



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

# Guide to Redundancy & Settlement Agreements

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## **FREE PDF DOWNLOAD**

T: 02477 981545 E: [enquiries@kumarihart.co.uk](mailto: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.

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## WHY DO I NEED A SOLICITOR TO ADVISE ME?

Settlement agreements are not legally effective unless the employee has received independent legal advice about its effect.

Settlement agreements tend to be written in legal jargon, often referring to legislation that you may never have heard of. It is essential that you understand the content of the agreement so that you know exactly what you will be getting.



Section 203 of the Employment Rights Act 1996 states that, the advice must be given by a "relevant independent adviser" and that the advise must have a contract of insurance in place which covers the risk of a claim by you.

There must be in force a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of any potential claim by you in respect of any loss that may arise from our advice.

### **Kumari Hart Solicitors meet all the legal requirements:**

- We are "relevant independent advisers" and
- We are Members of a professional body (Law Society and SRA)
- We have professional indemnity insurance covering any risk of a claim by you

## WHEN WILL I GET MY REDUNDANCY PAYMENT?

Your Settlement Agreement will state when you will get your payment. If you are not sure, please contact us.

## WILL KUMARI HART'S COSTS BE TAKEN OUT OF MY PAYMENT?

No. You will receive the full payment. We charge your employer direct and we will cap the amount we charge to the amount that they will pay.

## WILL I HAVE TO PAY TAX ON THE REDUNDANCY PAYMENT?

This depends on how the redundancy payment is made up. You will pay tax and national insurance on wages and holiday pay. Redundancy payments up to £30,000 are usually tax-free.

If your payment is going to be more than £30,000, you may wish to consider putting some in your pension to reduce the tax payable.

## WHAT ABOUT A REFERENCE FOR FUTURE EMPLOYMENT?

Your employer is not under a duty to provide a reference. If it is provided it should be accurate and fair. If not, your employer may be in trouble! If you need one and it is not mentioned in your settlement agreement, let us know and we will ask for an appropriately worded reference to be included.

 [Your Employment Lawyers](#)

## WILL I BE ABLE TO BRING A CLAIM AFTER I LEAVE?

In general you will still be able to make claims for:

- Personal Injury (so long as not specifically excluded)
- Breach of the Settlement Agreement
- Accrued pension rights.

All other claims will be excluded as part of the agreement.

## 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.

## 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.

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## 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.

 **Your Employment Lawyers**



# 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](mailto: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.

## **HELPFULLY LINKS**

### **REDUNDANCY CALCULATOR:**

<https://www.gov.uk/calculate-your-redundancy-pay>

### **ACAS GUIDE:**

<https://archive.acas.org.uk/settlementagreements>

### **UK GOVERNMENT:**

<https://www.gov.uk/guidance/statutory-payments-and-compromise-agreements>



## 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. FLEXIBLE OPENING TIMES – 8am to 8pm during the week & from 9am to midday at 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!

### > Your Employment Lawyers

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**KUMARI HART**  
SOLICITORS

**Tel: 02477 981545**

[enquiries@kumarihart.co.uk](mailto:enquiries@kumarihart.co.uk)

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