



HR Briefing June 2007

COMPROMISE AGREEMENTS

THE POTENTIAL PITFALLS

There is a common held view that all employment legislation is in favour of employees, rather than employers. The cases referred to below demonstrate that this is not always the case, and there are occasions when the employer “comes out on top”.

What is a Compromise Agreement?

This is an agreement between an employer and an employee whereby the employee agrees to waive any claims he/she may have against the employer, and in return, the employer makes a payment to the employee. The employee needs to obtain independent legal advice about the purpose and effect of the agreement in order for it to be valid.

How can an employer be sure to cover all potential claims?

The answer to this is to make sure that the compromise agreement, amongst other things, defines all of the statutory rights that the employer is seeking protection against. This advice comes straight from the case of ***Hinton v University of East London*** where the Judge stated that any potential proceedings must be identified in the agreement either by a generic description such as ‘unfair dismissal’ or by reference to the statute itself. It is not sufficient to write “the employee waives all statutory rights” or accepts the payment “in full and final settlement of all claims”.

Problem Areas

There is always the possibility, as with all contracts and agreements, that a problem may arise. Recent case law demonstrates that an employee’s conduct prior to signing the agreement can affect its validity.

Key Recommendations

- Ensure that before you enter into a compromise agreement you take legal advice as every individual’s circumstances are different.
- Consider carefully the representations made by both parties during the negotiation of the Compromise Agreement. It is critical that no misrepresentation or false statements are made.

A recent case involving the former manager of Crystal Palace Football Club (“Crystal Palace”), Iain Dowie, looked at this problem. His contract contained a clause, that should he find alternative employment with another Premiership Football Club before the expiration of his contract, then Crystal Palace would be entitled to compensation in the sum of £1,000,000. Some time into the contract Mr Dowie informed Crystal Palace that he wanted permission to talk to other clubs so he could work nearer to his home in the North. It was subsequently agreed that he would leave the Club and sign a compromise agreement waiving any claims against Crystal Palace and in return it would release Mr Dowie from the compensation clause in his contract.

An issue then emerged in relation to fraudulent misrepresentation and it was argued, successfully by Crystal Palace, that Mr Dowie had made a false statement in that at the time he claimed he wanted to work nearer to home, he had actually been in talks with Charlton Football Club. The court found that Mr Dowie had therefore wrongfully induced the club into signing the compromise agreement and the entire enforceability of the compromise agreement is at issue as a result.

In the case of *Collidge v Freeport*, the employee and employer entered into a compromise agreement which contained a warranty that the employee was not aware of anything that could be considered a breach of his employment contract. The employer subsequently found out that the employee was guilty of submitting fraudulent expense claims. As a result, the employer withheld payment and the employee commenced proceedings to recover the severance payment due to him. The court found that the employer did not have to make the severance payment because the employee was in breach of the warranty he had given as part of the compromise agreement.

These cases demonstrate that, even though compromise agreements can effectively terminate the employment relationship, there are potential pitfalls involved. Furthermore employers will have recourse against an employee who misrepresents his/her situation or who breaches warranties given.

If you have any queries on any of the above please contact either **Alison Loveday** at alisonl@berg.co.uk or **Lee Jfcott** at leej@berg.co.uk to discuss further issues. Alternatively you contact either **Alison** or **Lee** on **0161 833 9211**.

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- Consider not only the past (i.e. how potential claims may have arisen) but also the future. For example, does the employer need on-going confidentiality restrictions or restrictive covenants.
- Consider the practical aspects of the agreement – for example, how and when will payment be made, what about the return of Company property, how will the handover of work be dealt with, what amendments will be made – internal and external and so on.