

DGR Law News and Articles

Compromise Agreements – A practical solution to work place disputes

What are compromise agreements?

A compromise agreement is a contract setting out the terms of how an employment relationship will end; they are a way of resolving work place disagreements between an employee and employer which could amount to a legal claim, often for unfair dismissal. Additionally a compromise agreement provides a means for an employer to ring-fence any potential future employment claims and liabilities by an employee.

Often they will arise when an employer invites the employee for an 'off the record discussion', where they will normally be offered inducements over their statutory entitlement, usually financial, to agree to a clean break from the employment relationship. Sometimes an employee will propose a compromise agreement to their employer, but any offer is a clear statement that they wish to leave and the timing and circumstances should be carefully considered before taking this route.

What are the benefits of an employee signing a compromise agreement?

When an employee is going through a process, such as a grievance or disciplinary hearing, they will be facing some difficult choices; should they stay and fight, with the risk of being dismissed; or do they leave; or should they bring legal action? The reality is that the employee will be contemplating re-entering the jobs market with a damaged reputation, or the lack of a suitable reference. When negotiating a compromise agreement it is common to ask for the inclusion of an agreed reference, agreed statements dealing with the nature of the employee's departure and clauses preventing derogatory comments.

In compensation for agreeing not to bring a claim an employee should expect to be offered a financial award, and up to £30,000 of any ex gratia award is tax free. What constitutes a reasonable amount will depend upon the facts of matter, namely how strong a claim the employee would be relinquishing.

Many employees do not appreciate, until it is too late, that their contract of employment contains restrictive covenants preventing them from working in their employer's industry for a number of months, or often years, after having ceased employment. Negotiating a reduction in the length of the restrictive covenants as an inducement to sign a compromise agreement is usual and what represents a reasonable reduction will depend on the facts of the matter.

What are the benefits of a compromise agreement to an employer?

A compromise agreement allows an employer to ring-fence their employment liability to their employee. To an extent, a compromise agreement can be viewed as an exercise in commercial expediency, rather like an out of court settlement. Why is this? First, they

provide some certainty, no matter how well an employer believes they have followed the statutory employment process they may still find themselves having to defend a claim. A compromise agreement can prevent this. Secondly, they are time efficient in contrast to proceedings taken through a tribunal. Thirdly, as a consequence of the above two points they are usually the most cost effective option for an employer, who can rarely recover their legal costs in an employment tribunal, even if they succeed.

The role of an employment lawyer

Whether you are an employee or an employer there should be some input from an employment lawyer; to be legally binding an employee must have gained independent legal advice on the consequences of a compromise agreement. Often the employee and employer are too close to the matter and an impartial negotiator, who can assess the strength of the parties' positions, can ensure that the most favourable outcome in the circumstances can be achieved.

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