Compromise Agreement Advice for Employees on Termination of Contract

Graham Cardona February 14, 2013

The prospect of losing one’s job is bad enough, but to then be handed a lengthy legal document known as a Compromise Agreement or Settlement Agreement “without prejudice and subject to contract” is enough to make even the most composed employee a nervous jittering wreck. We look here to give compromise agreement advice for employees so they may better understand what is happening, gain some control and composure, and in the process perhaps negotiate a better settlement deal.

(Newswire.net -- February, 15 2013) Milton Keynes, Buckinghamshire, UK -- With big name companies shedding staff such as Rolls Royce and Barclays and some others, previously considered indestructible such as HMV, Blockbusters, JJB Sports and Comets that have since gone bust leaving tens of thousands of employees out of work, losing one’s job is the biggest fear among today’s workforce.

An increasing number of employees are also now being asked by employers to sign a lengthy legal document known as a Compromise Agreement or settlement Agreement as a condition to receiving a financial leaving package.

Why are employer’s asking employees to sign a compromise agreement?

The principal reason for this is that an employee compromise agreement is the only legal document recognised in law as binding and enforceable to prevent an employee from taking any further legal action against the employer in respect of that employment. It is in effect an insurance policy for employers seeking to end an employees contract of employment for whatever reason.

An employee is under no legal obligation to sign a compromise agreement. However, if the terms of an employee compromise agreement include a generous financial leaving package that is in excess to what an employee may be entitled to in law, the employer will usually make it a condition of signing the agreement.

Whether an employee is being offered a financial settlement in excess of the amount that they may be entitled to in law, is very much dependant on the circumstances of the termination and whether it is a fair and lawful termination of employment.

In straightforward cases, for example for redundancy, calculating one’s financial redundancy entitlement is relatively uncomplicated. For an simple and fast way of calculating an employee’s basic redundancy pay it is best to head over to the government's statutory redundancy calculator, which takes you through a simple 4-step process to accurately calculate what an individual employee's entitlement is based on four criteria.

Once an employee knows their basic entitlement, they will then need to go back to their contract of employment to ascertain whether their employer has a more generous redundancy package. For example, many employers will offer a redundancy package based on one month’s pay for each complete year employed with the company. When you compare that to statutory redundancy, which is calculated on a maximum weekly pay of £450 (as at Feb 2013) times the number of years of employment, you can quickly see that an employee is not entitled to much under the statutory scheme.
An employee should therefore ensure that if their employer has its own redundancy scheme, that it is at least equal to the basic statutory entitlement.

In circumstances where an employee's contract of employment is being ended under a cloud, for example, where there is a dispute between the employer and employee. Or where an employer is seeking to terminate an employee's contract under dubious circumstances, in breach of UK employment laws or regulations and therefore potentially an "unfair dismissal", it's important that professional legal compromise agreement advice for employees be obtained in order to have the situation properly assessed, and so that employees are advised of their options and the most appropriate course of action.

In addition, all employees are also entitled to their contractual notice period or pay in lieu of notice, if the contract of employment permits this.

The law provides a basic minimum entitlement of one week's notice after working more than one month and less than two years. After working continuously for more than 2 years, an employee is entitled to one week for each additional full year worked, with a cap at twelve weeks notice.

An employee is entitled to receive all other additional contractual entitlements up to the date of termination of employment.

In addition to the financial package, which is undoubtedly the most important element to an employee, what other things should an employee look out for in an employee compromise agreement?

An employer is not legally obliged to give job references. So if an employee is concerned that an employer may not give a reference upon request by a potential employer, then this ought to be covered during negotiations of the final terms of a compromise agreement.

If an employee is on a bonus scheme, make sure that you discuss this with the employer. Many bonus schemes are described as "discretionary". If an employer has routinely received a bonus and would have been on track for a further bonus if they remained in employment, then now is the best time to negotiate a sum in recognition of the loss of bonus.

Occasionally, employers try to include additional restrictive clauses (covenants) into the compromise agreement such as a non-competition clause. Or that an employee cannot work for a competitor during a fixed period immediately following the end of the contract.

If this restrictive clause simply restates the contractual position, there is little an employee can do. If the proposed clause is not already in the contract of employment, then this is a negotiable term. Either negotiate its removal or negotiate a better financial settlement by way of compensation for the added restraint on one's ability to find alternative employment.

Finally, employees should take a good look at the financial package and ensure that the contractual elements of the payment are clearly separated from non-contractual payments. This is important since non-contract payments up to £30,000 are non-taxable. It is therefore in the employee's interest to ensure that as much of the settlement is "compensation" for loss of office in order to minimise liability to tax.

For some initial advice or guidance on what to do next when presented with an employee compromise agreement, you can speak with Graham Cardona at Cardona & Co who will be more than happy to have an informal chat. Alternatively, if you are just looking for more information on compromise agreements, head over to http://cardonaandco.co.uk/compromiseagreement where you can find answers to the most frequently asked questions.