

February 2019

SETTLEMENT AGREEMENTS

A FACTSHEET FOR EMPLOYERS AND WORKERS ABOUT SPEAKING UP

This factsheet outlines key considerations to help employers and workers understand their rights when entering into a settlement agreement. It has been produced by NHS Employers in partnership with the National Guardian's Office, following consultation with UNISON and with six law firms that provide legal services to the NHS: Bevan Brittan, Capsticks, DAC Beachcroft, Hempsons, Mills & Reeve and Ward Hadaway.


What is a settlement agreement?

Settlement agreements (previously known as 'compromise agreements') are legally binding agreements between employers and workers. They set out the terms and conditions reached when a contract of employment is being terminated or a dispute is being resolved.

By signing a settlement agreement, the worker shows they are content with, and agree to abide by, the conditions that it sets out.

Why are settlement agreements used?

Settlement agreements can benefit both employers and workers and can mean that expensive and stressful legal processes such as employment tribunals are avoided. They can include agreements for financial compensation and enable an employer to give a worker a reference.



What employers should think about when considering a settlement agreement

Is it the right thing to do? Settlement agreements should only be used on rare occasions. They are no substitute for good management or engaging with workers to find a constructive solution to workplace issues. You should always ask 'Are there other ways of finding a positive solution?'

Is the documentation you are using correct? Settlement agreements are bespoke documents and must reflect the specifics of the case. They should never be reused or copied. You should always check that they contain up-to-date information and reflect the latest guidance.

You are strongly advised to seek legal advice every time a settlement agreement is being drawn up, to ensure:


- the use of a settlement agreement is the best route to take
- the requirements outlined within the agreement are clear
- implications for all parties concerned are easy to understand and can be considered.

Does the worker understand what the agreement means? Settlement agreements will always include certain legal references which cannot be avoided. However, they should, as far as practically possible, be written in a way that minimises complexity and legal jargon.

You should always satisfy yourself that a worker understands what the agreement means both in general terms and in relation to the specific conditions it sets out. You should not ask a worker to sign a settlement agreement if you are in any doubt that they understand what they are agreeing to.

Workers must be advised to take independent legal advice before signing a settlement agreement for it to be legally binding. Employers may choose to pay a contribution towards the worker's legal costs and this can be agreed as part of the settlement agreement.

Are you supporting the worker? Ending someone's employment or resolving a disagreement can be stressful. You must act responsibly and reasonably and ensure that the worker is being appropriately supported. Support includes ensuring that the physical and mental health of the worker is being looked after. In addition, it is also important to ensure workers have access to legal and other sources of advice, as may be appropriate, to help them make good decisions and properly understand the details of the settlement agreement and its implications.



Where employers can go for further help and support

This factsheet should be read in conjunction with guidance for employers on [the use of settlement agreements and confidentiality clauses](#), which can be found on the NHS Employers website.

Other useful sources of information:

- [Acas](#) provides a range of guidance and free advice on the use of settlement agreements.
- [The Solicitors Regulation Authority](#) has produced a warning notice which includes information about settlement agreements. While this is aimed at legal professionals, some of the principles may be useful for NHS organisations drawing up settlement agreements.

What workers should think about when considering a settlement agreement

Is it the right thing to do? Settlement agreements should only be used on rare occasions and you should consider whether there are other ways of finding a positive solution to the situation you are in. You do not have to enter into discussions about a settlement agreement and can end discussions at any time.

Are you confident that you know what the agreement means? You should only sign an agreement if you understand what it means and are willing to agree to it. Always ask a lawyer to check the document and explain its contents to you in a way that you understand. Where necessary, legal advice may be paid for by your employer.

Does it include the right information? Settlement agreements must include certain legal references that may not be widely understood. Again, legal advice should be sought to ensure you understand and can fully consider the implications for you.

Are you being supported? Ending your employment or resolving a disagreement can be a stressful time. Your employer has a duty of care to act reasonably and responsibly to ensure your physical and/or mental health is being looked after. They must also ensure you have access to appropriate legal advice before signing the agreement. If you need additional support, you are within your rights to ask for it.



Where workers can go for further help and support

- [Acas](#) provides a range of guidance and can give free advice on the use of settlement agreements.
- [Protect](#) (formerly known as Public Concern at Work) is a whistleblowing charity that can provide free legal advice and support to whistleblowers and organisations.
- [Speak up Direct](#) (formerly the National Whistleblowing helpline) provides free and independent advice on the speaking up process.
- [Citizens Advice](#) can provide free advice to workers about entering into a settlement agreement with their employer.

Other considerations for both employers and workers

Confidentiality

Settlement agreements may include wording that means part, or all, of the agreement needs to remain confidential. This would be included in what's known as a 'confidentiality clause'. Most commonly, this might relate directly to restrictions around disclosing the value of any severance payment in certain circumstances. Employers should consider whether confidentiality clauses are needed at all and workers should make sure they understand and are happy with these parts of the agreement before signing.

If a confidentiality clause is needed, they should not go further than intended. In no circumstances should these clauses prevent a worker seeking support from their family, a GP or similar health practitioner, or an employment support scheme such as NHS Improvement's Whistleblowers' Support Scheme.

Speaking up

Settlement agreements must not prevent workers from speaking up, either before or after they have been signed. Workers can and should be supported by employers to speak up, through the appropriate channels, about any matter that may prevent their organisation from delivering high quality safe care. This includes matters relating to patient safety, bullying and harassment, and other cultural issues that might compromise the quality of patient services and care or the wellbeing of workers. It does not include matters of personal interest with no direct impact on patients or the public.

The settlement agreement should explicitly reference what the worker can speak up about and who they can speak to, in order to remove any element of doubt. If a worker is unsure, they are within their rights to ask the employer to provide clarity about what they can speak up about and who they can speak to, as part of the settlement agreement.

Workers can seek further independent advice through legal representation, or through other advisory bodies listed in the section above on where workers can go for further help and support.

Employers should follow their organisation's speaking up policy to ensure that workers are familiar with its content and feel confident and able to speak up should they need to. Employers should ensure that workers have contact details for their organisation's Freedom to Speak Up Guardian, which can be found on the [National Guardian's Office website](#).

Important to note

Once signed, both the employer and the worker must follow the conditions that the settlement agreement sets out.

Legal advice should always be sought if either party believes the other has breached the contract in some way and is not following the agreed terms.

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