

SETTLEMENT AGREEMENTS and COT 3 (ACAS) AGREEMENTS

(Per ACAS Guidance):

The law relating to the negotiation of settlement agreements is set out in section 111A of the Employment Rights Act (ERA) 1996.

Settlement agreements are *legally binding contracts* that waive an employee's rights to make a claim (i.e. those claims expressly set out within the agreement) to an Employment Tribunal or court.

Settlement Agreements can be offered at any stage of an employment relationship. They are voluntary.

For a Settlement Agreement to be legally binding, the following must apply:

- The agreement must be in writing.
- There is usually some form of payment to the employee
- The agreement must relate to a particular complaint or proceedings.
- The employee must have received advice from a relevant independent adviser, such as a lawyer or a certified and authorised member of a trade union.
- The independent adviser must have a current contract of insurance or professional indemnity covering the risk of a claim by the employee in respect of loss arising from the advice.
- The agreement must identify the adviser.
- The agreement must state that the applicable statutory conditions regulating the settlement agreement have been met.

Other factors often captured:

- An agreed reference might be included as an Appendix to the Agreement.

When are they used?

Settlement agreements can be used:

- to end an employment relationship on agreed terms.
- to resolve an ongoing workplace dispute, for example, a dispute over holiday pay.

These agreements can be proposed by either an employer or an employee, although it will normally be the employer.

Once a valid settlement agreement has been signed, the employee will be unable to make an employment tribunal claim about any type of claim which is listed on the agreement –

you will usually have a separate clause/paragraph in the agreement listing the claims with reference to the applicable legislation – i.e. s15 Equality Act, discrimination arising from disability claim.

Where the employer and employee are unable to reach an agreement, the settlement discussions cannot usually be referred to as evidence in any subsequent unfair dismissal claim.

Where the settlement discussions are held to resolve an existing dispute between the parties they cannot be used as evidence in any type of claim.

Employees should be given a reasonable amount of time to consider the proposed conditions of the agreement; *the Acas Code of Practice on settlement agreements specifies a minimum of 10 calendar days unless the parties agree otherwise.*

Settlement agreements are voluntary and parties do not have to agree to them or enter into discussion about them. There can be a process of negotiation during which both sides make proposals and counter proposals until an agreement is reached or both parties decide no agreement can be reached.

If a settlement agreement is not reached and depending on the nature of the dispute or problem, resolution may be pursued through a performance management, disciplinary or grievance process, or mediation whichever is the most appropriate.

It is important that employers follow a fair process and use the Acas Code of Practice on Discipline and Grievance procedures because, if the employee is dismissed, failure to do so may be grounds for a claim of unfair dismissal (note Lecture notes on this subject).

Meeting to discuss settlement agreement

There is no statutory right for the employee to be accompanied at any meeting to discuss the agreement, but good practice would be to allow this - such as a work colleague or a trade union representative.

If the agreement is to end the employment relationship

When the settlement agreement includes an agreement to end the employment relationship, then employment can end with the required notice, or the timing can be agreed as part of the settlement agreement.

Details of payment and the timing should be included in the agreement; any payments should be made as soon as practicable after the agreement has been reached.

(See ACAS website for a sample 'model' settlement agreement for information - [https://www.acas.org.uk/media/3817/Model-settlement-agreement/doc/Model Settlement Agreement template.doc](https://www.acas.org.uk/media/3817/Model-settlement-agreement/doc/Model%20Settlement%20Agreement%20template.doc)).

NB: ACAS statutory Code of Practice on Settlement Agreements - [https://www.acas.org.uk/media/3725/Code-of-Practice-on-settlement-agreements/pdf/11287 CoP4 Settlement Agreements v1 0 Accessible.pdf](https://www.acas.org.uk/media/3725/Code-of-Practice-on-settlement-agreements/pdf/11287_CoP4_Settlement_Agreements_v1_0_Accessible.pdf)

and ACAS Guidance - [https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement agreements Dec 18.pdf](https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement_agreements_Dec_18.pdf)

COT3 Agreements

A COT3 is an agreement which records the terms of settlement of an employment tribunal claim (or potential claim) which has been agreed between an employee and employer with the assistance of a conciliation officer employed by ACAS.

They have the same effect as the settlement agreement but will usually be much shorter and involve the signature of representatives rather than the parties themselves and do not require a Solicitor advising and signing off the Agreement/trade union representative approved official sign off.

Key differences between settlement agreements and COT3 agreements are as follows:

1. The COT3 agreement will usually be in a far simpler format than the settlement agreement. ACAS has standard form agreements that it can use. Settlement agreements will usually have been drafted by lawyers acting for employers and will seek to put far more obligations on the employee.
2. Whilst settlement agreements will usually have to be signed, COT3 agreements can be entered into verbally, provided ACAS has been involved.
3. Whilst a settlement agreement can always be entered into, COT3 agreements can only be entered into when ACAS has been involved. ACAS will only usually want to be involved where there is a dispute, and will not want to be involved at the last minute.
4. COT3 agreements will usually relate to particular complaints only, whereas Settlement Agreements will seek to settle all employment claims.
5. COT3 agreements are usually signed by representatives, whereas settlement agreements will have to be signed by employees themselves.

Useful reading:

CIPD

<https://www.cipd.co.uk/knowledge/fundamentals/emp-law/tribunals/questions>

<https://www.cipd.co.uk/about/media/press/NDA-220719>

ACAS

[https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement agreements Dec 18.pdf](https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement_agreements_Dec_18.pdf)

Government (for public bodies)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817156/Cabinet-Office-guidance-on-settlement-agreements-special-severance-payments-on-termination-of-employment-and-confidentiality-clauses.pdf