by:

- the 'without prejudice' legal principle
- section 111A of the Employment Rights Act 1996

This means that settlement discussions usually cannot be used as evidence in an employment tribunal or another court.

In some specific circumstances, discussions can be shared as evidence if there's been:

- 'unambiguous impropriety' – when the 'without prejudice' principle applies
- 'improper behaviour' – when section 111A of the Employment Rights Act 1996 applies

Without prejudice

Some settlement discussions are legally protected under the 'without prejudice' principle.

This means they cannot be used as evidence in an employment tribunal or another court.

For settlement discussions to be protected under 'without prejudice', there must be:

- an 'existing dispute'
- a genuine attempt to settle that dispute
- no 'unambiguous impropriety' during the settlement discussions

The without prejudice principle can apply to any type of legal claim, for example:

- unfair dismissal
- breach of contract
- discrimination
- wages

What counts as an existing dispute

A situation counts as an 'existing dispute' if at the time of the settlement discussions, the employer or worker either:

- has made a legal claim
- might reasonably consider making a claim

For example, it's likely to be an existing dispute if:

- someone makes an unfair dismissal claim against their employer after being dismissed
- a worker is considering making a claim for discrimination while they continue working for their employer

The type of claim someone can make to an employment tribunal or another court depends on their employment status.

The term 'existing dispute' does not cover every issue between an employer and a worker.

For example, it's unlikely to be an existing dispute if:

- a worker raises a grievance but is not considering a legal claim
- an employer offers a settlement agreement to end employment without warning

If it's not an existing dispute, the discussions would not be protected under the 'without prejudice' principle. But they might be protected under section 111A of the Employment Rights Act.

Unambiguous impropriety

If there is 'unambiguous impropriety' during settlement discussions, they might be allowed as evidence at an employment tribunal or another court.

Unambiguous impropriety means serious wrongdoing.

Unambiguous impropriety might include:

- blackmail

- discrimination
- fraud
- intimidation
- physical violence
- threats

Simply having settlement discussions does not count as 'unambiguous impropriety'.

For example, if an employer offers a settlement agreement but the worker prefers to settle the dispute in a different way, it's unlikely to be unambiguous impropriety.

If someone makes a legal claim to an employment tribunal or another court, the judge will decide what counts as unambiguous impropriety.

Section 111A of the Employment Rights Act

Some settlement discussions are protected under section 111A of the Employment Rights Act 1996.

This means they cannot be used as evidence in an employment tribunal or another court.

Section 111A only applies to:

- 'pre-termination negotiations' – these are the settlement discussions that end an employment relationship
- some claims for constructive dismissal and unfair dismissal

There does not need to be an existing dispute for section 111A to apply.

Legal claims covered by section 111A

Section 111A applies to claims for constructive dismissal and unfair dismissal, except if it's an 'automatically' unfair reason.

Automatically unfair reasons include:

- asking for a legal right – for example to be paid the National Minimum Wage
- carrying out trade union activities
- whistleblowing

Only someone with the legal status of employee is eligible to make a claim for unfair dismissal or constructive dismissal. This includes former employees.

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

If an employee is offered a settlement agreement to end their employment, they cannot use the settlement offer to make a constructive dismissal claim.

Find more advice on:

- constructive dismissal
- unfair dismissal, including automatically unfair reasons

Improper behaviour

If there's been 'improper behaviour' during settlement discussions, they could be used as evidence in an employment tribunal or another court.

Improper behaviour during the settlement discussions could include:

- harassment, bullying and intimidation – including offensive words or aggressive behaviour
- physical assault, threats of physical assault and other criminal behaviour
- victimisation
- discrimination

Improper behaviour also includes putting undue pressure on someone, for example:

- not allowing a reasonable time to consider a settlement agreement offer
- telling someone before a disciplinary procedure that they'll be dismissed if they turn down a settlement offer
- threatening to harm an organisation's reputation if the employer does not sign an agreement

What does not count as improper behaviour

Actions which are not improper behaviour include:

- setting out the reasons for suggesting a settlement agreement
- stating likely alternatives if a settlement is not agreed – including disciplinary action and possible dismissal
- factually stating that if an offer is refused and disciplinary action results in a dismissal, they will not be allowed to leave on the terms offered
- not agreeing to provide a reference
- not paying for the cost of independent advice
- encouraging someone to reconsider an offer after turning down

If someone makes a claim to an employment tribunal or another court, the judge will decide if there has been improper behaviour.

Example of improper behaviour

Kai has worked in a call centre for 3 years. When the organisation upgrades their systems, they struggle to adapt to the new technology. Kai's performance starts to be affected, but their manager tells them their performance was still satisfactory and they'd soon adapt.

When a new manager reviews everyone's performance, they tell Kai to improve or they'll be dismissed. They are shocked when the manager offers them a settlement agreement in an aggressive manner, saying "take it or leave it". Kai is given the weekend to consider the offer. When Kai turns down the offer, their manager starts a disciplinary procedure and then dismisses them.

Kai makes a claim to an employment tribunal for unfair dismissal. They want to use the manager's comments when they made the offer, as evidence to support their claim.

In this situation, it's likely there was improper behaviour under section 111A because Kai's manager:

- was aggressive and intimidating
- did not give a reasonable period of time to consider the offer
- threatened to dismiss Kai before following disciplinary procedures

It's likely that Kai would be allowed to use the manager's comments as evidence at an employment tribunal.

Example of where there's no improper behaviour

Chris has worked in a shop for 5 years. Recently they have not been turning up for work on time. Chris's manager discusses their timekeeping and rearranges their shift pattern to help them. Chris continues to turn up late and is given a first written warning.

Their poor timekeeping is affecting the organisation. Their manager suggests Chris leave their job in return for a payment and an agreed reference. Chris turns down the offer.

Chris continues to be late. So their manager follows the company disciplinary procedure. This leads to a final warning and then dismissal.

If Chris makes an unfair dismissal claim, it's likely they cannot use the settlement discussions as evidence at an employment tribunal or another court.

This is because:

- pre-termination discussions for unfair dismissal claims are protected under Section 111A
- there was no improper behaviour

When section 111A and without prejudice principle both apply

Settlement discussions will be protected under both section 111A and without prejudice if all of the following apply:

- it relates to an existing dispute
- there's a claim for unfair dismissal or constructive dismissal
- there was no unambiguous impropriety

If there are multiple claims

Section 111A only applies to unfair dismissal and constructive dismissal claims.

It does not apply to other claims, for example:

- discrimination
- wrongful dismissal – read about unfair dismissal, including wrongful dismissal
- unlawful deduction of wages

Example of multiple claims

Someone makes a claim for both unfair dismissal and discrimination where there's no existing dispute.

The settlement discussions relating to the unfair dismissal claim are protected under section 111A. So they cannot be used as evidence.

The discussions relating to the discrimination claim are not protected under the 'without prejudice' principle. This is because there's no existing dispute.

So in this situation, they might be able to use settlement discussions as evidence for the discrimination claim.

Discrimination when using settlement agreements

Discrimination law (Equality Act 2010) protects people against discrimination at work. It could be discrimination if someone is treated 'less favourably' than someone else, because of a 'protected characteristic'.

For example, offering a settlement agreement to:

- a worker because they tell their employer they have a disability
- an older worker to encourage them to retire

If a worker makes a discrimination claim at an employment tribunal and there's an existing dispute, they cannot use the settlement discussions as evidence. This is because the discussions are protected under the 'without prejudice' principle.

If there's no existing dispute about the discrimination at the time of offering the settlement agreement, the discussions would not be protected. This means they can be used as evidence.

By law, if there's discrimination, including victimisation, during settlement discussions, this could count as:

- 'improper behaviour' under section 111A of the Employment Rights Act
- 'unambiguous impropriety' under the without prejudice principle

If there's discrimination during settlement discussions, they can be used as evidence in an employment tribunal or another court.

Example of discrimination in offering a settlement agreement

Mo has worked on a production line for 7 years. Their mobility is being affected by arthritis. They discuss it with their GP who suggests a reasonable adjustment at work to allow them to sit from time to time.

Their manager calls a meeting and says "You know you can't carry on working here with mobility issues. It's just not going to work." The manager offers them a settlement agreement to end employment.

When Mo turns down the offer, their manager starts a performance improvement process. This is followed by a disciplinary procedure and Mo is dismissed.

Mo feels discriminated against and makes an unfair dismissal claim and a disability discrimination claim. Mo wants to use their manager's comments during the settlement agreement meeting in both claims.

For the unfair dismissal claim, the settlement discussions would usually be protected under section 111A. But because the manager's comments count as 'improper behaviour', it's likely Mo could use the discussions.

For the discrimination claim, it's likely that Mo can use the manager's comments because they are not protected under:

- section 111A – section 111A does not apply to discrimination claims
- without prejudice – without prejudice does not apply if there's no existing dispute at the time of the settlement discussions

Reasonable adjustments

Employers must make reasonable adjustments for disabled workers.

For example, if someone needs a sign language interpreter, they might need more than 10 days to get independent advice.

Preventing discrimination

It's good practice for employers to review their use of settlement agreements. They should make sure that their use of settlement agreements does not discriminate against anyone who has a protected characteristic.

Example of checking for discrimination

Dan is an HR Director for 10 retail outlets across Britain. They become aware that a number of settlement agreements have been made in the past year.

Dan decides to do an equality impact review of the use of settlement agreements. They notice they're being used in relation to workers aged 65 and over.

Offering settlement agreements as a default to encourage older workers to retire might be discrimination.

Following the review, Dan arranges equality awareness training for all managers.

Find out more about preventing discrimination