

18/07/06

# ESJOBS BUSINESS



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DIANA BENTLEY

## Saying goodbye with a compromise

**T**HERE was a time when a job was for life — or quite a lot of it, anyway. But these days, our lack of job security is well known and employees can find themselves out of work for many reasons: budget downsizing, reorganisation after a merger or acquisition, a personality clash with a superior or some other disagreement.

If an employee chooses to leave their job, there is usually no reason why they should have to enter into a contract with their employer.

But in other cases, such as redundancies and disputes, many employees will be asked to sign what is called a compromise agreement — a contract that sets out terms on which the working relationship is ended.

Nigel Sellens, MD of human-resources adviser Harbour HR, says:

“Compromise agreements have been prevalent for a number of years in the financial-services sector; but now you’re seeing them used much more generally in other industries.”

Some firms, such as investment banks, often offer employees generous terms when they’re leaving, says Nicholas Lakeland, a partner of law firm Silverman Sherliker. “As a matter of course, they’ll ask an employee to sign a compromise agreement just to guarantee that the employee will make no further claim on them,” he says.

“But in cases involving real disputes, which could end up in an employment tribunal, the employer really needs to ensure that any agreement reached with the employee is recorded so

there’s no chance of the employee taking legal action against them later.”

Compromise agreements were created under employment-law legislation and follow a format. Employees must consult an independent lawyer, who has to certify that they have given the employee advice about the document. Even so, employees should consider agreements carefully and be prepared for what they might find — and what they can change, says Sellens. “Fundamentally, it’s a commercial transaction so there’s often the opportunity to negotiate.”

Apart from how much employees are receiving as a payout, they will normally see a confidentiality clause. This is included to prevent sensitive

information about the employer being disclosed. Before signing one, employees could negotiate for possible extras — for example, more money.

“Employees can also be allowed to keep a mobile. Much depends on the bargaining power of the individual,” says Lakeland. “This normally comes down to how strong a case they have against the employer.”

One potential area of trouble for employees is tax. “There’s usually a nasty clause called an ‘indemnity clause’, which is standard in compromise agreements. It means that the employee runs the risk of being liable for tax on the tax-free payment if the employer has made a mistake and paid out money tax-free that should

have been taxed,” says Lakeland.

Some contractual entitlements are always taxable. Notice is a tricky issue, he says, and if there is a payment-in-lieu-of-notice clause, then the amount paid will be taxable. It is sometimes possible to make compromise agreements more tax efficient, says Sellens. “Often the lawyer advising the employee can advise them on tax, but sometimes it’s a good idea for them to get an accountant’s advice as well.”

As compromise agreements are becoming more popular, employees can expect to see them more often. When they do, they should be ready. Says Lakeland: “It is your chance to settle things with a former employer to your advantage.”