

Settlement agreements

Employers that want to explore the option of a settlement agreement should contact an advisor at Laveer and have your **FREE** consultation to discuss and explore your options with a legally trained advisor.

Call us now on **0161 338 6142** or **drop us an email** with an ideal date and time and we will call you back!

info@laveerassociates.com

What is a Settlement Agreement?

A settlement agreement is a legally binding contract between an employer and employee when the employment relationship has come to an end (which may be for a number of varied reasons), or where both parties agree the relationship can no longer continue for whatever reason that may be.

Main terms are agreed between the two for the employer to enter into an agreement with the employee to end his or her employment on agreed terms, for example on payment of a cash sum to the employee. This may be appropriate where, for example:

- it is clear to the line manager that giving support to the employee will not help / has not assisted to improve an employee's **poor performance**
- an **alternative to a formal disciplinary process** which is inevitably likely to lead to dismissal
- **relationship** between the parties has **clearly broken down** and you decide you can no longer work together
- Maybe there is an **existing tribunal claim** that is ongoing, and the parties wish to settle the matter between their selves via a Settlement Agreement in an attempt to mitigate their losses rather than go through the expense and stress of a tribunal hearing.

How do I approach the possibility of a Settlement Agreement with an employee?

Since 29 July 2013, Employers can now have '**Protected Conversations**' with employees (*just make sure you stick to the guidance on these otherwise if an agreement is not reached an employee may be able to disclose these conversations at a later tribunal hearing!*). We have covered this topic on a separate Employer briefing.

Alternatively, you can speak to an employee on a '**Without Prejudice**' basis to explore the possibility of a Settlement Agreement being reached, and whether they may be open to consider this approach.

There are differences between the two processes and it is important you seek advice before embarking on any process to try and explore the possibility of a Settlement Agreement.

Employer's that want to explore the option of a settlement agreement should contact an advisor at Laveer and have your **FREE** consultation to discuss and explore your options with a legally trained advisor. Once they have a full understanding of your situation and how you have reached the point of considering a Settlement Agreement they can provide you bespoke advice to your personal situation.

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The advantages of such an agreement are that:

- entering into an agreement at the appropriate time could avoid the need to begin capability proceedings against the employee;
- if the employee agrees to the offer he or she will sign a "settlement agreement", which will prevent the employee from bringing tribunal proceedings against the employer; and
- even if the employee does not agree to the offer, he or she will not (except in limited circumstances) be able to bring the offer to the attention of the employment tribunal at a future claim for unfair dismissal, for example to show that the manager had already decided to dismiss the employee prior to following the proper procedures.

Line managers who want to take this approach should:

- write to the employee, explaining that they wish to make an offer, the reasons why, and the details of the offer;

- invite the employee to a meeting to discuss the offer, which should be at a time and place convenient to the employee;
- give the employee the option of bringing a colleague or trade union official to the meeting;
- give the employee a reasonable period of time to consider the offer, which, in most circumstances, will be at least 10 calendar days;
- if the employee agrees to the employer's offer, ask the employee to sign a settlement agreement; and
- ensure that the settlement agreement conforms to legal requirements, including that the employee has received independent legal advice before signing it.

The line manager must behave appropriately at all times during this process, as any improper behaviour could allow the employee to bring the employer's offer to the attention of the employment tribunal in a future claim for unfair dismissal.

Dos and don'ts

Do give the employee an honest explanation as to why an offer is being made.

Do make clear that it is the employee's decision whether or not to accept the offer.

Do make the terms of the offer, including the timescales for any payment, clear.

Do conduct the discussion sensitively and consider any counter offers that the employee makes.

Do explain, in a factual manner, the likely consequences of the employee not agreeing to the offer, for example that capability proceedings will need to be commenced.

Do explain that, if capability proceedings will need to be commenced, fair procedures will be followed and the outcome of the discussion will have no bearing on such processes.

Don't put pressure on the employee to accept the offer, for example by saying that the employee will be dismissed if he or she does not accept it.

Don't harass, bully, intimidate or assault the employee, or threaten to do so, for example by using offensive language.

Don't discriminate against the employee because of age, sex, race, disability, sexual orientation, religion or belief, transgender, pregnancy and maternity or marriage and civil partnership.

Employers **should not** rush into this process because it might seem like an easier option than performance managing the employee, disciplinary procedure or any other form of managing an employee out of the business.

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“We look forward to speaking with you!”