

How to use our settlement agreement template

[Our settlement agreement template](#) is for when an employer and an employee are discussing ending their employment relationship under the terms of a settlement agreement.

You can use the template to make your own settlement agreement. You should adapt or remove some clauses depending on your particular situation. Clauses are the sections a legal agreement is broken up into.

This template is for a settlement agreement. It is not for a COT3 (a conciliation agreement) that's used by an Acas conciliator during or after [early conciliation](#).

Getting legal advice

A settlement agreement is a legal contract. It's important for both parties that it achieves the settlement you both want and is legally accurate. If you're not sure about anything, you should get legal advice.

The template and guidance are not a replacement for legal advice.

Some parts of a settlement agreement need to be different depending on whether the law of England and Wales or Scots law applies. The guidance and template provide these options.

For a settlement agreement to be legally valid, the employee must have independent advice before they sign it. The template and guidance do not replace this legal requirement.

[Find out more about the formal offer process](#), including getting independent advice.

How to use the template

You should follow this guidance carefully when using the template to write your settlement agreement. It explains what the different clauses in the template are for and how you should amend them for your particular circumstances.

Cover page

'Subject to contract' means under the law of England and Wales that the draft agreement will not be legally binding on either party until they have signed it.

Under Scots law, it means it is the intention that the agreement will not be legally binding until signed. But if you've agreed on the 'essential terms', there may be a binding contract between parties even if you've not yet agreed on all details or signed the written agreement. 'Essential terms' are the main points of the agreement.

You should also add on the cover page that the agreement is either:

- 'without prejudice'
- 'covered by section 111A of the Employment Rights Act 1996'

Find out more about section 111A and without prejudice in our advice on [settlement agreement confidentiality](#).

Names and date of the agreement

When you've agreed on all the terms of the agreement, write the names of the 2 parties and the date they sign it. If you each sign the agreement on different dates then write the later of the signing dates.

Also write the names of the parties and the date of the agreement at the top of the first page of the agreement before clause 1.

Clause 1: Background

This clause sets out that both parties are entering into a settlement agreement and that in doing so, the employer does not 'admit any liability'. This means that although the parties are agreeing to settle certain legal claims or potential claims, the employer is not saying they're at fault.

Clause 1.1

Add the employee's job title and employment start date.

Clause 2: Definitions

This clause sets out the definitions of the terms used in the agreement. If appropriate, you can add other terms to this list.

Clause 3: Termination date and notice

Clause 3.1

If both parties are agreeing to end the employment, you both need to agree the date when it will end (the 'Termination Date'). Write the agreed date here.

Clause 3.2

There are 2 options for this clause. You should choose the text that applies to your agreement depending on whether the employee will work their notice or there will be payment in lieu of notice (PILON).

If you're agreeing the employee will work their notice period

The first option is for putting the wages or salary and any bonuses or commission, or similar payments the employee is entitled to during or at the end of the notice period. These payments will usually be agreed in the employment contract.

Add any holiday entitlement that the employee will have accrued (built up) but not taken by the agreed termination date. The employee has a right to payment of any statutory holiday accrued but not taken by the termination date. Whether the employee is entitled to holiday pay that's more than statutory will depend on what was agreed in the employment contract.

These are the usual payments that are paid at the end of an employment contract and the usual tax rules apply to them. They are not part of the 'Settlement Payment' that you set out in clause 5.

If you're agreeing to PILON

The second option is for if you're agreeing to payment in lieu of notice (PILON). The employment contract may allow for PILON, or both parties may agree to this.

PILON means the employee does not work the notice period and instead the employer makes a payment to them that reflects what they would have received during the notice period. This includes their wages or salary, any bonuses or commission, and any holiday they have accrued but not taken.

If you're agreeing to PILON, write the details of what's being paid in this clause. The usual tax rules apply to these payments.

The employer must also calculate and write here the amount of taxable 'post-employment notice pay' (PENP).

For more advice on PENP or how tax rules apply to PILON, speak with a tax adviser or use [HMRC's guidance on GOV.UK](#).

If you're agreeing to garden leave

Add here if you're agreeing that the employee will not work during the notice period and instead be on 'garden leave'. Garden leave is when an employee is still employed by the employer but does not work either part or all of their notice period and is still given their usual pay.

It can depend on the employment contract whether the employee can be required or asked to stay on garden leave. If it's not in the contract, the employee needs to agree.

Payments due to the employee during garden leave depend on their employment contract, or you can make an agreement.

If the employee is to go on a significant period of garden leave (for example, several months) there are some important legal issues to consider. You should get legal advice about this.

Clause 4: Withdrawal of proceedings and waiver

Clause 4.1

In this clause, both parties are acknowledging and accepting that the settlement agreement is made in full and final settlement of particular legal claims.

To make the settlement agreement legally valid, it is not enough to state that it settles 'all claims' or 'all potential claims' in general.

You must include a list of the 'particular claims' you're agreeing to settle. These can be claims to an employment tribunal or court that:

- the employee has 'presented' (claims they have already made)
- it can be 'reasonably anticipated' the employee might 'present' (claims they might make in the future)

In Annex A you must:

- list any claim numbers and details of any claims the employee has already made to an employment tribunal
- delete any potential claims from the list that you do not intend to settle

Clause 4.2

This sets out that the employee is agreeing to:

- a 'withdrawal of proceedings' – they will withdraw any claim they have made to an employment tribunal or court against the employer
- 'waive' their right to make the particular claims listed in the agreement – 'waive' means they agree not to make those claims

Clause 5: Settlement Payment

Clause 5.1

This sets out the 'Settlement Payment' – the amount the employer agrees to pay to the employee to settle the claims they're agreeing not to make or continue to make at an employment tribunal or court.

It is separate from the payments for the employee's usual wages or salary, any bonuses or commission, holiday or other notice payments due on the termination of employment, as set out in clause 3.

Clause 5.2

This sets out the tax liabilities that the parties expect to apply to the Settlement Payment. In certain circumstances, settlement payments of up to £30,000 (or the first £30,000 of larger settlement payments) may be free of tax and National Insurance (NI).

The taxation of settlement payments can be complicated, so if you're not sure you should check with a tax adviser. You can also use the HM Revenue & Customs (HMRC):

- [Employment Income Manual for tax on GOV.UK](#)
- [National Insurance Manual on GOV.UK](#)
- [guidance for employees on tax on termination payments on GOV.UK](#)

If the reason for the employment ending is redundancy, you should put the amount of redundancy payment here. Statutory redundancy payments are not subject to income tax and National Insurance (NI), but an 'enhanced' or 'contractual' redundancy payment might be.

[Find out more about redundancy payments](#)

Clause 5.3

The Settlement Payment, or a part of it, can often be made without deducting tax or National Insurance (NI). But you can include an agreement for who will pay if it later turns out that tax or NI was in fact due on the Settlement Payment or part of it.

Clause 5.4

If the employer is agreeing to give a reference as part of the settlement, write this here.

Add a copy of the reference as an annex. The reference could be a simple statement of the employee's dates of employment and position held, or a more detailed description of their duties, role and performance.

Clause 6: Conditions regulating settlement agreements

A settlement agreement must meet certain legal conditions to make it valid in waiving the employee's right to make or continue to make a claim to an employment tribunal or other court.

This clause links with annex B, which lists the laws that set out these legal conditions.

Completing this clause and annex B means both parties are agreeing these conditions have been 'satisfied'. Satisfied means everyone has done what is legally required.

Find the full list of legal conditions in our [advice on settlement agreements](#).

Clause 7: Employer's property and employee's property

Clause 7.1

Add this clause if the employee has any property the employer wants them to return, for example a company laptop or mobile phone. You can also use this clause if the employer wants the employee to delete confidential records.

Write what property the employee must return or what information they must delete and the date you're agreeing this must happen.

Clause 7.2

Add this clause if the employer is agreeing to return any property to the employee.

Clause 8: Confidentiality

Clause 8.1

This clause is for when parties agree that confidentiality clauses or restrictive covenants already included in their employment contract should remain binding after the end of the employment relationship.

If there are no confidentiality clauses or restrictive covenants in the employment contract, you do not need to include this clause.

[Find out more about restrictive covenants in employment contracts](#)

It's important to write out clearly here any terms of the employment contract that parties want to keep as binding, to make sure they're included as part of the settlement agreement.

There may be tax issues and you should get legal advice if the parties are agreeing to both of the following:

- confidentiality clauses or restrictive covenants in the employment contract will remain binding
- payment in lieu of notice (PILON) when there is no contractual right to it

Clause 8.2

This is for when parties agree to keep the settlement agreement itself confidential (except for limited exceptions). Delete this clause if it's not part of the terms you're agreeing.

All such confidentiality clauses are voluntary and are for parties to agree during settlement discussions. Confidentiality clauses should only be used when necessary and should not be included in settlement agreements as standard.

If parties are agreeing they will not make 'derogatory' comments about each other after the settlement agreement has been signed, you can add this here. 'Derogatory' means critical or disrespectful.

If a confidentiality clause is to be used, it should include wording to make it clear that the individual's statutory right to make a protected disclosure of matters in the public interest (sometimes called 'whistleblowing') is not affected.

The wording should not try to discourage someone from raising concerns, for example about wrongdoing, poor practice or unlawful conduct in the employer's organisation.

Employers cannot use a confidentiality clause to stop a worker:

- reporting a crime to the police
- [sharing information about a crime](#) to get advice and support if they're a victim of crime in England or Wales

Employers in higher education in England cannot use a confidentiality clause to stop workers disclosing:

- sexual misconduct, abuse or harassment

- other bullying or harassment

[Find out more about settlement agreement confidentiality](#)

Clause 9: Employee's representations and warranties

Clause 9.1

This clause sets out that the employee is declaring that they have not acted in a way that would justify the employer dismissing them without notice during the employment relationship. This would normally be for gross misconduct.

Clause 9.2

This clause means that if the employee was not truthful in their declaration in clause 9.1, then the employer may be able to withhold or recover the Settlement Payment and potentially sue the employee for any relevant losses or damages.

Clause 10: Employee's advice and costs

Clause 10.1

For the settlement agreement to be legally valid, the employee must have received advice from a relevant independent adviser. You must confirm that here.

The independent adviser must not be employed by, acting for or connected with the employer. They must be either:

- a qualified lawyer
- a certified and authorised trade union officer, official, employee or member
- a certified and authorised advice centre worker

Clause 10.2

Use this clause if the employer has chosen to pay or contribute to the cost of the employee getting this independent advice. There is no legal requirement to do so, but it can be in everyone's interests as it may help make sure the employee gets the necessary advice.

These payments may be made tax free in certain circumstances.

[Find advice on tax on payments to meet legal costs from HMRC](#)

Clause 11: Entire agreement and enforceability

Clause 11.1

If you want the settlement agreement to 'supersede' (override) any previous agreements between the employer and the employee, such as the terms of the employment contract, you should include this clause to make this clear.

Under Scots law, to be legally binding this clause must genuinely reflect the intention of both parties.

If you want the settlement agreement to keep any confidentiality clauses or restrictive covenants that are in the employment contract, use clause 8.1 to say this. It's important to be clear about which specific parts of the employment contract you want to keep. For example, write the clause numbers from the employment contract.

Clause 11.2

This clause makes clear that the settlement agreement may only be varied by both parties agreeing in writing.

Clause 11.3

This explains that if any term of the settlement agreement is later found to be illegal, invalid or unenforceable, the other terms of the agreement will not be affected.

Clause 12: Jurisdiction

This clause sets out which 'jurisdiction' (legal system) applies if there are any legal disputes related to the settlement agreement in the future. There's optional wording to use depending on whether the law of England and Wales or Scots law applies.

If the agreement comes under Scots law, there are some clauses and headings where you must use additional or alternative wording. The template has wording you can use or delete as appropriate. In addition to this clause, this applies to:

- clause 2.1
- clause 5.1
- clause 6
- clause 13
- the headings of annexes A, B and C

Clause 13: Parties to the settlement agreement

This clause makes it clear that only the employer and employee will have any rights under the settlement agreement.

There's optional wording to use depending on whether the law of England and Wales or Scots law applies.

The final sentence in the template makes it clear that the parties are agreeing that, once the agreement has been signed and dated, it will become a legally binding document.

Signing

Both the employee and the employer (or someone authorised to sign on behalf of the employer) must sign the agreement.