

# SETTLEMENT AGREEMENTS – ADVICE FOR REPS

## Introduction

Settlement agreements or, as they were previously known, compromise agreements are legally binding contracts between employee and employer. They are usually designed to allow the termination of an employee's employment in return for a settlement payment or other benefit.

They can, however, be used to settle legal proceedings at any stage in the process; they can also be used where employment is continuing. It is important to remember that if members breach the terms of a settlement agreement the employer may seek to recover some or all of the money paid as well as the costs of doing so.

## What settlement agreements cover

Settlement agreements generally settle all actual or potential legal claims connected to members' employment (or the fact that it is ending). These include (but are not limited to) unfair dismissal, discrimination, breach of contract and current personal injury claims. Members also usually waive the rights to make claims that might arise in the future. There are normally specific exceptions to these general rules:-

- members will always be able to enforce the terms of the agreement;
- unless members are advised otherwise by their independent legal adviser, claims for personal injury that are not known about when the settlement agreement is signed can usually still be brought in the future if there are grounds to do so (e.g. for asbestos-related conditions that come to light later);
- members can still bring a claim in respect of accrued pension rights under the employer's pension scheme if necessary.

If members have any concerns or believe they may have any claims at all against their employer they should raise this with the solicitor who is advising them on the agreement.

**Please note, if the member has an ongoing personal injury claim at the time of entering into a settlement agreement, or is thinking about making a personal injury claim, they need to make sure they have informed both the solicitor advising them on the agreement and their employer about this.** If they do not then they may lose the right to make or continue the claim(s). If other solicitors are acting for them in relation to an existing claim they should check whether the claim is ongoing, but the

key thing is to let the solicitor advising them on their agreement know about any claim or potential claim.

### **Why members need legal guidance**

If one of your members is offered a settlement agreement they need to fully understand the document before they sign it.

The law therefore stipulates that a settlement agreement will not be legally binding unless an independent adviser has advised the employee about the terms and effect of the agreement. **Settlement**

Members need to be careful about what they sign. The wording of settlement agreements is often complex and legalistic; agreements that might appear to be straightforward may have unexpected legal consequences.

### **TSSA recommends Morrish Solicitors**

It is normal for the employer to pay a fee of around £350 (+VAT) towards the cost of the member seeking independent legal advice for a settlement agreement. They may also encourage members to go to a local solicitor. This is, of course, the choice of the member but we would always recommend using Morrish Solicitors who will not only aim to take the stress out of the settlement agreement process, but have a wealth of experience in advising on settlement agreements specifically in the railway sector and other industries where TSSA has members. The lack of this specific understanding has meant that

in the past the use of other solicitors has led to issues such as:

- loss of an individual's travel benefits because the other lawyers did not know to advise the individual to check their travel benefits with the employer or ATOC before concluding the settlement agreement
- a member being left unaware they would receive a tax bill on some of the payments
- a member appeared to have under settled their claim without gaining any input from TSSA before concluding the agreement – if the member had gained input from TSSA it may well have been possible for the settlement figure to have been negotiated upwards with the TSSA's help.

Morrish understand the key elements of the terms and conditions that TSSA members retain such as pensions, travel provisions, allowances, commission etc. and therefore we believe they are best placed to advise in these scenarios.

They will look for drafting errors or unintended consequences. They can advise about the types of claims that should be excluded from the scope of a particular settlement agreement. They will explain the effects of what are often necessarily complex and detailed obligations members may be signing up to. They avoid jargon.

Morrish Solicitors is a law firm for the individual. Having represented staff association members, trade union members and private clients for over 100 years, they have extensive experience in giving advice to individuals on all aspects of employment law. Morrish's clients are

employees from a broad spectrum of industries and sectors including, of course, the railway sector and other industries where TSSA has members. If reps have a member who may need legal support they should talk to their nominated Organiser or Organising Director in the first instance.

### **Member's obligations under a settlement agreement**

It is important members read the agreement very carefully to determine the exact obligations it will impose on them and Morrish will discuss these with the individual. They will be different in every case. However, the following are the most common:

- members must accept that they will not bring any claims against their employer (or any group companies) arising out of their employment or its termination, regardless of whether they know about them or not
- members accept that the payments set out in the agreement are paid to them in full and final settlement of any actual/potential legal claims against their employer
- members must return all company property. They will also normally need to promise not to keep copies of any documents belonging to the employer
- members must keep the terms of the agreement and circumstances surrounding the termination of their employment strictly confidential
- members must not reveal any confidential information about their employer which they have gained in the course of their employment

- members must continue to observe any post-termination obligations in their contract of employment
- members must ensure they do not make any derogatory or disparaging statements about their employer and ensure none are made on their behalf.

### **Employer's obligations under a settlement agreement**

It is important to read the agreement very carefully to determine the exact obligations on the employer and Morrish will discuss these with members. They will be different in every case. However, the following are the most common:

- members will receive a termination or other compensation payment
- members will receive their basic salary and all contractual benefits accrued up to and including the date of termination of employment
- members will be entitled to receive a payment in respect of any outstanding accrued holiday entitlement
- members may be entitled to an agreed reference from their employer.

### **Key things to be aware of when entering into a settlement agreement**

- Members may have "restrictive covenants" in their contract of employment which may prevent them from poaching clients or colleagues or working for competitors. Members should check this. Members will continue to be bound by their contract unless the agreement states otherwise.

- Voluntary, as opposed to compulsory, redundancy can have a negative impact on insurance policies. For example an insurer may refuse to pay out redundancy protection/mortgage protection when an employee has accepted voluntary redundancy.

- Members must also be aware that it may take longer to receive any state benefits such as Job Seekers Allowance if they have volunteered for redundancy.

- If members have any additional benefits it's important to ensure they are all dealt with in the agreement.

### **The tax consequences of signing a settlement agreement**

As a general rule termination payments are currently tax free up to a limit of £30,000.00. This general exemption does not apply to all of the money members will be paid. In particular, members are liable to be taxed on:

- any money representing outstanding salary, holiday pay or other contractual payments since these constitute elements of their pay
- any money relating specifically to a period of notice
- any money paid in lieu of notice in circumstances where their contract of employment includes a 'payment in lieu of notice' clause.

There is normally a clause in the agreement about tax. The money specified as being for loss of employment will be paid to members tax free in the belief that they are protected from the payment of tax. If

HM Revenue & Customs take a different position members will be liable to pay any tax that is later charged.

As a general rule any financial benefits (e.g. health cover or travel benefits) will be taxable.

### **Reps action**

At the time of writing the government has a consultation under way about whether the £30,000 tax free payment for loss of employment should be retained, reduced or abolished. Reps therefore need to look out for announcements about this – especially, but not limited to - the Budget when any change is most likely to be announced.

Further information on this and other employment rights matters is available from:

- Val Stansfield, Employment Rights Adviser at [stansfieldv@tssa.org.uk](mailto:stansfieldv@tssa.org.uk) or 020 7529 8046
- the TSSA Helpdesk – 0800 328 2673

### **In relation to settlement agreements ONLY:**

- Morrish Solicitors LLP on 03333449603 or by email at [settlementagreement@morrishsolicitors.com](mailto:settlementagreement@morrishsolicitors.com)

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