

Compromise Agreements

If your employer has offered you a compromise agreement, you probably have many questions that need an answer. This guide aims to provide answers to some of the questions our clients commonly ask, but if there is any point that needs clarification or you have questions not covered here, just pick up the phone and call Hannah Scott our employment expert.

If you would like to know a little more about either Hannah or Waldrons, there is some additional information at the end of this document.

This document covers:

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4. Why has my employer chosen to offer me a compromise agreement and what are the benefits for them
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1. What is a compromise agreement?

A compromise agreement is a legally binding written agreement between you and your employer. In its most common form, a sum of money is paid on termination of your employment (often called an 'ex-gratia' payment) and in return you agree to waive your rights to bring claim relating to your employment or its termination.

There are certain rights that by law cannot be waived, these being accrued pension rights and the right to claim for personal injury, not apparent at the time of signing. An example of such an injury would be asbestos related diseases such as mesothelioma, or asbestosis.

By law, you have to have independent legal advice before signing the document, and your legal adviser will have to sign a statement to confirm they have given you the advice.

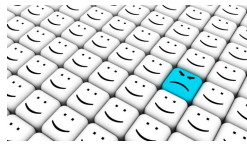


What will it cost?

In most cases, your employer will contribute towards your legal costs, but this may be capped at around £250 + vat. For straightforward agreements, without the need for negotiation of payment or clauses, this sum should cover your costs.

However, if negotiations are required your costs may be higher, and you will be responsible for funding a shortfall.

The bottom line is that we will always provide you with a quotation for costs so you know where you stand, and if you come to Waldrons with a compromise agreement that has terms already agreed, you will not be charged more than your employer is willing to cover.



In what situations is it normal to offer a compromise agreement?

There are many situations that prompt the use of a compromise agreement, some of the more common ones are listed below

Ill health: If you have been off sick for a long time, and it is not clear if and when you will be able to return to work.

Redundancy: You may be consulting within a redundancy situation

Grievance: You may have raised a formal grievance and a compromise agreement may be offered by way of resolving the matter if differences cannot be overcome.



Why has my employer chosen a compromise agreement and what is in it for them?

The reason most employers offer compromise agreements is to give them certainty of costs and a definite close to any employment issues.

The risk employers face is that if an employee makes a claim against them, they will have to foot the cost of defending it and pay compensation if the employee is successful. So to remove this risk, many employers choose to pay a little more up front, as an ex-gratia payment, but be sure the matter is permanently settled.

For these reasons, Compromise Agreements are becoming a more common route for employers, even when there appears to be little or no prospect of a dispute.



What are the benefits to me?

The main benefit to employees is that in exchange for waiving your rights under the terms of the agreement, you will usually be given an additional payment over and above your contractual rights.

Even if you feel you have a legitimate and strong claim against your employer, you will need to weigh up the cost both financially and emotionally of pursuing a matter through to an employment tribunal against the ex-gratia payment being offered.

This is a very personal decision, and it is because of the seriousness of this decision the government has made it mandatory that you receive independent legal advice.



What does a Compromise Agreement contain?

The following is a checklist of the clauses we typically see within a Compromise Agreement. It is not exclusive and you may well have additional issues with an agreement that are not listed here.

1. Details of your employment such as your start date, and job role.
2. The termination date, whether you can immediately start to look for a job, or whether there are restrictions and the nature of these restrictions.
3. The amount of money that will be paid and when payments will be made. This is usually either one to two weeks after the termination date or the date the agreement is signed (whichever is later) or the next payroll date. It should also deal with payment of the legal fees.
4. Details of any benefit you will continue to receive after termination including pension issues.
5. The most important clause is the waiver of claims clause and the confirmation that the agreement conforms to the relevant legislative conditions.
6. Where relevant, there may be re-emphasis of restrictive and anti-competition terms from the contract of employment, as well as a clause that states the employer and employee promise not to make derogatory statements about one another.



How much can I expect to be paid, and do I have to pay tax?

What you can expect to receive financially will depend on your individual circumstances. However, as a very minimum you should receive:

- ✓ pay in lieu of your statutory notice period (if you are not being asked to work it),
- ✓ pay in lieu of your accrued but untaken holiday pay to the termination date
- ✓ the ex-gratia payment

Pay in lieu of accrued but untaken holiday and usually pay in lieu of notice will be subject to tax and national insurance deductions. The first £30,000 of an ex-gratia payment should be tax free.

As far as tax goes, your compromise agreement will specify within the terms how the payment will be treated for tax purposes.

Also, expect to see a clause about 'tax indemnity' where you promise that if HMRC decide that not enough tax has been paid and make your employer pay the shortfall you will then reimburse the employer for the tax, and any penalties or charges. It is a standard clause, and used because the individual employee is always ultimately responsible for paying tax on their earnings.



Will signing this harm my chances of getting another job? And can I have a reference?

A compromise agreement usually includes a confidentiality clause that states that you cannot disclose the circumstances around your termination and the terms of the agreement. There is usually a clause that allows you to say that you have been made redundant, should a future employer ask.

Employers are under no 'general duty' to provide you with a reference, in other words, they legally do not have to do so, but compromise agreements often say that your employer will provide a factual reference. This is a reference that will confirm your start and end date, your job role and the nature of the duties you carried out.



If I change my mind and choose not to sign, will I have damaged my case?

Compromise agreements are very often offered subject to contract and without prejudice. This means that until they are signed, either party can decline to proceed.

You do not have to sign a compromise agreement – the choice is yours. This is part of the reason why you need to have independent legal advice.

If you have a really good claim against your employer, and they are not offering you enough of a financial incentive to give up your rights, you may want to either consider declining the compromise agreement (which can be risky) or negotiate for a higher ex-gratia payment.

About Waldrons

Be reassured, that if you come to Waldrons for your legal advice, you have access so some of the most skilled legal brains in the Black Country.



We have been helping people for over 140 years and are one of the few firms with the Law Society's Lexcel accreditation. This is a tough to achieve quality standard, so whenever you talk to a Solicitor, look for the logo.

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