

COMPROMISE AGREEMENT FACTSHEET

When a relationship between an employee and employer breaks down irretrievably a compromise agreement can be the only way to deal with the situation and prevent a possible complaint to an Employment Tribunal.

A 'compromise agreement' is a legally binding agreement following the termination of employment. It usually provides for a severance payment by the employer, in return for the employee agreeing not to pursue any claim they believe they may have to an employment tribunal. Quite often, the compromise agreement will also deal with the notice element in the contract of employment and may provide for a "payment in lieu of notice".

Employers are now increasingly using compromise agreements as a mechanism for preventing possible future complaints to a tribunal, especially in redundancy situations.

Compromise agreements are recognised by statute and are the only way a claim can be legally binding without tribunal proceedings having been initiated.

The employee must seek the advice of an independent solicitor before the agreement becomes binding.

The solicitor giving the advice must also sign the agreement and certify that the appropriate advice has been given.

Why is a Compromise Agreement Necessary?

The use of compromise agreements in redundancy situations is used mainly if an employer has not complied with the law in making redundancies (perhaps through failing to consult properly, failing to use fair selection criteria etc) where an employee can complain to a tribunal that the redundancy was unfair. This can be done after the redundancy and could result in an award of compensation or even reinstatement.

The only way an employer can be sure that an employee will not complain to a tribunal after redundancy is to persuade them to sign away their right to do so. This can be done in a compromise agreement and has the effect of turning the redundancy package into a "full and final" settlement of any claims the employee has against the employer.

However, compromise agreements are also commonly used in employment situations other than redundancies and also during the conciliation period when an employment tribunal claim has already been made and they have the same "full and final" effect. Where compromise agreements are made during the conciliation period, it is normal for Acas to draw up the agreement but you can amend the wording or request that you use your own.

What terms does a Compromise Agreement have to contain?

The compromise agreement will state the full breakdown of the payments the employee is to receive and the extent to which the sums will be paid free of tax. The ceiling for such payments is £30,000 compensation without deductions.

The compromise agreement will also provide for confidentiality both in terms of the employers trade secrets and business affairs and also of the terms of the agreement. Normally an employee is paid a small additional sum for agreeing to this - usually a few hundred pounds. Sometimes the 'sweetner' to

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the employee is that the notice in lieu is incorporated into the agreement as otherwise this is normally subject to income tax and NI deductions.

The agreement can also contain the requirement not to make any derogatory comments against your employer. It is best practice for such agreements to be mutual.

The compromise agreement may confirm the existing post-termination restrictive covenants that the employee may already be bound by under their contract of employment. In some cases, the covenants are new, having appeared in the compromise agreement for the first time.

How much will it cost?

It will cost the employee nothing as the employer pays for the agreement to be drawn up and agreed and covers the legal costs normally up to a certain amount and typically this is up to £250.

What happens if the employee is not happy with the Agreement?

There is no legal or other obligation on the employee to sign a compromise agreement if they are not happy with it. However, once you enter into negotiations on an agreement it is quite normal for the 'sweetner' to be increased.

However, if there is no agreement between the employer and employee, the employee is free to make a claim to the employment tribunal (which must be within 3 months of their termination date).

When do I have to pay the amount due under the Agreement?

Once a compromise agreement has been signed by all parties, any agreed compensation will usually be paid in a within 7 or 14 days. Sometimes, it goes through in the next company pay run or is paid by cheque. The payment date will be specified in the agreement. In these current hard times the payments can be split over an agreed period.

We have extensive experience in drawing up and negotiating compromise agreements and if you would like to know more please talk to us.