

Compromise Agreements are on the increase. It's a far better way of resolving workplace disputes.

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The Chartered Institute of Personnel and Development (CIPD) reported in a survey of employers this month that more than half of companies have used compromise agreements in the last 2 years as a means of resolving workplace issues. The average compensation package under a compromise agreement was reported to be £10,000 while 1 in 5 reported a typical payment of £25k or more. The government, in its present review of employment regulations, is expected to encourage the further use of compromise agreements.

So, what is a compromise agreement and what is the benefit to you (and your employer) in using them?

A compromise agreement is a legally binding agreement either during or following the termination of your employment, and which brings your employment to an end. It is recognised by statute and is the only way you can validly "contract out" of your employment law rights. It usually provides for a severance payment, in return for which you agree not to pursue any claim or grievance you may have in an employment tribunal. You must take independent legal advice from a lawyer on the agreement for it to be valid and your employer will normally pay for the cost of this.

Employers have for many years now increasingly used compromise agreements as a mechanism for preventing possible future complaints to a tribunal. The CIPD survey found that major reasons for using the compromise agreement (other than to settle an existing claim) are to remove an employee on the grounds of poor performance or misconduct (38.95%), to avoid legal challenge in redundancy situations (25.75) and to make it easier to remove senior staff without embarrassment (24.3%).

It follows that even where an employer has followed a fair process, many will still prefer the employee to sign a compromise agreement to ensure there is no possible comeback. Very few processes are absolutely watertight and many individuals who are unaware of their employment law rights at the relevant time may have second thoughts after they have left. There is a period of 3 months from the date of termination of your employment in which to make a claim to an employment tribunal.

So, should you be worried about signing away your rights in this way? Whilst it is the case that compromise agreements can be written in very legalistic language and can refer to sections of Acts and Regulations which you may never have heard of, most will follow a regular pattern. As long as the severance pay you are receiving is properly reflected in the agreement and there are no unusual onerous terms, you should not be too worried.

In fact, being presented with a compromise agreement can be a good thing. Not only is there certainty of payment within an agreed timescale, but the agreement should confirm that the first £30k if a redundancy or compensation payment can be made free of deductions. You also get the chance to have a job reference attached to the agreement together with clauses preventing either party from bad mouthing the other. This is very useful where an employee may have left under a cloud and wants to preserve their future reputation.

And, here is the best bit. A good employment lawyer may be able to challenge the amount being offered under the agreement and negotiate an increase or argue for the employer to go down the compromise agreement route in the first place. Many employers can be receptive to such requests if a reasoned argument is put and there is a proper legal basis. As the CIPD survey pointed out, the average time for management in dealing with a compromise agreement is far less than would be the case if the matter went to an employment tribunal. Commercial considerations therefore rule – especially in the present financial climate.

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