Part 7 Employment law

Settlement agreements

The issue of how settlement agreements work is discussed in Chapters 20 and 24 in the book. The change to how employment tribunals deal with complaints against employers has brought the topic of settlement agreements to the fore.

The Advisory, Conciliation and Arbitration Service (ACAS) is now required to explore the possibilities for a settlement with both parties, before any employee claim can go through to the tribunal process. If both parties agree to conciliation, this can result in agreements between them, with some form of compensation. The terms of the agreement are legally binding. The typical areas covered by these settlement agreements are shown in the example below. This shows the obligations on the employer and the employee which will have been negotiated between the two parties. The terms of the agreement would typically be negotiated by solicitors representing each side, and would cover topics such as those listed below.

- The agreement is legally binding on both sides.
- In return for the employee relinquishing all claims against the employer, the employer agrees to a settlement payment. This would include a payment in connection with the termination of employment. In addition, if for example there was an allegation of discrimination, there may also be a payment as compensation for ‘injury to feelings’. The amount would probably be based on a number of months’/weeks’ pay. The solicitors would take as a guide the maximum amount achievable from a tribunal, if the employee were to win their case. The employer may also pay the legal fees in respect to the preparation of the settlement agreement.
- There may also be amounts relating to payment in lieu of notice, the employer’s contributions to pension schemes and issues around any bonus foregone.
- The timing of the payment – the date, and the arrangements regarding what amount is to be taxed.

There would usually be non-financial obligations on both parties in the agreement. Obligations on the employee might include the following:

- Confidentiality clauses: these impose a duty of treating information about the employer’s business known to the employee as a result of their employment as confidential, so that it must not be revealed to other parties. Similarly, employees will be obliged not to disclose any passwords for employer’s computers and files, as well as laptops, mobile phones, etc.
- Detrimental remarks: the employee would be obliged to undertake not to make statements or derogatory remarks about the employer such that these could be expected to damage the employer’s reputation and business.
- The employee will agree not to represent him/herself to be still in the employment of the company after the termination date.
- The employee will indemnify the employer against any liability for unpaid tax, National Insurance contributions, or other penalties imposed by the tax authorities.

© Shaun Tyson 2015
There may be restrictive covenants in the employee’s contract which seek to govern the behaviour of the employee after he/she has left the employment in question. Employers would probably seek to ensure the employee agreed to continue to be bound by these covenants. This would be a matter for the employee’s solicitor to consider when negotiating the agreement.

There would also be obligations on the employer within the agreement, negotiated between the two parties. These might well include the following:

- The right to a reference, to be expressed in the agreed wording. (The wording to be a part of the agreement.) This will be provided in writing or verbal form, and will be the only acceptable form of words. Reference requests which are to be supplied in questionnaire form to be entirely consistent with the wording agreed.
- The employer agrees to keep the terms of the agreement confidential.
- An internal announcement to staff regarding the departure of the employee to be made in the wording agreed between the two parties. (This wording to be a part of the agreement.)
- The employer agrees to ensure that no detrimental remarks are made about the employee, which might damage the reputation of the employee.