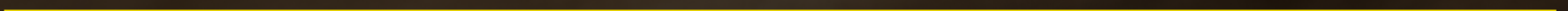




THE ESSENTIALS OF SETTLEMENT AGREEMENTS

Unfortunately, due to the continuing impact of COVID-19, many Senior Executives have faced uncertainty in their roles for several months and now as we approach the end of the furlough scheme, find themselves at risk of being made redundant.

Rather than following a formal termination process, many employers are opting to offer Senior Executives Settlement Agreements. We have set out some FAQs asked by Senior Executives about Settlement Agreements.



FAQs

SETTLEMENT AGREEMENTS

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What is a Settlement Agreement?

A Settlement Agreement is a contractual agreement between an employer and employee whereby the employee agrees to waive all and any claims against their employer to the fullest extent permissible by law (there are a few exceptions to this - the employee will not be waiving their accrued pension rights, their rights to enforce the terms of the agreement or any personal injury claim which they are not aware of as at the date of signing the agreement).

When are Settlement Agreements used?

Settlement Agreements are usually used where there is a potential risk that the employee could bring a claim against the company, e.g. if there is a redundancy situation, a grievance or disciplinary matter, there are performance concerns, or the employee has been absent on long-term sickness.

Are there any benefits for me as an employee?

The benefit of a Settlement Agreement for Senior Executives is that you can receive an ex-gratia lump sum from your employer (the first £30,000 of which is payable free of any deductions of tax and National Insurance contributions). Additionally, you can also negotiate a favourable reference and announcement regarding your departure from the business which will avoid any damage to your reputation. It also avoids the stress, time and cost of a lengthy employment tribunal case.

What is the minimum I am entitled to?

- Your contractual notice period (or the statutory minimum – whichever is the longer period). You can either agree to work your notice period, be placed on garden leave, or be paid in lieu of your notice period by your employer
- A payment in respect of any accrued but untaken holiday up to and including the termination date
- If applicable, a statutory redundancy payment or if your employer has an established enhanced redundancy package that is always offered to employees, you are entitled to receive such enhanced sums
- You will also potentially be entitled to other sums and benefits, but you would need to check your contract to see whether any additional entitlements are available to you



Q3 of 2020 saw the highest rate of redundancies since the 2008 financial crisis.



FAQS

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What should I negotiate?

You will want to have an agreed statement regarding your departure from the business together with a favourable reference

- The financial terms - you will want to agree what the ex-gratia sum will be. This is essentially the consideration for you agreeing to waive your claims against your employer. The amount offered by the employer will vary from case to case. We regularly advise Senior Executives as to what would be a reasonable sum after weighing up the likely value of any potential claims and assist with any ensuing negotiations
- A contribution towards your legal fees for obtaining advice on the terms and effect of the Settlement Agreement. It is common for employers to contribute towards legal fees in these circumstances as without obtaining legal advice, the Settlement Agreement will not be legally binding
- You should ask if your employer provides any outplacement services to assist you with your search to find another role in the future
- If you would like to keep any company property e.g. mobile phone/laptop – particularly if you were permitted to use these for personal use during your employment
- As part of the settlement terms, you would also want to ensure that there is an obligation on the company and their officers and employees not to badmouth you after the termination of your employment
- If you have any shares, you should ascertain what your options are in respect of these
- If you were due a bonus, commission or other payments under any incentive plan, you will want to ensure that these payments are clearly set out in the Settlement Agreement
- If you are a Director, you will want to ensure that the Directors and Officers Insurance remains in place to cover you after termination and that you resign from any offices held as at the termination date
- If there are any loans in place, you should agree what will happen in respect of those
- Finally, that you are given a reasonable amount of time to consider and obtain advice on any settlement terms. The Acas guidance states that you should be given a minimum of 10 days. It is common for employers to place pressure on employees to sign such Settlement Agreements within the space of a few days, this should be resisted where possible

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Here at Joelson we are able to utilise our experience of acting for both employers and employees to the advantage of our Senior Executive clients to negotiate the best possible exit terms. If you have been given a Settlement Agreement and need advice, please call now for a free consultation.