

EXAMPLE

SETTLEMENT AGREEMENT

This is a template or model of an example settlement agreement with which the employer and employee can mutually terminate an employment agreement. For more information about employment agreements, visit our website (www.penrose.law/downloads).

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This template cannot be considered an advice and no rights can be derived from it. It is advisable to seek advice before using this agreement for the termination of an employment agreement. This applies to both the employer and the employee. You can reach Penrose at info@penrose.law, or at 020-2400710.

SETTLEMENT AGREEMENT

THE UNDERSIGNED:

1. [EMPLOYER NAME and legal form], with its statutory seat and registered office at [(ZIPCODE) PLACE] at [STREET AND HOUSE NUMBER], in this validly represented by [●] (hereinafter referred to as "Employer");

and

2. [MR./MRS.] [EMPLOYEE NAME], residing at [(POSTCODE), PLACE] at [ADDRESS] (hereinafter referred to as "Employee");

hereinafter jointly referred to as: "Parties" and individually: "Party";

WHEREAS:

- a. Employee entered into employment with Employer on [DATE OF HIRE] and is currently employed on the basis of an employment agreement for [AN INDEFINITE PERIOD / A DEFINITE PERIOD] in the position of [JOB TITLE];
- b. Employee's current salary is € [GROSS AMOUNT EXCLUDING ALLOWANCES] gross per month, excluding 8% holiday allowance [and other allowances], based on a working week of [NUMBER] hours;
- c. [OPTION 1: a difference of opinion has arisen between the Parties regarding the content and execution of the work, and despite discussions, this difference of opinion has persisted];
- c. [OPTION 2: the position of Employee has become redundant due to economic [AND / AND/OR] organizational reasons];
- d. Parties have explored if, whether or not with the help of training, another suitable position for Employee is available within the Employer's organization, but they have had to conclude that such a position is not available and is not expected to become available within the foreseeable future;
- e. Employer has taken the initiative to terminate the employment agreement with Employee and has made a proposal to that effect;
- f. Employer emphasizes that this initiative is not related to an urgent reason as referred to in Article 7:678 of the Civil Code ('Burgerlijk Wetboek') and that Employee cannot be blamed for the situation that has arisen in any other way;
- g. Employer has advised Employee and provided the opportunity to seek legal advice on the (consequences of) terminating the employment agreement by mutual agreement;

- h. Employee is fit for work at the time of signing and there are no (other) grounds for a prohibition on termination ('opzegverbod');
- i. there is no termination by Employer with the consent of Employee as referred to in article 7:671 of the Civil Code;
- j. Parties have reached agreement on the termination of the employment agreement and wish to record the underlying conditions in this settlement agreement ("**Agreement**").

AGREE AS FOLLOWS:

Article 1. Termination of the employment agreement by mutual agreement

- 1.1. The employment agreement between the Parties terminates at the initiative of the Employer by mutual agreement as of [ENDDATE, usually the last day of a calendar month] (hereinafter: the "**End Date**").
- 1.2. If the Employee finds a new paid job before the End Date (whether as an employee, self-employed, or otherwise) and the activities of that job start before or on the End Date, [he/she] will inform the Employer as soon as possible. In that case, the employment agreement terminates by mutual agreement on the date of commencement of that new job, so that the new, earlier end date should be read as the End Date, leaving the other provisions of this Agreement unaffected. [OR: In that situation, the Employer pays an additional amount in addition to the Compensation as referred to in article 2.1, equal to [PERCENTAGE, for example 75%/50%/25%] of the salary that would originally be due in the period between the earlier end date and the original End Date.]

Article 2. Compensation

- 2.1. Employer shall pay Employee a one-time compensation of € [GROSS AMOUNT] gross (the "Severance Fee") within one month after the End Date.
- 2.2. If the employment agreement ends before the End Date due to a summary dismissal [optional: or due to the death of the Employee before the Termination Date], the Employer shall not owe the Severance Fee.
- 2.3. Employee declares that [he/she] does not have (a concrete prospect of) new employment or (a concrete prospect of) paid work as a self-employed person (hereinafter: the '**New Employment**') at the time of signing this Agreement. The entitlement to the Severance Fee lapses if it turns out that the Employee had a concrete prospect of New Employment at the time of signing this Settlement Agreement. Any Severance Fee already paid shall in such case be considered undue and must be repaid to the Employer. In all other aspects, the Agreement shall remain unchanged.

Article 3. Salary, benefits, transfer of duties [OPTIONAL: and exemption from duties]

- 3.1 The Employee retains the right to the customary salary including holiday pay and other benefits until the End Date.
- 3.2 The Employee ensures a proper handover of the tasks and responsibilities performed by [him/her]. The Employee will remain available for questions from the Employer regarding [his/her] duties even after the End Date.
- 3.3 [Optional: Following a proper handover of duties and effective from [DATE], the Employee is exempt from duties until the End Date. Any expense reimbursements will be discontinued as of the start date of the exemption.]

Article 4. Settlement of vacation allowance and vacation days

- 4.1 Within one month after the End Date, the Employer shall pay the Employee the accrued but unpaid vacation allowance (the "Final Settlement").
- 4.2 Any accrued but unused vacation days shall be deemed to have been taken as of the End Date. Therefore, these will not be paid out to the Employee. [OR: The accrued but unused vacation days will also be paid out to the Employee with the Final Settlement. The Employee is entitled to [NUMBER> NOTE that this number may change if the employee takes additional days and does not account for any early termination of employment!] days at the end of the employment contract.]
- 4.3 [Optional: If the Employer has any claims against the Employee, these will be offset against the Final Settlement.]
- 4.4 There is no entitlement to any commission, fee, and/or bonus for the year [YEAR]. [OR: The bonus for the year [YEAR] will be determined in the usual manner and, if granted, will be paid to the Employee pro rata at the usual time.]

Article 5. Costs of legal assistance and outplacement

[This Article 5 is optional. It is, of course, also possible to offer reimbursement only for legal costs and not for outplacement:]

- 5.1 The Employer shall reimburse the costs for legal assistance up to a maximum amount of € [AMOUNT] including office costs and excluding VAT. The Employer shall pay these costs to the Employee, upon receipt of a copy of the invoice addressed to the Employee for the legal advice.
- 5.2 The Employer shall allocate a budget of up to € [AMOUNT] EUR excluding VAT for an outplacement and/or training program to be followed by the Employee. Payment shall be made on an invoicing basis, directly to the outplacement agency and/or training institute, which must invoice these costs directly to the Employer no later than [DATE].

Article 6. Company property

- 6.1 The Employee shall return all property belonging to the Employer in good condition no later than the last actual working day.

Article 7. Termination of participation in (insurance) schemes and pension

- 7.1 The Employee's participation in the pension scheme shall terminate as of the End Date. Upon termination of the employment, the Employer shall ensure the settlement of the pension in accordance with the Pension Act and the provisions of the applicable pension schemes.
- 7.2 As of the End Date, all insurances and schemes in which the Employee participates by virtue of the employment agreement, shall terminate.

Article 8. Certificate, references, and communication

- 8.1 The Employer shall provide the Employee, upon request, with a [positively/neutrally] formulated certificate and equivalent references.
- 8.2 The Parties shall consult to determine how and in what terms the departure of the Employee will be communicated within the Employer's organization and externally.
- 8.3 The Parties shall not speak negatively about each other.
- 8.4 Within 5 days after the End Date, the Employee shall adjust [his/her] profile(s) on social media and networking websites (such as LinkedIn) to indicate that the Employee is no longer employed by the Employer as of the End Date.

Article 9. Confidentiality

- 9.1 The Employee shall maintain confidentiality regarding all information of which the Employee has become aware in the context of the employment agreement and of which [he/she] knows, or ought to know, the confidential nature. The obligation of confidentiality shall remain in full force even after the End Date. In the event of a breach of confidentiality, the Employee shall owe the Employer an immediately payable penalty of [€] per breach, plus an amount of [€ ...] for each day or part of a day that the breach continues. The penalty is intended for the Employer, so the Parties hereby deviate from the provisions in Articles 7:650 paragraphs 3 to 5 of the Dutch Civil Code. [Alternative: The confidentiality clause included in the employment contract and the associated penalty clause shall remain in full force even after the End Date].
- 9.2 The Parties shall not make any disclosures to third parties regarding the formation, content of this Agreement, and the background and reasons for the termination of the employment contract, unless a legal obligation (for example, a request from the UWV) makes this necessary. If one of the Parties is legally required to provide information, that Party shall first inform the other Party and coordinate the content of the communication with the other Party.

Article 10. Post-contractual clauses

10.1 All restrictive post-contractual clauses agreed upon between the Parties, including the non-competition and non-solicitation clauses [the anti-poaching clause [and/or] the intellectual property clause] and the associated penalty clause, as included in article[s] [ARTICLE NUMBER(s)] of the employment contract, shall remain in full force.

[OR: The non-competition and non-solicitation clauses agreed upon between the Parties shall expire on the End Date.]

Article 11. Incapacity for work before or after termination of employment

11.1 If the Employee becomes incapacitated for work before the End Date or within four weeks after the employment has ended, and is not employed by another employer or receiving unemployment benefits at that time, [he/she] is obliged to report this immediately in writing to the Employer. In that case, the Employee is subject to the control regulations and reintegration obligations, including the obligation to follow the instructions of the company doctor and to maintain contact with the Employer, as if the Employee were still employed by the Employer. The obligations mentioned in this Article remain in effect as long as the Employee remains incapacitated for work and receives a sickness benefit or a so called WIA ('Wet Werk en Inkomen') benefit.

11.2 Any potential incapacity for work of the Employee before or after the End Date shall not affect the validity or content of this Agreement.

Article 12. Reflection period

12.1 The Employee has the right to dissolve this Agreement within fourteen days from the date on which this Agreement was concluded (that is, within fourteen days after [DATE]) without giving any reasons by means of a written declaration addressed to the Employer.

12.2 Notwithstanding the provisions of the previous paragraph, the Parties hereby waive their right to terminate this Agreement and/or to invoke the annulment of this Agreement.

Article 13. Final discharge

13.1 The Parties declare that they have discussed all relevant matters concerning the employment contract and its termination and have included them in this Agreement where appropriate. Except for the agreements set forth in this Agreement, the Parties have no further claims against each other regarding the employment contract, its termination, and anything that may arise directly or indirectly therefrom; this includes any potential (damages) compensation, claims for pension (premiums), and claims arising from any applicable collective labor agreement, and they grant each other a full and final discharge. The final discharge also applies to any potential claim(s) of the Employee against any affiliated company(ies) of the Employer.

Article 14. Miscellaneous provisions

- 14.1 This Agreement is a settlement agreement within the meaning of Article 7:900 of the Dutch Civil Code and constitutes the complete representation of all agreements made between the Parties regarding the termination of the employment contract, replacing all prior agreements and commitments made between the Parties, both oral and in writing, including any correspondence related thereto.
- 14.2 To the extent that any provision of this Agreement, or any part thereof, is found to be invalid, the validity of the remaining provisions shall not be affected. In such case, the Parties shall replace the invalid provision(s) with a new provision that differs as little as possible from the invalid provision and aligns as closely as possible with what the Parties originally intended to agree upon.
- 14.3 This Agreement shall be governed by Dutch law. All disputes between the Parties shall be exclusively submitted to the competent Dutch court.

HEREBY AGREED, MADE IN DUPLICATE AND SIGNED IN [PLACE] ON [DATE] BY:

On behalf of [EMPLOYER]

Employee

[NAME]

[NAME]