

The use of settlement agreements and confidentiality clauses

May 2024

About us

NHS Employers is the employers' organisation for the NHS in England. We support workforce leaders and represent employers to develop a sustainable workforce and be the best employers they can be. We also manage the relationships with NHS trade unions on behalf of the Secretary of State for Health and Social Care.

Overview

While the information contained in this guidance is not intended to provide legal advice, it has been produced with legal input from Capsticks LLP to help outline some of the legal requirements for settlement agreements when terminating employment and considerations regarding any confidentiality clauses they may wish to include.

This guidance also uses and signposts to guidance from independent public body [Acas](#), the Advisory, Conciliation and Arbitration Service, and provides links to other related NHS guidance and resources.

What is a settlement agreement?

Settlement agreements (formerly known as compromise agreements) are legally binding contracts between an employer and a worker. When used appropriately and in line with guidance, they can be used to resolve a workplace dispute or to end an employment contract.

The main feature of a settlement agreement is that a worker usually agrees to waive their rights to continue with and/or make a claim to a court or employment tribunal on the matters covered by the settlement agreement. The employer may also agree to make some form of payment to the worker^[1] and/or provide an agreed reference.

Settlement agreements should only be used in exceptional circumstances. They should not be used as a substitute for good performance management or engaging with workers to find other constructive solutions to address workplace issues. It is important to note that a settlement is a voluntary agreement, individuals do not have to enter any discussions or accept the terms proposed.

Acas, the Advisory, Conciliation and Arbitration Service, has published a statutory [code of practice on settlement agreements](#) and non-statutory [settlement agreement guidance](#). Both documents include an explanation of the law, guidance on how to make a settlement offer and what would constitute proper behaviour. We advise employers to read the code and guidance in conjunction with this document.

[1] Employers should note that any payments made under a settlement agreement must comply with Annex 4.13 of [Managing](#)

What is a settlement agreement?

Public Money (May 2023) and Public Sector Exit Payments
Guidance on Special Severance Payments (May 2021) and the
NHS TDA's Guidance for NHS Trusts on processes for making
severance payments (June 2014).