



Employment Exits: Beyond the Quick Fix

I regularly have clients ask if offering an exit package might be a quick way to resolve an issue for both them and their employee. An exit package, golden handshake or settlement might, on the face of it, seem like a straightforward solution for employers looking to part ways with an employee swiftly. However, the legal intricacies of employment termination in New Zealand highlight that such a quick fix is often not simple, or even an option, in some circumstances. In this blog post, we'll explore why employers can't solely rely on settlements, the ways employment can end, and the circumstances under which settlements can be utilised within the framework of New Zealand employment law.

1. Legal Termination Avenues

Employment in New Zealand can end through various avenues, including resignation, dismissal, medical retirement or incapacity, redundancy, or some employees might say they are retiring, even though there is no legal age for retirement in New Zealand employment legislation. It's crucial to note that an employer can't require an employee to retire, and while there is usually a process by which the employee is obligated to follow, if they wish to end their employment, any employer-driven termination of employment must adhere to the appropriate prescribed process, to ensure fairness and compliance with employment law.

2. The Role of Settlements

Settlements are a tool that can be utilised to resolve employment relationship problems, and they are not exclusive to situations where employment is ending or is likely to end. They can address disputes, grievances, or conflicts and can offer a mutual resolution that is agreeable to both parties. A key consideration is therefore to assess whether there is actually an employment relationship problem to resolve? If not at this stage, consider what other processes may be appropriate.

3. The Process for Settlements

The process for reaching a settlement involves negotiation between the employer and the employee. Both parties may choose to be represented during these negotiations, which may occur via without prejudice communications. If an employee is not represented some extra steps, to ensure they understand the process you wish to embark on, is likely to be required. Once an agreement is reached, it is typical to document the terms in a settlement agreement and for the details of the agreement to be confidential to the parties. Parties often opt to have a Ministry of Business, Innovation and Employment (MBIE) Mediator sign off on the settlement document, to perhaps add an extra layer of assurance. Section 149 of the Employment Relations Act 2000 describes this type of settlement.

4. Mediation Services

In New Zealand, the Mediation Service, operated by MBIE, offers a constructive environment for parties to resolve employment disputes, including during employment; not just when a personal grievance has been raised. Mediation involves a trained mediator facilitating discussions between the employer and employee to reach a mutually acceptable resolution. Settlement can be an outcome of successful mediation.

5. Recent Cases

Employment Relations Authority (ERA) cases underscore the importance of employers following due processes when utilising settlements. Instances where employers have misused or breached the requirements of a settlement have resulted in significant remedies being awarded to the affected employees. In addition to enforcing the terms of a settlement agreement, a party can seek to have penalties imposed by the ERA. These penalties can be significant; up to \$20,000 against a company and up to \$10,000 against an individual.

6. MBIE Mediator's Role

When a settlement document is presented to an MBIE Mediator, their role is to ensure that the terms align with the law and that the agreement is freely and voluntarily entered into by both parties. The Mediator will also check that the parties understand their obligations once the agreement is signed off by them.

In conclusion, the legal landscape surrounding employment exits in New Zealand is nuanced, and any attempt at a quick fix, such as offering a settlement, requires very careful consideration. Employers are urged to follow prescribed processes, especially when considering using settlements as a means of ending employment. A proactive approach that embraces the legal avenues for termination, coupled with the judicious use of settlements for dispute resolution, will ensure a fair and legally sound conclusion to employment relationships and be more likely to support a positive and product workplace culture.

If you have any employment-related concerns don't hesitate to contact me to discuss the ways it can be resolved.

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