

Key Considerations When Offering a Settlement Agreement

Considering your objectives and the employee's wider circumstances before making an offer can help you structure an appropriate proposal and manage the conversation effectively.

-  **The Reason for the Proposed Exit**
Be clear about why a settlement agreement is being considered. This may relate to performance, conduct, redundancy, absence, a grievance or a wider breakdown in the employment relationship.
-  **The Alternative Process**
Consider what would happen if settlement cannot be agreed. Employers should understand the disciplinary, capability, redundancy or other procedure that may otherwise need to continue.
-  **The Financial Offer**
Decide what compensation the organisation is prepared to offer in addition to contractual entitlements. The amount should reflect the circumstances, legal risk and value of achieving an agreed outcome.
-  **Notice and Other Payments**
Calculate salary, notice pay, holiday, bonuses and other contractual sums separately. These payments may have different legal and tax treatment from genuine termination compensation.
-  **Tax Treatment**
Consider which elements of the settlement are taxable. Qualifying termination payments may benefit from the £30,000 threshold, but earnings and post-employment notice pay remain taxable and do not automatically fall within that exemption.

The Settlement Conversation

Plan carefully how the proposal will be introduced. The legal protection given to settlement discussions depends on the circumstances, and section 111A does not protect every type of potential employment claim.

Confidentiality and Reputation

Consider what information genuinely needs to remain confidential and whether an agreed announcement or reference is appropriate. Confidentiality provisions should be clearly drafted and proportionate.

Business Protection

Review existing restrictive covenants, confidentiality obligations and intellectual property provisions. The settlement agreement may reaffirm or amend these protections as part of the employee's exit.

Time to Consider the Offer

Allow the employee reasonable time to consider the proposed agreement and obtain independent advice. Acas recommends allowing at least 10 calendar days to consider the formal written terms unless the parties agree otherwise.

Authority and Internal Approvals

Confirm who has authority to approve the settlement and financial package. Senior executive or director exits may also require board, shareholder or wider corporate approvals.



Chester Office
Knights Court
1 Weaver Street
Chester, Cheshire
CH1 2BQ
01244 354 800



Liverpool Office
3rd Floor
No. 4 St Paul's Square
Liverpool
L3 9SJ
0151 321 0000