

Compromise Agreements

As a general rule, 'out of court settlements' of employment disputes are not legally binding in that they cannot exclude an employee's right to take the matter concerned to an Employment Tribunal (ET). A formal compromise agreement is one of the few exceptions to this rule.

A compromise agreement is a legally binding agreement by which an employee undertakes to refrain from instigating ET proceedings against his or her employer or, if proceedings have already commenced, to discontinue them in return for consideration. Compromise agreements were created by s203 of the Employment Rights Act 1996 (ERA) and must comply with the stringent requirements of that section.

The Court of Appeal recently ruled (*Hinton v University of East London*) that in order for a compromise agreement to be effective, it must expressly specify the cause of action being settled.

Dr Hinton retired early from a senior lecturing position with the University of East London (UEL). He signed a compromise agreement with the university, in accordance with s203 of the ERA. During negotiations he had raised the possibility of a claim in accordance with s47B of the ERA (which protects employees who make public interest disclosures from suffering a detriment) but the compromise agreement contained no specific mention of this.

Dr Hinton subsequently sought to pursue a claim under s47B. His argument was that an employment law claim could be waived only if the compromise agreement complied with the requirements of s203 of the ERA, which requires the agreement to relate to the particular complaint. As the s47B claim was not mentioned in the agreement, the agreement could not therefore be said to 'relate' to that particular complaint. Consequently, the s47B claim was still live.

The ET allowed Dr Hinton's claim to proceed. The Employment Appeal Tribunal overruled this decision and so Dr Hinton appealed to the Court of Appeal.

The Court granted Dr Hinton's appeal, allowing the s47B claim to proceed to hearing on the grounds that compromise agreements were created to encourage parties to settle their disputes while protecting employees from unknowingly signing away the right to instigate proceedings before an ET. In order to ensure that the employee fully understands which rights are being waived, the agreement should list all potential claims. For clarity's sake each claim should be accompanied by a brief description. In this case, UEL was aware of the potential s47B claim and as the agreement did not refer to it specifically, it was not compromised.

Says Paul Davies, "Compromise agreements remain a good way to avoid litigation and achieve certainty. However, if the agreement is badly drafted the employer will remain vulnerable to the possibility of tribunal proceedings and

further expense. If you wish to enter into such an agreement, we can assist you to ensure that all potential claims have been compromised.”

For further information or to discuss how to proceed with this or other employment related issues please contact Paul Davies at paul.davies@emsleys.co.uk or tel: 0113 287 4333.