



Settlement Agreements in Employment Cases – Are They Binding?

Settlement Agreements are widely used in Ireland. They are there to compromise employment claims. They are used to deal with the discharge of liabilities to an employee in termination of employment situations and in potentially contentious employment matters.

Settlement Agreements are generally speaking put in place in redundancy situations where an employer is paying an ex gratia payment to ensure that all claims are disposed of.

The conditions required for an agreement to be enforceable would appear to this office to be;

1. The agreement is in writing and signed by the employee
2. The claims being waved and discharged are very clearly set out. This means every single Act that would need to be covered.
3. The employee has taken independent legal advice.

It would appear to this office not to be sufficient that the employee is simply advised to obtain independent legal advice. They should actually be obliged to obtain same prior to any such agreement being accepted by the employer.

This will mean that the employer will need to discharge reasonable professional fees to a Solicitors firm to give such advice. In well drafted agreements an amount is set out and an undertaking is given in saying that once the signed agreement is returned this amount will be discharged to the Solicitor for the employee on receipt of a VAT invoice. Because certain difficulties have arisen for some employers not discharging same some settlement agreements now provide that it will either be discharged to the Solicitor directly or if the employee returns same with a Vat receipt marked paid that it will be discharged to the employee directly.

It is important however that employers make sure that individuals understand the documentation that they are signing particularly in the case of mental capacity.



There is a clear defect in our legislation.

In the United Kingdom there is a detailed statutory regime. This sets out the use and validity of employee compromise agreements. This legislation has not been copied into Irish Legislation. This is unfortunate. Saying this, the practice of the Labour Relations Commission, and we would presume it is likely to apply to the Workplace Relations Commission or the Labour Court on Appeal, will be that they will be reluctant to refuse to enforce such an agreement unless clear evidence is established with the Burden of Proof on the employee to show that it should not be followed. There is a difficulty for those entering into such agreements.

In Ireland, the compromise of an employment claim, particularly one that has gone to the WRC or the Labour Court on Appeal, where the employer subsequently becomes insolvent means that the employee is not covered by the insolvency legislation. If they have received the decision for the same amount from either the WRC or the Labour Court on Appeal then such award would be enforceable against the insolvency fund.

This office has written to the Minister for Jobs Enterprise and Innovation asking that she would consider amending the legislation to allow for settlement Agreements to have the standing of a Determination or Decision. Of course this will be subject to certain safeguards that it was not abused but at the same time this failure to include same under insolvent situations does have the effect that some employees will be reluctant to enter into such agreements.

The issue is compounded by the fact that the WRC where Agreements are entered into either just before or on the day of a hearing have taken the approach as to why matters were not resolved in advance. That is a good question but often it is a matter that negotiations in the Courts often only happen very close to or on the date of a hearing when matters are generally adjourned.

While the WRC currently is allowing adjournments the indications are that they will not go forward. This means that parties may be forced to effectively go through a charade of a hearing so that a settlement agreement can be put in place subsequently.

Certainly if parties have case before the WRC or the Labour Court it is advisable in any settlement agreement to have a provision inserted, if



acting for the employee, that in the event that the settlement is not implemented by a specific date, that the employee shall have the option to either proceed with their claim or to sue on foot of the settlement agreement.

This issue is not relevant where proceedings have not in being and where there is going to be an ex gratia payment. However, it may be relevant where simply for example statutory redundancy is proposed to be paid and the employer is seeking to have a settlement agreement put in place.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**