



## YOUR FREE GUIDE TO COMPROMISE AGREEMENTS

### *A HELPING HAND FROM THE ALSTERS KELLEY EMPLOYMENT TEAM*

**I have been given a compromise agreement by my employer, but don't know what it is?**

A compromise agreement is a legal document in which an employee agrees to give up their employment law rights (i.e. agrees not to sue their employer!). This is usually in exchange for a sum of money.

**I have been told I must get legal advice, is that right?**

In order for the agreement to become legally binding, you **must** have the content of the agreement and the consequences of signing it explained to you by a relevant legal adviser, such as a solicitor.

**How much will it cost?**

In most instances, it will cost you **nothing**. Although there is no obligation on an employer to pay for your legal fees in taking advice on a compromise agreement, in the vast majority of cases the agreement will include a contribution to your legal costs. That is usually sufficient to cover the advice however, if the agreement needs to be re-negotiated or otherwise significantly amended before you sign, then the cost may go above the amount your employer is offering to contribute.

In these circumstances, your solicitor may approach your employer for an increase to the contribution to cover the additional cost. It may be that the balance has to be met by you.



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#### **What is in a compromise agreement?**

Compromise agreements can vary widely in content, according to the type of organisation you work for, the type of work you do, or who prepared the agreement. However, in order for a compromise agreement to be valid, the following are requirements:

- The compromise agreement must be in writing
- The compromise agreement must specifically relate to a particular complaint or particular proceedings
- You must have received legal advice from a relevant independent advisor - for example a solicitor - about the terms and effect of the agreement and its effects upon your ability to pursue any rights before an employment tribunal
- Your legal adviser must have a current contract of insurance (or professional indemnity insurance) covering the risk of a claim in respect of the advice
- The compromise agreement must identify the adviser
- The compromise agreement must state that the conditions regulating compromise agreements have been satisfied

Your legal advisor will advise you as to whether these requirements have been met in your agreement.

#### **The agreement I have seems much longer than this, why is that?**

It is true that some agreements can seem to be full of jargon or 'legalese'. As mentioned above, compromise agreements can vary in content depending upon what additional clauses your employer wants to include.

Some common clauses you might find in a compromise agreement could be:



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#### **Arrangements on termination**

This may set out when you will receive your last salary payment, what pay or benefits you will receive, such as accrued but untaken holiday entitlement or expenses.

#### **Termination payment**

This explains what sum of money is due to you under the terms of the agreement. It is often described as compensation for 'loss of employment' or 'loss of office'. Sometimes, where the sum is made up of more than one element, these may be separated out.

This payment is normally paid tax free up to £30,000. However, depending upon how your employer has reached the figures being offered, some elements of the termination payment may potentially be subject to tax.

#### **PILON - or Pay In Lieu Of Notice**

A payment in lieu of notice - that is to say being given the money for your notice period, rather than being asked to work your period of notice - can be a tricky matter. These payments may be taxable in certain circumstances and is generally dependent upon the wording of your contract of employment. Your solicitor should advise you on this.

Pay in lieu of notice is **not** the same as garden leave.



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#### **Garden Leave**

If you are placed on 'garden leave' you are being asked to serve your notice period away from your place of work. In these circumstances, you will still be employed and bound by your contract of employment up to the termination date. You must remain available to your employer throughout the garden leave period. This is usually to protect the employer's commercial interests but can be appealing to employees who are paid to stay at home!

#### **Tax Indemnity**

Most compromise agreements will include a tax indemnity clause. In essence, this is a mechanism for ensuring that you are responsible for any tax which may be deemed to be payable on your termination payment (rather than your employer). This is generally to cover situations where there has been an error in classing the payment as tax free, or should HM Revenue & Customs amend the legislation rendering the payment subject to tax.

#### **Warranties**

Also described as 'Employee Warranties'. Your employer may list several items under this heading, but a commonplace one is that you warrant that you are not aware of any misconduct by you which may entitle the employer to dismiss you without notice or which may mean they do not have to pay you the sums under the compromise agreement. You may also have to warrant that you have received the proper legal advice.



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#### **Waiver of claims**

This is a core element of a compromise agreement. It is the clause which states the very reason for the agreement - that you will not make a claim against the company. It is usually accompanied by a list of the claims that you are agreeing not to bring.

Claims for accrued pension rights and personal injury claims are often specifically excluded from the Waiver clause.

#### **Confidentiality**

It is common to find a confidentiality clause to protect the use or misuse of information the Employer considers confidential. This may be a new clause in the compromise agreement or the reinforcement of a clause existing in your employment contract.

#### **Without Prejudice and Subject to Contract**

Most compromise agreements will be described as 'without prejudice' and often contain a paragraph stating this fact. What it means is that the document is being used by both sides to try and settle a disagreement and so its contents cannot usually be used in evidence if the matter later goes before a court or employment tribunal.

'Subject to Contract' means that the contract (compromise agreement) is not legally binding until it is signed by all the parties to it (sometimes described as 'execution').



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This guide is intended to help to take some of the mystery out of compromise agreements. However, we are only able to give illustrations of some of the most common clauses. Detailed advice on your own circumstances will be given by your legal advisor.

If you have been given a compromise agreement by your employer, Alsters Kelley's dedicated employment solicitors in any of our three offices in Coventry, Leamington Spa or Nuneaton will be happy to advise.

**Contact us now for more advice and assistance**

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