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Settlement agreements – what are the limitations?

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Settlement agreements are commonplace in an employment context and are ordinarily used to provide the parties to the agreement with certainty following the conclusion of an employment relationship. There are already restrictions on the extent to which personal injury claims can be settled by a settlement agreement. There have also been numerous consultations about the use of non-disclosure agreements and confidentiality clauses, particularly where allegations of sexual harassment and discrimination have been raised. In any event, it is clear that settlement agreements should not be used to prevent an employee from raising a protected disclosure.

But what about alleged discrimination which takes place after entering into a settlement agreement?

The recent case of **Bathgate v Technip UK Ltd [2022] EAT 155** considered this issue. The Claimant in this matter, Mr Bathgate, was employed for just under 20 years before he agreed to take voluntary redundancy. As part of the voluntary redundancy, Mr Bathgate entered into a settlement agreement waiving his right to bring past, current and future claims against his employer in consideration for enhanced redundancy pay, notice pay, and an additional payment calculated in accordance with the terms of a collective agreement. After Mr Bathgate entered into this agreement, his employer discovered that the terms of the collective agreement provided that the additional payment would only apply to those who had not reached the age of 61. Mr Bathgate was not entitled to receive the collective agreement payment as he was 61 as at his termination date.

Mr Bathgate brought an employment tribunal claim, citing age discrimination in relation to the non-payment of the collective agreement payment. Mr Bathgate's employer sought to defend this claim on two grounds, firstly that he had compromised his ability to bring a claim by entering into the settlement agreement, and secondly on jurisdictional points relating to the meaning of "seafarers" (which is not relevant for the purposes of this article).

The Tribunal found that the Claimant was precluded from bringing his claim, due to the settlement agreement. The wording of the agreement was an effective full and final settlement of all current and future age discrimination claims. Mr Bathgate appealed against the Tribunal's decision.

The Employment Appeal Tribunal (EAT) upheld his appeal. For an agreement to be valid to settle claims under the Equality Act 2010, it must meet a number of requirements, including that it must relate to "the particular complaint". In this case, the settlement agreement referred to a "long list" of legislation, including that relating to age discrimination and purported to include future discrimination claims of which Mr Bathgate was unaware. The EAT held that an **unknown future claim could not fall within the statutory meaning of a "particular complaint" under the Equality Act 2010.**

How does this compare to the position before?

Previously, based on the decision in Hilton UK Hotels Limited v McNaughton EATS/0059/04, it was understood that it was possible to settle future unknown claims within a settlement agreement but that, if this was the intention of the parties, the wording needed to be clear

and unequivocal. The decision of the EAT in Bathgate has now restricted this principle as being relevant only to matters of contract law and contractual interpretation, highlighting the potential limitation of settlement agreements, and the protection afforded to employers in certain circumstances.

What does this mean moving forwards?

The reduction in certainty, and the inability to secure a clean break, will need to be considered by employers when deciding whether to enter into settlement agreements and/or the amount of consideration that will be offered. If you are considering entering into a settlement agreement with an employee, you will also need to carefully consider the waiver of claims, to ensure you are protected as far as possible.

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