



## Ten top tips for compromise agreements

**In our experience the same issues turn out to be contentious time and time again in compromise agreement negotiations; deal with these knotty problems head on, and save yourself time (and legal fees!)**

1. Clearly set out all the payments to be made - and what they are for – for example, what is being paid in respect of any accrued holiday or in lieu of notice. Make sure you know which payments will be taxable. Note that there are new rules for tax deductions from April 2011.
2. Make use of the £30,000 tax exemption – it will make the deal more attractive for the employee - but make sure you are protected from claims by HMRC. A carefully drafted warranty from the employee may help, provided that he or she is good for the money.
3. Include a confidentiality clause covering the terms of the deal. The employee may also ask you to keep the details confidential. You will need to make exceptions, for example so the parties can take legal advice, or give an accurate reference.
4. On the question of references, employees frequently ask for one during discussions– so attach a standard reference to the agreement, but protect your right to amend it in the future if necessary.
5. Set out any new restrictive covenants, and ensure separate consideration is allocated to any new confidentiality clause and restrictive covenants for tax purposes. Remember that you may need to restate restrictive covenants from the original contract of employment, as protection can be lost if not giving full contractual notice. This is an area for specialist advice.
6. Set out any specific claims that the employee may have or specify a redundancy situation - also add a schedule of all other potential claims. A blanket settlement of all possible claims will not be effective, so set out a bit of background to identify the claim.
7. If any of the claims listed involve discrimination law, the agreement may be ineffective under the Equality Act 2010 – so you may need extra protection to ensure you are safe from tribunal claims. Options include phasing payment or involving ACAS.
8. Ensure you deal with the return of company property – for example laptop, phone or car - before the termination date and that all company information on any personal computer is deleted. Don't forget to get all company documents back too. Some employees want to buy company property, or retain it for their notice period. This can be a good trade-off, especially if the property has a low value to the company but would be expensive for the employee to buy themselves.
9. Add a clause stating that no further payments will be made to the employee making sure you include both salary and future bonuses.
10. Include a clause preventing the employee from making any derogatory comments about the Company and its employees.