

Compromise Agreements
(All an employee needs to know)

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It is important for employees to understand their rights, particularly in the current climate, in relation to disputes in the work place and redundancy situations. We have experienced employment law solicitors who are available to advise employees on all aspects of their employment and we have particular expertise in dealing with Compromise Agreements.

1. What is a Compromise Agreement?

The law states that an individual cannot contract out of his employment rights, but there is an exception to this rule where a settlement is reached by way of a Compromise Agreement.

A Compromise Agreement is a legally binding agreement between an employer and employee used to set out the terms and conditions reached when a contract of employment is to be terminated or a dispute is to be resolved. It is essential that you fully understand your employment rights before contracting out of them so you are required by law to obtain legal advice from a qualified legal adviser, such as a solicitor, before signing a Compromise Agreement. At Allan Janes, we have qualified employment law specialists with the experience and insurance cover required to advise on all aspects of Compromise Agreements.

Compromise Agreements can be used in a number of circumstances, including redundancy, dismissal, or settlement of an Employment Tribunal claim. Perhaps the most common use is in redundancy situations where it minimizes the risk of complications and concludes the employment contract unequivocally with agreement by both parties.

2. Why is a Compromise Agreement Necessary?

If, when making redundancies, your employer has failed to comply with the relevant laws, it is normally open to you to make a claim to the Employment Tribunal that the redundancy was unfair, potentially resulting in compensation or even in reinstatement. As a result, employers are now increasingly using Compromise Agreements to prevent employees making claims after they have been made redundant. Compromise Agreements can also be used in the settlement of any dispute relating to your employment and, in this situation, it has the same effect of giving you certainty and closure.

A Compromise Agreement has the effect of you signing away your right to make a future claim against your employer and thus turning a redundancy package, or claim settlement, into a full and final settlement of any potential claims. In redundancy situations, you must therefore be satisfied that any outstanding wages, bonuses and accrued but untaken holiday pay is dealt with in the Agreement. We would examine your Compromise Agreement to ensure that all payments and benefits available to you are incorporated into the settlement.

The Compromise Agreement can also benefit you because it is usually the quickest and most cost effective means of reaching a settlement and it gives you the certainty of knowing that you will receive a specified sum from your employer by way of compensation. It reduces the obvious stress involved in a redundancy situation or workplace dispute and also avoids the risk of a potential claim being unsuccessful.

3. What will a Compromise Agreement contain?

In order to be legally binding, a Compromise Agreement must:

- Be in writing;
- Relate to an employment contract;
- Only be made where the employee has received advice from a relevant independent adviser, such as a solicitor, as to the terms and effect of the proposed agreement and in particular, its effect on their ability to pursue their rights before an Employment Tribunal. The legal adviser must have professional indemnity insurance;
- Identify and be signed by the independent adviser;
- State that the conditions regulating Compromise Agreements are satisfied;

The Agreement will state the full breakdown of any payments you are receiving and the extent to which the sums will be paid free of tax. Usually up to £30,000 compensation can be paid without deduction, but it is usual to give a tax indemnity to your employer within the Agreement.

The Agreement will often also provide for confidentiality both in terms of your employers trade secrets and business affairs and also as to the terms of the Agreement. You will often be paid a small additional sum for agreeing to this.

The Agreement may contain a long list of Statutes under which you will agree not to bring a claim. The Agreement is intended to be in full and final settlement of all potential claims but the Agreement must mention the statutes specifically in order to make it enforceable. We will go through your Agreement with you to ensure that all the relevant conditions are met (so that the Agreement is legally binding) and that you receive all that you are entitled to.

4. Why do I need legal advice on a Compromise Agreement?

The law states that a Compromise Agreement is only valid if the employee has obtained legal advice (this requirement cannot be waived in any circumstances). This is to protect you from signing away your employment rights without properly understanding the consequences. Compromise Agreements can be complex and may contain legalistic language, so it is vital that you obtain professional advice to ensure your full understanding of the effect of the Agreement.

The required advice can only be given by a qualified lawyer, a qualified trade union official, or a qualified advice centre worker, all of whom must be covered by an appropriate certificate of indemnity insurance. One of our solicitors will advise you if the terms of your Agreement offer you adequate protection and will ensure that you are offered a suitable amount of compensation. Factors we will consider here include the number of years you have worked for your employer, your salary and job title, and, where relevant, the reason for the termination. We will then provide confirmation to your employer that we have advised you on the Compromise Agreement, either by counter-signing the Agreement or sending a letter of confirmation.

You may wish to consider obtaining legal advice on an employment issue before you even reach the stage of negotiating a Compromise Agreement. In this case, we would be happy to make an appointment to discuss your concerns and give you advice particular to your circumstances.

5. Will I have to pay tax on the amount received?

Compensation received under a Compromise Agreement can be paid tax-free up to £30,000. However it depends on the circumstances, and this is where Allan Janes expertise in this area can be of great assistance.

If the money you receive is in place of working a notice period, known as a Payment in Lieu of Notice (“PILON”), you may not have to pay tax on it. This will depend on whether there is a clause in your employment contract permitting the employer to make a PILON. If there is no PILON clause in your

contract, any PILON in the Agreement can be paid tax free because it will be classed as compensation rather than a payment under the employment contract.

If your employment contract does contain a clause allowing the employer to make a PILON the payment will be subject to tax. It is deemed to be a payment made under your employment contract, rather than compensation. Equally, if your contract gives your employer the discretion to make a PILON but your employer chooses not to do so and pays compensation instead, it may still be deemed to be taxable as a PILON. This is more likely when the “compensation payment” is substantially the same value as a PILON would have been.

The general rule of thumb is that payments due in accordance with your contract of employment are taxable and ex-gratia payments are not. In addition, benefits such as continued use of a mobile phone or company car are usually tax-free.

6. Do I have to agree to a Compromise Agreement ?

There is no legal or other obligation on you to sign a Compromise Agreement if you are not happy with it. Your refusal to sign would mean that there is no agreement between you and your employer and you would maintain your right to pursue an employment related claim in the Employment Tribunal (which must usually be done within 3 months of the complaint or 6 months in cases of redundancy).

However, in many cases your refusal to sign a Compromise Agreement could mean that your employer refuses to pay the sum offered in the Agreement, i.e. the full redundancy package, and instead pays only the minimum state entitlement. You should therefore consider carefully whether the outcome of a potential claim in the Tribunal is likely to exceed what you would have received under the Compromise Agreement, taking in to account that you are unlikely to recover any costs in the Tribunal.

If you are not satisfied with the contents of your Compromise Agreement, we would seek to negotiate improved terms for you. In negotiating the terms of the Agreement we are free to suggest amendments and to attempt to increase the settlement sum.

7. What claims will I be able to make once an Agreement is signed?

If you sign a Compromise Agreement, you will generally only be able to make three types of claim in future:

1. If your employer breaches the Agreement
2. If the claim is in respect of personal injury. However, the Agreement may exclude personal injury claims in respect of injuries of which you are already aware at the time that the agreement is signed, e.g. when the reason for termination is due to sickness absence for stress or depression.
3. If the claim relates to accrued pension rights.

Should the situation arise where you feel that you need to make a claim in the above terms, we have experience in dealing with such disputes and would be happy to discuss your concerns with you.

8. Will a Compromise Agreement affect my reference?

There is generally no legal obligation on an employer to provide a reference, but any reference that is provided should be true, accurate and fair. If not, the employer may be guilty of misrepresentation. It is usually a good idea to incorporate a reference into a Compromise Agreement (for certainty's sake), in which case the reference becomes part of the Agreement. We would be happy to draft an appropriate reference for you, for inclusion in the Agreement.

9. Who Pays for the legal advice required for a Compromise Agreement?

The vast majority of employers offer their employees a contribution to legal fees which is sufficient to cover the costs of the required legal advice. However Compromise Agreements are not always

straightforward and in those cases where extensive negotiations are required to achieve a satisfactory settlement, we can attempt to negotiate an increased contribution to the legal fees from your employer. If this is not possible, you may be required to meet the costs in excess of your employer's contribution if you wish to pursue further negotiations.

This is prepared as general advice and should not be relied on without taking specific advice about your situation. You will need to obtain formal legal advice for your Compromise Agreement to be valid. We hope that this information has helped you to understand your Compromise Agreement better.

If you have an employment law query relating to a Compromise Agreement or otherwise, please contact us for a consultation in which we will be pleased to provide you with our expert guidance.