



**Acas consultation on:
Draft Code of Practice on
Settlement Agreements**

February 2013

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ACAS CONSULTATION ON DRAFT CODE OF PRACTICE ON SETTLEMENT AGREEMENTS

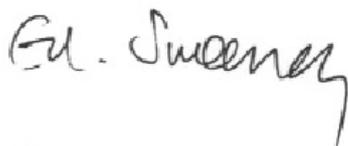
A message from Acas Chair, Ed Sweeney

Acas has been asked by the Government to prepare a statutory Code of Practice to accompany the new legislation being introduced on settlement agreements. The aim of the Code is to help employers and employees negotiate settlement agreements by providing a clear explanation of the law as it relates to the confidentiality provisions of such negotiations.

The draft Code contained in this consultation document has been prepared carefully by Acas and reflects the considered view of all sides of industry as represented by the members of the Acas Council. The guidance in the Code is, however, the initial view of Council and we are anxious to hear what others think.

A key element of the new Code will be the advice it gives on what constitutes 'improper behaviour' when negotiating settlement agreements. The attached draft contains a number of examples of 'improper behaviour' and we are particularly interested in what others think of these examples and indeed whether there are other examples that might be included. The draft Code also contains aspects of good practice guidance relating to the offering and negotiation of settlement agreements: for instance, that offers should be made in writing and that employees should be allowed to be accompanied at meetings to discuss settlement offers. Views on this good practice guidance and whether it is best covered in a statutory Code of Practice or in guidance would be much welcomed. Specific questions are posed on these points in the consultation document.

The attached draft Code draws on Acas' experience and knowledge of the world of work and of good employment relations. Our intention has been to provide employers and employees with clear and straightforward guidance. We look forward to your feedback.



CONSULTATION ON DRAFT CODE OF PRACTICE ON SETTLEMENT AGREEMENTS

Introduction

1. The Government is currently in the process of introducing a change in the law to make offers of settlement in relation to termination of employment inadmissible in unfair dismissal employment tribunal claims. To underpin the use of the new legislation the Government has asked Acas to produce a statutory Code of Practice. It is a draft of this Code on which Acas is now seeking views in this public consultation.
2. At present employers and employees can bring an employment relationship to an end through a compromise agreement. Compromise agreements are legally binding agreements that can be used to resolve all possible employment claims that an employee could bring to a court or tribunal, usually in return for a severance payment to the individual by the employer.
3. The Government has announced that it will be changing the name of these compromise agreements to settlement agreements – a term which is felt to more accurately describe their purpose and content.
4. As well as changing the name, the Government will also be introducing, subject to Parliamentary approval, a new law that will mean that offers of settlement cannot be used as evidence in Employment Tribunals in unfair dismissal cases, so long as there has been no improper behaviour in the process of discussing the agreement. This new law is being introduced because there is presently some uncertainty about whether discussions that take place to end the employment relationship can take place on a 'without prejudice' basis in situations where it is unclear whether there is an existing dispute between the parties. 'Without prejudice' is a common law principle which prevents statements (written or oral) that are made in a genuine attempt to settle an existing dispute from being put before a court or tribunal as evidence.
5. The new law will mean that negotiations relating to, or offers of, settlement will not be admissible in tribunal claims relating to unfair dismissal regardless of whether there is an employment dispute between the parties or not.

The new Code of Practice on settlement agreements

6. To support the new unfair dismissal rules in relation to settlement agreements, the Government has indicated that a statutory Code of Practice will be produced setting out the broad principles covering the use of settlement agreements. Statutory Codes of Practice are taken into account by courts and employment tribunals when considering relevant

cases although the advice they give is not legally binding. The new draft Code, which is attached, is intended to provide employers and employees with a shared understanding of how the new rules on settlement agreements would work in practice and, most importantly, to define what is meant by improper behaviour.

7. Comments are invited on all aspects of the draft but there are a number of specific issues on which Acas is especially keen to hear your views.

Focus of the Code

8. In producing the draft Code Acas has sought, in so far as possible, to focus on the new provisions regarding the inadmissibility of settlement agreement offers and discussions in unfair dismissal claims. Some aspects of good practice in relation to how settlements are offered and discussed are also included.

Q1. Is it right that the Code should focus mainly on the new legal provisions regarding the inadmissibility of settlement agreement offers and discussions in unfair dismissal claims?

Q2. Should the Code also include reference to the statutory requirements for drawing up a settlement agreement, e.g. putting the agreement in writing, and the employee receiving advice from an independent advisor? If not, should these be set out in accompanying guidance?

9. Acas will also produce detailed accompanying non-statutory guidance (as set out in more detail in paragraph 10 below). This guidance will include expectations as to good practice in offering and negotiating settlement agreements, to help both parties approach the process. However, Acas is seeking views on whether it would be useful or appropriate for the Statutory Code itself to set out key points of good practice.

Q3. Should the Code contain good practice guidance on how settlement agreements are offered and discussed, in addition to this being covered in non-statutory guidance?

Non-statutory guidance

10. To support the new Code, Acas is planning to produce non-statutory guidance on settlement agreements. The guidance would provide more detail on what settlement agreements are, how they can be drafted and negotiated, and some expectations for the kind of good practice we imagine employers will adopt. Some of the key issues identified in the Department for Business, Innovation and Skills (BIS) consultation that will be addressed in guidance include:

- the relationship between settlement agreements and broader processes for dealing with disciplinary and performance issues;
- the relationship between the new confidentiality provisions and the without prejudice conversations associated with existing compromise agreements;
- how the new confidentiality provisions will work in practice, including whether the fact or content of a settlement discussion becomes admissible;
- how the confidentiality provision will be handled in multiple claims;
- how the confidentiality provision will work with wrongful dismissal claims;
- how and when to use a template letter;
- explanation of when and how to add or remove clauses in the model agreement;
- things to consider when agreeing the terms of a settlement agreement, e.g. whether it constitutes dismissal or not, and the implications for Job Seeker's Allowance, etc.;
- how to manage meetings to discuss settlement, including that it will be good practice to allow the employee to be accompanied;
- that the employer may want to consider paying the individual's legal costs, and possible process for doing so;
- factors for consideration when offering/negotiating the financial settlement;
- what might be included in a reference, if the employer decides to offer one;
- how settlement agreements fit with redundancy rules;
- what happens if an offer is rejected; and,
- what happens if a settlement agreement is not honoured.

Acas would like to know what other information the non-statutory guidance might usefully include.

Q4. What sort of information and good practice advice would you like to see included in non-statutory guidance on settlement agreements?

Setting out the details of an offer in writing

11. The attached draft Code includes at paragraph 8 guidance (in square brackets) to the effect that initial offers of a settlement agreement should be set out in writing. Whilst recognising that it is not the Government's intention to suggest that failure to make an offer in writing would amount to 'improper behaviour', Acas feels that setting out the offer in writing could be helpful. Acas would, however, be interested to hear from you whether this good practice recommendation should be included in the Code or accompanying guidance and, if included in the Code, the likely impacts of that.

Q5. Should the good practice recommendation to set out the initial details of an offer in writing be included in the statutory Code?

Q6. If so, what might be the likely impact and how might the recommendation be perceived by employers and employment tribunals?

Template letters

12. The Government supported by evidence gathered in their consultation on ending the employment relationship feels that including template letters in a statutory Code will give employers as much certainty as possible that they are making an offer in an appropriate way - making it easier, cheaper and faster to agree settlements. The Government has been clear that the use of template letters is not compulsory and businesses may use their own formulation. The Government has also made it clear that the use of another appropriate form of words should not constitute improper behaviour, but that provision of the template as an option maximises certainty for business that they are using appropriate language and covering appropriate issues. However, some have expressed the view that template letters cannot cover all of the varied circumstances in which a settlement may be offered and will therefore need amendment to fit individual situations, thus to an extent reducing the level of certainty they provide. Including template letters in the Code may make amending them in future more difficult as substantive changes to Codes of Practice require Parliamentary approval. An alternative approach might be to include the template letters in non-statutory guidance. This would, however, mean that they would not have the same status as if they were part of the Code.

13. For the purposes of this consultation the template letters have been included in the attached draft Code and are worded exactly as revised by BIS following its public consultation on ending the employment relationship. References to the letters have also been included (in square brackets) in paragraphs 1 and 9 of the draft Code. But Acas would like to know what the public think of including the template letters now that they can see them in the context of the Code.

Q7. Having seen the draft of the new Code on settlement agreements do you feel the template letters should be included in a) the Code or b) the non-statutory guidance?

Q8. Do you have any comments on the wording of the template letters?

Reasonable period of time to consider an offer

14. The attached draft Code makes clear that the parties should allow a reasonable amount of time for the offer of a settlement agreement to be considered and has set out 7 working days as a minimum period. Defining

in the Code a minimum period of time to consider an offer will provide certainty for both parties and ensure that the employee is protected from being improperly rushed into a decision. It would also mitigate the risk of legal wrangling over whether a 'reasonable' period of time had been given. It would not prevent a party from accepting an offer more quickly should they wish to do so.

15. There may, however, be a risk that including a specific time period to consider an offer could develop into a norm which makes little allowance for the variety of individual circumstances that can arise in the workplace. Acas would be interested in what the public thinks on the issue.

Q9. In referencing the importance of having a reasonable time to consider a settlement agreement offer, should the Code specify a minimum time period?

Q10. Is so, how long should the period be?

Allowing employees to be accompanied

16. Although employees have no legal right to be accompanied at meetings to discuss settlement agreements, Acas nevertheless feels that it can be helpful for a companion to be in attendance at what can be stressful meetings, particularly when one possible outcome is the ending of the employment relationship. A good practice recommendation to this effect is set out (in square brackets) in paragraph 11 of the attached code, but Acas would be interested to know what the public think of the idea.

Q11. Do you think the statutory Code should contain a good practice recommendation that employees should be allowed to be accompanied at meetings to discuss settlement agreements?

Q12. What do you think are the implications of including such a reference to accompaniment in the statutory Code?

Improper behaviour

17. Acas has set out in the draft Code some examples of what might constitute improper behaviour and has also provided some examples of actions that would be regarded as undue pressure. Acas would be particularly interested to know what people think of these examples and whether they have any others to offer.

Q13. What do you think of the examples of improper behaviour and undue pressure set out in the draft Code and do you have any other examples that you feel might usefully be included?

18. As well as giving examples of what might constitute improper behaviour or undue pressure Acas would be interested to know whether it would be helpful to set out in the Code examples of behaviour that would not be deemed to be improper or to constitute undue pressure - for example, an employer factually stating the likely alternative process to be entered into should an agreement not be reached, such as setting out the disciplinary processes which may follow.

Q14. Should the Code include examples of what does not constitute improper behaviour or undue pressure?

Q15. If so, what examples would you like to see included?

How to Respond

19. Comments on the content and structure of the draft Code together with any answers to the questions set out above can be sent by **post or fax** to:

George Boyce
Acas National
22nd Floor
Euston Tower
286 Euston Road
London NW1 3JJ

Fax 020 7210 3691

Or by **email** to copsa@acas.org.uk

The closing date for responses is 9 April 2013.

20. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Confidentiality and Data Protection

21. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want information, including personal data that you provide, to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities

must comply and which deals, amongst other things, with obligations of confidence.

22. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Acas.

23. Acas will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

LIST OF QUESTIONS

Q1. Is it right that the Code should focus mainly on the new legal provisions regarding the inadmissibility of settlement agreement offers and discussions in unfair dismissal claims?

Q2. Should the Code also include reference to the statutory requirements for drawing up a settlement agreement, e.g. putting the agreement in writing, and the employee receiving advice from an independent advisor? If not, should these be set out in accompanying guidance?

Q3. Should the Code contain good practice guidance on how settlement agreements are offered and discussed, in addition to this being covered in non-statutory guidance?

Q4. What sort of information and good practice advice would you like to see included in non-statutory guidance on settlement agreements?

Q5. Should the good practice recommendation to set out the details of an offer in writing be included in the statutory Code?

Q6. If so, what might be the likely impact and how might the recommendation be perceived by employers and employment tribunals?

Q7. Having seen the draft of the new Code on settlement agreements do you feel the template letters should be included in a) the Code or b) the non-statutory guidance?

Q8. Do you have any comments on the wording of the template letters?

Q9. In referencing the importance of having a reasonable time to consider a settlement agreement offer, should the Code specify a minimum time period?

Q10. If so, how long should the period be?

Q11. Do you think the statutory Code should contain a good practice recommendation that employees should be allowed to be accompanied at meetings to discuss settlement agreements?

Q12. What do you think are the implications of including such a reference to accompaniment in the statutory Code?

Q13. What do you think of the examples of improper behaviour and undue pressure set out in the draft Code and do you have any other examples that you feel might usefully be included?

Q14. Should the Code include examples of what does not constitute improper behaviour or undue pressure?

Q15. If so, what examples would you like to see included?



Draft Acas Code of Practice on settlement agreements

DRAFT CODE OF PRACTICE ON SETTLEMENT AGREEMENTS

Foreword

The Acas statutory Code of Practice on settlement agreements¹ is set out in paragraphs 1 to 22 and annexes 1 to 3 on the following pages. The Code is designed to help employers, employees and their representatives understand the negotiation of settlement agreements prior to any potential termination of employment, as set out in the new section 111A of the Employment Rights Act 1996. In particular, it explains aspects of the confidentiality provisions associated with negotiations that take place to reach a settlement agreement.

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and comes into effect by order of the Secretary of State on xxx. Failure to follow the Code does not, in itself, make a person or organisation liable to proceedings nor will it lead to an adjustment in any compensation award made by an employment tribunal. However, employment tribunals will take the Code into account when considering relevant cases.

The discussions that take place in order to reach a settlement agreement in relation to an existing employment dispute can be, and often are, undertaken on a 'without prejudice' basis. This means that any statements made during a 'without prejudice' meeting or discussion cannot be used in a court or tribunal as evidence. This 'without prejudice' confidentiality does not, however, apply where there is no existing dispute between the parties. Section 111A of the ERA 1996 has therefore been introduced to allow greater flexibility in the use of confidential discussions as a means of ending the employment relationship. Section 111A, which will run alongside the 'without prejudice' principle, provides that even where no employment dispute exists, the parties may still offer and discuss a settlement agreement in the knowledge that their conversations cannot be used in any subsequent unfair dismissal claim. It is the confidentiality aspect of Section 111A that is the specific focus of this Code.

More comprehensive guidance on developing and negotiating settlement agreements can be found in the Acas booklet on settlement agreements *[to be drafted]*.

¹ Until [insert date when known] settlement agreements were known as compromise agreements

Draft Code of Practice

Introduction

1. This code is designed to help employers, employees and their representatives understand the law relating to the negotiation of settlement agreements as set out in section 111A of the Employment Rights Act (ERA) 1996. In particular it gives guidance on the confidentiality provisions associated with negotiations about settlement agreements and on what constitutes improper behaviour when such negotiations are taking place. [It also provides some template letters that can be adapted to be used to offer such agreements.]

2. Settlement agreements are only one way of handling potentially difficult employment situations and problems in the workplace are best resolved in open conversations, including where appropriate through the use of informal and formal disciplinary, grievance and performance procedures.

What are settlement agreements?

3. Settlement agreements are legally binding contracts which can be used to end the employment relationship on agreed terms. Their main feature is that they waive an individual's right to make a claim to a court or employment tribunal on the matters that are specifically covered in the agreement. They usually include some form of payment to the employee by the employer and may also include a reference.

4. Settlement agreements are entirely voluntary. Employers and employees do not have to enter into them if they do not wish to do so. Equally the parties do not have to accept the terms initially offered to them. There can be a process of negotiation during which both sides make offers and counter offers until an agreement is reached, or both parties recognise that no agreement is possible.

Settlement agreement discussions and the law

5. Section 111A of the ERA 1996 provides that offers to end the employment relationship on agreed terms (i.e. under a settlement agreement) can be made on a confidential basis even where there is no current employment dispute or where one or more of the parties is unaware that there is an employment problem. Section 111A can also apply to offers of a settlement agreement against the background of an existing dispute, although in such cases the 'without prejudice' principle can also apply.

6. Under section 111A, such offers and any discussions about them are treated as confidential which means that they cannot be used as evidence in an unfair dismissal claim to an employment tribunal. This confidentiality is, however, subject to there being no improper behaviour. Guidance on what constitutes improper behaviour is contained in paragraphs 13 to 20 of this Code. Where there is improper behaviour, confidentiality will only attach to anything said or done to the extent that an employment tribunal considers just.

7. Where the parties sign a settlement agreement, the employee will be unable to bring a tribunal claim under any of the jurisdictions listed in the agreement. Where a settlement agreement is not agreed, an employee *may* bring a subsequent claim to an employment tribunal but where this claim relates to an allegation of unfair dismissal the confidentiality provided by section 111A of the ERA 1996 will apply. There are however some exceptions to this. Claims that relate to an automatically unfair reason for dismissal such as whistleblowing, union membership or asserting statutory rights are not covered by the confidentiality provisions set out in section 111A, nor are claims made under jurisdictions other than unfair dismissal, such as sex, race or age discrimination.

Offering a settlement agreement

8. Settlement agreements can be proposed by both employers and employees although they will normally be proposed by the employer. The offer of a settlement agreement can be made at any stage of an employment relationship and it is not necessary to have gone through a disciplinary or grievance process, or even started one, before making an offer. [To avoid any misunderstandings the initial details of the settlement agreement offer should be set out in writing and sent to the other party, although this is not a formal requirement.] The reason for the offer, for instance dissatisfaction with an employee's performance or conduct, should be given at an appropriate time. Ultimately, the final settlement agreement will need to be set out in writing and signed by the parties.

9. [Employers and employees are free to draw up their own letters offering a settlement but some template letters which could be used by employers for this purpose, after suitable amendment, are attached at Annexes 1 to 3. As settlement agreements may be offered to cover a range of problems e.g. poor performance, poor attendance or misconduct, there are a number of template letters provided from which employers can adapt the one that best suits their purposes.]

10. Parties must be given a reasonable period of time – a minimum of seven working days – to consider an offer of a settlement agreement and to receive any independent advice.

11. [The parties may find it helpful to discuss the offer and any such meeting should be at an agreed time and place. Employers should allow

employees to be accompanied at the meeting by a work colleague, trade union official or trade union representative.]

12. Where an offer of a settlement agreement is accepted then the employee's employment can be terminated either with the required contractual notice or from the date specified in the agreement. The details of any payments due to the employee and their timing should be included in the agreement.

Improper behaviour and unambiguous impropriety

13. If a settlement agreement is being discussed as a means of settling an existing employment dispute, the negotiations between the parties can be carried out on a without prejudice basis. Without prejudice is a common law principle which prevents statements (written or oral), made in a genuine attempt to settle an existing dispute, from being put before a court as evidence. This protection does not however apply where there has been fraud, undue influence or some other 'unambiguous impropriety' such as discrimination.

14. Section 111A of the ERA 1996 offers similar protection to the without prejudice principle in that it provides that the offer of a settlement agreement and any discussions about the agreement cannot be used as evidence in any subsequent employment tribunal claim of unfair dismissal, regardless of whether there is an existing employment dispute or not. Section 111A will not, however, apply where there is some improper behaviour in anything said or done in relation to the settlement agreement discussions or offer.

15. What constitutes improper behaviour is ultimately for a tribunal to decide on the facts and circumstances of each case.

16. The following list provides some examples of improper behaviour that would usually result in the removal of legal protection. The list is not exhaustive:

- a. All forms of harassment that include intimidation through the use of offensive words or aggressive behaviour;
- b. Physical assault and other criminal or wrongful behaviour;
- c. Victimisation of people because they have invoked or sought to invoke a statutory right;
- d. Discrimination because of age, sex, race, disability, sexual orientation, religion or belief, transgender, pregnancy and maternity and marriage or civil partnership;

- e. [Putting undue pressure on a party. The following behaviours would constitute undue pressure:
- i. an employer not allowing an employee a minimum of seven working days to consider an offer;
 - ii. an employer reducing the value of a financial offer during the seven working days an employee has to consider the offer;
 - iii. an employer saying before any form of disciplinary process has begun that if the offer is rejected then the employee will be dismissed;
 - iv. an employee threatening to undermine an organisation's public reputation unless the employer agreed to sign.]

17. Where an employment tribunal finds that there has been improper behaviour, any proposal of a settlement agreement or discussions relating to it will only be confidential if, and in so far as, the tribunal considers it just.

18. In situations where there is no existing employment dispute the without prejudice principle cannot apply and consequently the offer of, and discussions about, a settlement agreement will not be admissible in a tribunal (in an unfair dismissal case) so long as there has been no improper behaviour.

19. In situations where there is an existing dispute both section 111A and the without prejudice principle might apply and consequently any offers of, or discussions about, settlement agreements will be inadmissible in tribunal (in an unfair dismissal case) so long as there has been either no improper behaviour or no unambiguous impropriety.

20. The test of improper behaviour is slightly wider than that of unambiguous impropriety in that it covers some behaviour (e.g. undue pressure) which may not always amount to unambiguous impropriety. Therefore it is possible that in situations involving an existing employment dispute something could be said or done which is improper (meaning that section 111A will not apply) but does not amount to unambiguous impropriety. In these circumstances, despite the fact that there has been some improper behaviour, the offer of and discussions about the settlement agreement will remain inadmissible in tribunal proceedings because of the without prejudice principle.

What if a settlement agreement cannot be agreed?

21. If a settlement agreement is rejected and the parties still wish to resolve the dispute or problem that led to the offer being made then some

other form of resolution should be sought. Depending on the nature of the dispute or problem, resolution might be sought through a disciplinary, grievance or performance management process, whichever is appropriate. The parties cannot rely on the offer of a settlement agreement or any ensuing discussions about the agreement as being part of this process.

22. It is important that employers follow a fair process, as well as the other principles set out in the Acas discipline and grievance code of practice, because, if the employee is subsequently dismissed, failure to do so could constitute grounds for a claim of unfair dismissal.

Draft letter to send to employees offering a voluntary severance package on grounds of unsatisfactory performance

Dear []

Your employment

We are writing to inform you that we have concerns about your recent performance. [Add brief details if appropriate.]

We will be inviting you to a meeting in the near future so that we can discuss our concerns in full with you. You will have the right to bring a work colleague or a trade union official with you to this meeting. You will then be given opportunity to improve your performance to meet the required standard before we reach any final decision as to your future employment.

Alternatively, you may wish to consider the following offer to leave on agreed terms.

[You would receive a [lump sum] payment free of tax of [£x].]

[Your employment would end on *[insert date – suggest end of month, if still 3 weeks away]*.]

[You would receive a reference to reflect your work during your employment with us.] *[delete if you do not wish to offer a reference.]*

This offer is open for you to accept until 5pm on *[date, giving a minimum of seven days to respond]*. If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would pay a further sum of [£x] towards your independent legal advice]. All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will contact you again to arrange a meeting to discuss our concerns.

Yours sincerely,

Draft letter to send to employees offering a voluntary severance package on grounds of conduct

Dear []

Your employment

We are writing to inform you that we have [serious] concerns over your recent conduct [insert brief explanation here if appropriate].

We will be inviting you to a meeting in the near future so that we can discuss our concerns in full with you. You will have the right to bring a work colleague or a trade union official with you to this meeting. We will not reach a decision as to your future employment until you have had a full opportunity to have your say. [However, it is possible that we will reach a decision to terminate your employment.]

Alternatively, you may wish to consider the following offer to leave on agreed terms.

[You would receive a lump sum payment free of tax of [£x].

[Your employment would end on [*insert date – suggest end of month, if still 3 weeks away*].]

[You would receive a reference to reflect your work during your employment with us.] [*delete if you do not wish to offer a reference.*]

This offer is open for you to accept until 5pm on [*date giving a minimum of seven days to respond*]. If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would pay a further sum of [£x] towards your independent advice]. All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will contact you again to arrange a meeting to discuss our concerns.

Yours sincerely,

Draft letter to send to employees offering a voluntary severance package on grounds of unsatisfactory attendance

Dear []

Your employment

We are writing to inform you that we have [serious] concerns about your attendance record. [Add brief details if appropriate.]

We will be inviting you to a meeting in the near future so that we can discuss our concerns fully with you. You will have the right to bring a work colleague or a trade union official with you to this meeting. You will then be given opportunity to improve your attendance before we reach a decision as to your future employment.

Alternatively, you may wish to consider the following offer to leave on agreed terms.

[You would receive a lump sum payment free of tax of [£x].]

[Your employment would end on [*insert date – suggest end of month, if still 3 weeks away*].]

[You would receive a reference to reflect your work during your employment with us.] [*delete if you do not wish to offer a reference.*]

This offer is open for you to accept until 5pm on [*date giving a minimum of seven days to respond*]. If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would pay a further sum of [£x] towards your independent legal advice]. All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will contact you again to arrange a meeting to discuss our concerns.

Yours sincerely,

acas

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