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Settlement agreements: Court of Session finds future claims may be settled

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In November 2022, we reported on the Employment Appeal Tribunal (the EAT) decision in Bathgate v Technip UK Ltd which looked at the claims which could be effectively settled under a settlement agreement.

The EAT looked at whether it was appropriate to settle future discrimination claims under the Equality Act 2010 (the Act).

Mr Bathgate had agreed to be made voluntarily redundant and signed a settlement agreement which waived his right to bring past, current and future claims. He subsequently discovered new information about a right to receive an additional payment under a collective agreement but only payable to those yet to reach 61. As he was 61 at the point his employment ended, Mr Bathgate brought an age discrimination claim. Technip defended the claim on the basis that it could be not brought at all as it had been settled by the settlement agreement.

The EAT held that future unknown complaints that arise after a settlement agreement has been entered into cannot easily be settled as, by their very nature, those complaints had not occurred at the point of signature. However, the case then went up to Scotland's Court of Session (akin to England and Wales' Court of Appeal) who disagreed with the EAT. It concluded that "a future claim of which an employee does not and could not have knowledge" could be settled where "it is plain and unequivocal that this was intended", that is, by clearly being addressed in the agreement itself.

What does this mean for employers?

This judgment provides employers with greater certainty that a settlement agreement can settle claims that arise after the settlement agreement has been entered into.

Employers should review the wording of their settlement agreements and take advice to ensure:

- the wording suits the circumstances of the specific case in question, and
- that the settlement of future claims is "plain and unequivocal" as envisaged by this judgment.

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