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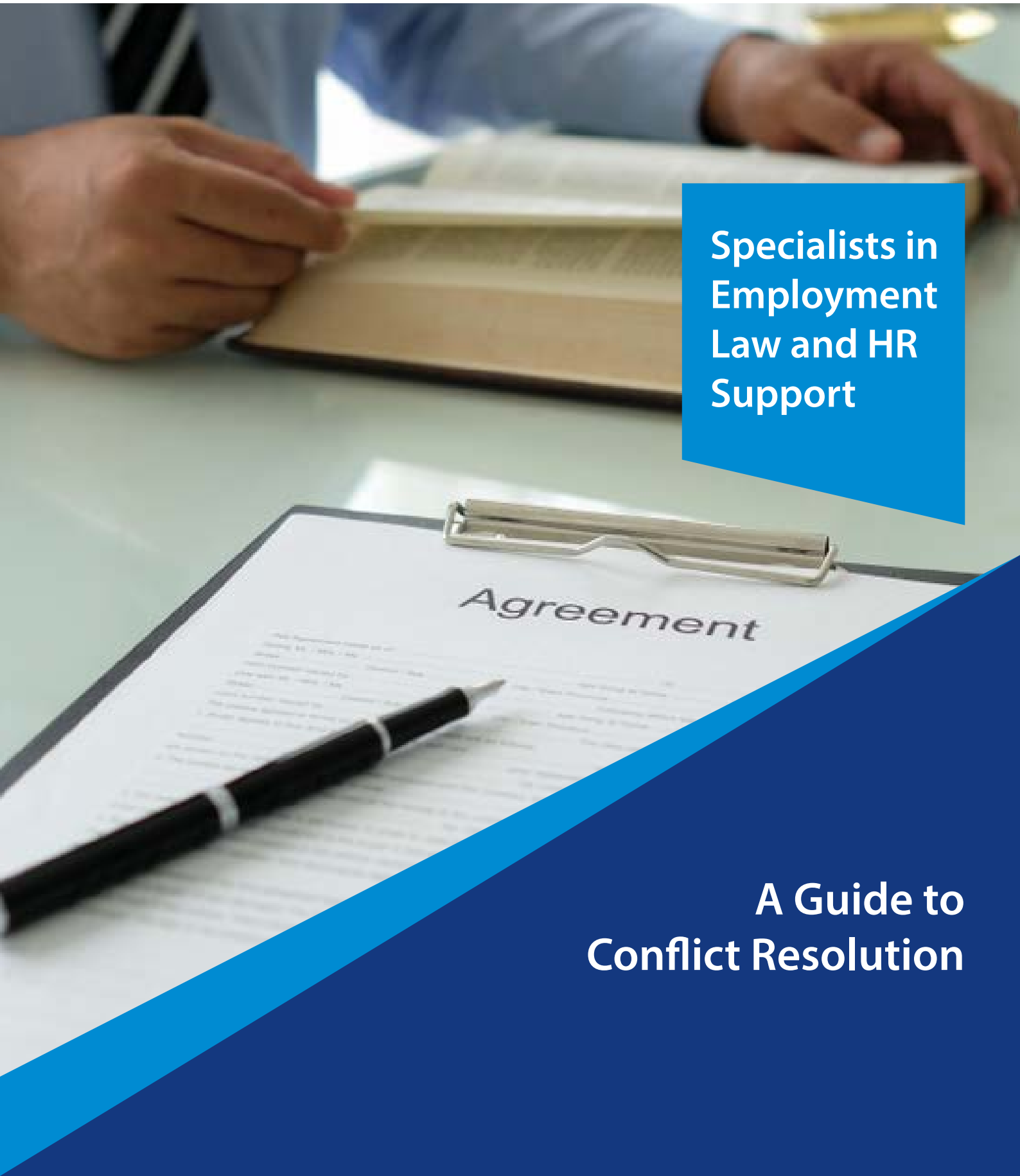

Specialists in Employment Law and HR Support

A Guide to Conflict Resolution

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A Guide to Conflict Resolution

Including valuable information on:

- **Early Conciliation**
- **Settlement Agreements**
- **The role of ACAS**

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A Guide to Conflict Resolution

Conflict Resolution

Early Conciliation
Early conciliation is a confidential and impartial process provided by ACAS to try to resolve a workplace dispute before it can develop into an employment tribunal hearing. Resolving a complaint through early conciliation can be faster, less stressful and more economical for both parties than attending a tribunal hearing.

ACAS early conciliation

A workplace disagreement can often be resolved by discussing matters with your staff member or addressing their grievance before things get out of hand, but a problem can escalate into a formal legal dispute resulting in an employment tribunal hearing.

Before a tribunal claim can be made a claimant must contact ACAS to register for early conciliation. ACAS (the Advisory, Conciliatory and Arbitration Service) is a government-funded organisation whose job is to help resolve workplace disputes.

How does ACAS early conciliation work?

- Once ACAS receives details of a complaint, a conciliation officer will contact you offering to explore the possibility of resolving the dispute before it progresses to an employment tribunal.
- The conciliation officer is impartial. Their purpose is to try to settle the matter to avoid the need for a tribunal hearing. They cannot provide either party with any legal advice.
- If both sides agree to participate, ACAS will attempt to negotiate a settlement of the dispute. Neither side is obliged to take part however and can withdraw at any time.
- If early conciliation succeeds, ACAS will record that the matter has been settled on a COT3 form, meaning the case cannot proceed to an employment tribunal.
- If early conciliation fails, or if one party withdraws from the process, the claim can then proceed to a tribunal.
- If a settlement is not achieved, conciliation can start again once the claimant has made their tribunal claim.

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Is there a limit to how long early conciliation lasts?

Early conciliation lasts a maximum of four weeks. If the parties are close to reaching an agreement at the end of that time, ACAS can provide a two-week extension.

If you have been contacted by ACAS regarding an employment dispute, you may be required to deal with complex legal negotiations that could result in you having to attend an employment tribunal hearing. Delphi can help you. We can: (see next page)

- Speak to ACAS and negotiate on your behalf;
- Assess the strengths and weaknesses of the claim;
- Assess the value of the claim;
- Advise on a realistic settlement figure and your legal options – settling your case may not always be the best strategy.

We specialise in employment law and with many years of experience, we are highly-qualified to assist with any early conciliation issues you might have. **Contact us today on 0113 867 2815.**

Settlement Agreements

A "Settlement Agreement", formerly known as a "Compromise Agreement", is a legally binding written contract between you and your employee, in which it is agreed that your employee will not bring any employment claims against your company (or will withdraw any existing claims) and you will pay them to sign the agreement.
These agreements usually relate to the termination of an employee's contract of employment and set out all the actions agreed by the parties in relation to that termination.

When might a settlement agreement be used?

If you're looking to dismiss an employee, you might offer them a settlement agreement as an alternative to going through a formal dismissal procedure. Settlement agreements are often used if you're involved in a legal dispute with an employee, or if they're being made redundant and you've offered them an enhanced redundancy payment.

Employment Tribunal cases can often be risky, expensive and time consuming, so a settlement agreement can provide a commercial alternative to a lengthy legal dispute.

How much will I have to pay?

The amount of money you offer your employee to sign a settlement agreement is likely to be based on a number of factors, such as their salary and benefits package, length of service, the events surrounding their dismissal and an estimate of how long it will take them to find another job.

Senior managers and executives are sometimes paid considerable sums of money to sign a settlement agreement, but the terms of the agreement may prevent them taking another job for a lengthy period of time afterwards.
You should pay your employee's salary and any accrued holiday pay that they've not taken up to the termination date set out in the agreement. Income tax and national insurance should be deducted from these payments as normal.
You might want to pay your employee in lieu of notice if you don't want them to work out their notice period – providing their contract of employment allows you to do so.

You can legally pay the first £30,000 of any non-contractual termination payment without income tax and national insurance being deducted but any sum over £30,000 will be subject to the usual deductions.

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What does a settlement agreement usually include?

There is no set format for settlement agreements, although they're often quite lengthy documents and their content is usually fairly similar.

ACAS have produced a Code of Practice on Settlement Agreements. In general terms a Settlement Agreement will set out:

- The terms of departure of the employee
- Details of any compensation paid to the employee
- Each of the claims the employee waives – (i.e. – unfair dismissal, sex, race, disability discrimination etc.)
- Tax indemnity – making the employee responsible for any income tax and employee national insurance contributions owed on their termination payment, if HMRC subsequently decide that any of the tax-free settlement sums paid to them (within the £30,000 threshold) should have been taxed.
- A statement confirming the advice the employee has received legal regarding the termination of their employment.

What additional clauses might an employer require?

As an employer, you may require your employee to formally confirm that they've returned all company property, that they've not committed any serious breach of contract prior to their departure and that they will obey any restrictive covenants in their contract. You may also want the following clauses included in the settlement agreement:

- Non-derogatory comments – Both parties agree not to make any derogatory or disparaging comments about each other post termination.
- Confidentiality – Both parties agree to keep all the details of the settlement private. There are usually some exceptions to this, allowing the employee to discuss the details of the agreement with their close family, or as may be required by law – for example if HMRC ask them to explain the payments.

What additional clauses might an employee require?

Employees will often ask for an agreed reference to be annexed to the settlement agreement. Employers will usually only provide a factual reference, giving details of the employee's job and length of service.

Employees may also request an agreed announcement relating to their departure from the company, retention of their company car or mobile telephone etc.

What can't be included in a settlement agreement?

If your employee was a member of the company pension scheme, you can't ask them to compromise their accumulated pension rights.

You also can't ask them to compromise any future personal injury claims that they don't know about at the time of signing (because they might develop a work related illness such as asbestosis in the future).

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Why does a settlement agreement have to be signed off by a lawyer?

For a settlement agreement to be legally binding, it must be counter-signed by a specialist employment lawyer or suitably qualified independent adviser. The settlement agreement requires your employee to give up all possible employment claims that they might have against your company (and any individual officers and employees of the company); consequently, the law requires evidence that the employee has received appropriate advice from an independent expert before agreeing to forego their employment rights.

Who is responsible for the cost of a settlement agreement?

You are responsible for the cost of preparing the settlement agreement and making a contribution towards the employee's legal costs.

What action could an employee take?

If you don't stick to the terms of the settlement agreement, your employee may be able to sue you for damages in an employment tribunal or the civil courts.

You may already have a standard settlement agreement on your system, or you may want us to draft one for you. We will ensure that your settlement agreement is tailored to your own specific needs and meets the various requirements to be legally binding and to protect your interests.

At Delphi, we specialise in employment law and with many years of experience are very well qualified to assist you with any Settlement Agreement issues you might have. **Contact us today on 0113 867 2815.**