

Legal fees for advising on settlement agreements

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When entering into a settlement agreement, it is a requirement for the employee to get independent legal advice on the terms and effect of the agreement. There is no obligation for the employer to pay for that advice. However, many employers do pay towards the legal advice, as it is in their interests to ensure that the agreement is legally binding.

In our experience, it is common for an employer to pay £250-500 +VAT towards the independent legal advice. However, the Employment Appeal Tribunal (“EAT”) has recently commented that this may not be sufficient if the merits of the claim are to be considered.

In that case, the employee had been offered a settlement of £50,000, plus £500 +VAT towards legal advice. The employee rejected the offer and the Respondent was awarded costs on the basis that the Claimant had acted unreasonably in failing to take advice on and accept the offer of settlement. In allowing the appeal against the costs decision, the EAT commented that £500 would only be enough to advise on the terms and effect of the proposed settlement. It was “wholly unrealistic” for a solicitor to advise on the merits and quantum of the claim for that amount.

Advice only needs to be provided on the terms and effects of a proposed settlement agreement. It does not need to cover whether the offer is a good one or if the employee should accept it or not. However, in light of the EAT’s comments, it is possible that legal advisers will start asking for higher contributions to their fees for advising on a settlement agreement, particularly where the advice is wider than simply the terms and effects of the agreement.

Further, settlement agreements often contain confidentiality provisions to some degree or another. Guidance issued by the ECHR in October 2019, suggests that employers should pay for the costs of an employee taking independent legal advice, regardless of whether the settlement agreement is concluded or not. It also stresses that the costs contribution should be “reasonable” – this will vary from case to case but employers may find employees seeking a higher contribution level where any confidentiality provisions are included.

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