



KUMARI HART
S O L I C I T O R S

Guide to Redundancy & Settlement Agreements

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T: 02477 981545 E: enquiries@kumarihart.co.uk

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WHAT ARE SETTLEMENT AGREEMENTS?

A settlement agreement is a voluntary agreement made between you and your employer. It limits any potential claims and draws a line under all matters once your employment comes to an end.

The agreement deals with things such as: termination payments (which may include a tax-free sum), holiday pay, bonuses, use of any private vehicle, your pension and many other items.

After you agree to the terms, your employer will make a payment to you on the basis that you agree not to bring certain claims, for example, unfair dismissal, discrimination or breach of contract.

Although it is a voluntary process, once signed by the parties it is binding. As such it is sensible that you take independent legal advice. Your employer will usually pay the cost of the advice.

WHAT ARE THE BENEFITS OF A SETTLEMENT AGREEMENT?

Settlement Agreements offer certainty to you and your employer. It ensures a clean break. You will have a clear understanding of payments to be made, often with an agreed job reference. Your employer will have the certainty that there will be no future claims.



WHEN SHOULD SETTLEMENT AGREEMENTS BE USED?

Settlement Agreements are now very common, especially when dealing with executive positions. Even if your employment is ended amicably, these agreements are often used. They are also used during processes such as redundancies and disciplinaries.

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WHAT DOES “Without prejudice & subject to contract” MEAN?

You may see “Without prejudice & subject to contract” in communication such as e-mail or a letter when dealing with a settlement agreement. It means that any discussions or communications used in the process cannot be relied upon in any subsequent tribunal. It allows the parties to communicate freely with fear of repercussion.

“Subject to contract” means that the settlement agreement will not be binding unless it has been signed by both parties.

HOW LONG DO I HAVE TO AGREE TO THE TERMS OF A SETTLEMENT AGREEMENT?

There is no set time limit. However, ACAS gives a code of practice which states that you should be given at least 10 days to consider the terms of your settlement agreement. If more time is needed, this is usually given by the employer within reason.



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WHAT CLAUSES ARE USUALLY INCLUDED IN A SETTLEMENT AGREEMENT?

ARRANGEMENTS ON TERMINATION:

This deals with the arrangements in the period leading up to and including your termination. It also confirms the payments that will be made or have been made to you over that period. These payments arise under the contract and will be taxable in full in the usual way.

If you are going to receive any bonus or commission payment, this should be specified in the agreement. Your employer may also wish to specify what payments you will not be receiving.

It will also include your “termination date” and whether you will be expected to work your notice period or be put on “garden leave” (Yippee!!)

TERMINATION PAYMENT:

This will set out the various payments to be made to you and when. It will make reference to a “compensation” payment which is usually paid free of tax up to the first £30,000.

BENEFITS:

This clause deals with any continuing benefits in kind previously enjoyed under your employment contract, such as private medical insurance or motor vehicle.



PENSION:

Care should be taken in relation to wording for pension compensation. There will be different considerations depending on the type of scheme of which you are a member and there are also tax issues to consider.

The clause usually requires the company to notify the trustees or administrators of the pension scheme of the termination of your employment. This is so that they are aware that the company will no longer be contributing to the scheme.

LEGAL FEES:

It is usual for your employer to make a contribution to your legal fees associated with the Settlement Agreement. The going rate may vary depending on locality and complexity. Most are probably between £300 and £500. For board-level terminations, particularly where transfers of shares are involved, a much greater contribution may be considered reasonable.

WAIVER OF CLAIMS:

This is where the parties will agree to waive the right to waive a future claim. It is not possible to waive all statutory claims. It is also common for an employer to try and waive any potential personal injury claim.

TRIBUNAL PROCEEDINGS:

This clause should only be included if you have brought a tribunal claim against your employer.

Your employer will want to ensure that the tribunal is notified of your settlement and that the claim is properly withdrawn by you.

EMPLOYEE INDEMNITIES:

This provides protection for your employer in the event that HMRC pursues it for further tax or employee NIC's on your termination payment

COMPANY PROPERTY AND INFORMATION:

This clause provides that you return property belonging to your employer, and to delete any information relating to the business and its contacts that might exist on your electronic devices and on third party servers such as cloud storage.

Employee Warranties and Acknowledgements:

Here, you are stating that you are not aware of any circumstances that would justify your summary dismissal. If, having made the termination payment and any payment in lieu of notice (if relevant), your employer discovers that this is not true, it ought to be able to recover those monies from you.

REFERENCE:

There is usually no obligation on an employer to provide you with a reference, and therefore your employer may prefer not to offer an agreed reference in the first instance. In most instances however, it is advisable to make sure that one is attached to the Settlement Agreement.



Same Day Virtual Appointments Available

To find out more about how we can assist in a Settlement Agreement, please contact us on **02477 981545** or **07840 925161**, email enquiries@kumarihart.co.uk

RESIGNATION FROM OFFICES:

If you are resigning from any directorships, your employer should check the relevant articles of association and may require you to sign a resignation letter, a draft of which is usually attached as a schedule to the settlement agreement.

If appropriate, you may be required to sell any qualifying or nominee shareholding to someone nominated by your employer.

RESTRICTIVE COVENANTS:

Where there are existing restrictive covenants in your contract of employment, these will likely be re-affirmed. Careful consideration is needed to ensure that these are reasonable and not too onerous as they may be challenged in court.

CONFIDENTIALITY AND ANNOUNCEMENTS:

Such clauses will usually include: -

- Protecting the employer's confidential information.
- Ensuring confidentiality about the settlement agreement and the circumstances of your departure.
- Listing exceptions to confidentiality, in particular to ensure compliance with regulatory requirements about non-disclosure agreements.
- Catering for potential tax issues arising from post-termination obligations of confidentiality.
- An agreed announcement about your departure

ENTIRE AGREEMENT:

The purpose of this clause is to ensure that neither party can argue that anything said in negotiations, or in any other document, forms a term of the contract. If there are other documents that are intended to be given contractual force, they should either be in a schedule to the agreement or specifically referred to in the entire agreement clause.

JURISDICTION:

A Jurisdiction clause enables the parties to agree at the outset of their contractual relationship which country's or countries' courts are to have jurisdiction to hear disputes arising from the contract.



KUMARI HART
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OUR LEGAL SERVICES INCLUDE:

- Landlord and Tenant Issues
- Professional Negligence
- General Civil Litigation
- Property Disputes
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HOW CAN KUMARI HART SOLICITORS HELP YOU?

We can review your Settlement Agreement within 24 hours. Furthermore, we are happy to speak to you over a Zoom call or on the phone anytime between 8 am – 9 pm and at the weekends.

OUR PRICE PROMISE TO YOU – FIXED FEES ONLY

The amount that your employer will pay towards the cost of you getting legal advice from a specialist is usually capped.

Kumari Hart promise that we will not charge you more than your employer's contribution to review the agreement.

We will also bill your employer direct, so you will not have to pay a penny!

DISCLAIMER

This document contains general information intended to promote this Firm and to alert you to matters upon which you might need legal advice. Whilst we endeavour to keep the content up-to-date and accurate it is not intended to provide legal advice and you should always take specific legal advice from a qualified lawyer before taking or not taking any action. Kumari Hart Limited disclaims any liability for any loss which may be suffered as a direct or indirect result of reliance on the information in this document.

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