

# Ask a Litigator: What Can Be Included in a Settlement Agreement?

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An effective settlement agreement memorializes the resolution of a dispute between a claimant-employee and a business, provides the parties with a clear path forward, and creates peace of mind. A poorly-drafted settlement agreement, on the other hand, can create further conflict and problems.

This is what litigators would like employers to understand about effective settlement agreements.

## What Can Be Included

1. **Waiver of Unknown Claims.** A settlement agreement always includes monetary and/or non-monetary consideration provided to the claimant to settle known claims against the business. Under California Civil Code section 1542, a claimant may also agree to waive the right to bring claims for potential violations of claims in existence at the time of the settlement that the claimant is not aware of when settling.
2. **Resignation.** A settlement agreement may include non-monetary consideration including requiring a current employee to resign from a job.
3. **Confidentiality.** The parties may also agree not to disclose the amount of the payment that the claimant receives in the settlement. Confidentiality may also be required as to the underlying claims, but with sexual harassment claims pursuant to California Code of Civil Procedure section 1001, confidentiality cannot extend to the factual basis for the claim.

## What Cannot Be Included

1. **Waiver of Certain Claims.** There are certain claims that cannot be released in a settlement agreement under the California Labor Code. For example, an employee cannot release claims to certain wages and benefits including:

- Earned wages

- Business expense reimbursement
- Unemployment insurance
- COBRA
- Workers' compensation insurance

2. **Prohibition against participating in administrative claims.** Moreover, a settlement agreement cannot include a prohibition against the claimant testifying and/or filing an administrative claim against the employer.
3. **Prohibition against re-hire.** Employers cannot include [“no-rehire” clauses](#) in settlement agreements. Under California Code of Civil Procedure section 1002.5, a settlement agreement cannot contain a provision prohibiting, preventing, or otherwise restricting a settling claimant who is an aggrieved person from obtaining future employment with the employer against which the claimant has filed a claim or any parent company, subsidiary, division, affiliate, or contractor of the employer. Such clauses will be deemed void if entered into after January 1, 2020.
4. **Waiver of future claims.** Provisions that require claimants to waive violations based on events that (may or may not) happen in the future are unenforceable.

Given the special nuances with employment settlement agreements, employers should work together with counsel to ensure that the settlement agreement is enforceable.

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