

Press release: New legal measures to protect workers from misuse of non-disclosure agreements

- New proposals include legislating that workplace confidentiality agreements cannot be used to prevent people reporting harassment or discrimination to police
- Measures also include extending the law to ensure the worker agreeing to confidentiality agreements receives independent legal advice on the limitations
- The plans are part of the government's ambition to create a fairer workplace as part of the modern Industrial Strategy

The rules around non-disclosure agreements (NDAs) and confidentiality clauses are set to be tightened under new legal proposals announced by Business Minister Kelly Tolhurst today (Monday 4 March 2019). This includes enshrining in law for the first-time that individuals cannot be prevented from reporting crimes, harassment or discrimination to the police.

Many businesses legitimately use NDAs and confidentiality clauses in agreements to prevent disclosure of confidential information. However, in recent months there has been increasing evidence to suggest that NDAs and confidentiality clauses are being abused by a very small minority of employers to intimidate whistleblowers, conceal harassment and discrimination incidents – including sexual assault, physical threats and racism.

Today's proposals will help put an end to the unethical use of these agreements and encourage good practice from employers and lawyers. They include:

- clarifying in law that confidentiality clauses cannot prevent people from speaking to the police and reporting a crime (or prevent the disclosure of information in any criminal proceedings)
- requiring a clear, written description of rights before anything is signed in confidentiality clauses in employment contracts or within a settlement agreement
- extending the law that means a worker agreeing to a settlement agreement receives independent advice; the advice must cover the limits of any confidentiality clauses in the settlement agreement so a person is in full possession of all the relevant facts; this will help to prevent employees from being duped into signing gagging clauses which they were unaware of

Prime Minister Theresa May said:

Sexual harassment is against the law and discrimination of any kind will not be tolerated – in the home, the workplace or in public.

Over the past couple of years, we have seen brave individuals breaking silence on such behaviour, but too many are still facing the unethical misuse of non-disclosure agreements by their employers.

We're sending a clear message that a change in the law is needed to ensure workers are able to come forward, be aware of their rights and receive the advice they need before signing up to them.

Business Minister Kelly Tolhurst said:

Many businesses use non-disclosure agreements and other confidentiality agreements for legitimate business reasons, such as to protect confidential information. What is completely unacceptable is the misuse of these agreements to silence victims, and there is increasing evidence that this is becoming more widespread. Our new proposals will help to tackle this problem by making it clear in law that victims cannot be prevented from speaking to the police or reporting a crime and clarifying their rights.

They will also help boost understanding of work place rights and legal responsibilities, all part plans to create a fairer workplace through our modern Industrial Strategy.

Evidence of the misuse includes examples where victims of harassment or discrimination have been silenced using the legal agreements, for example, suggesting that a worker cannot blow the whistle despite the fact that no provision can remove a worker's whistleblowing rights. In addition, through an NDA or settlement agreement, employers could insist that a worker is unable to discuss an issue with other people or organisations, such as the police, a doctor or a therapist. This can leave victims afraid to report an incident or speak out about their experiences, leaving others exposed to similar situations, and putting customers and other businesses at risk.

The proposals set out today to extend the requirement to receive legal advice to cover limits on confidentiality clauses and that signatories must be provided with a clear overview of their rights that will help end this unethical practice.

Chief Executive at the Equality & Human Rights Commission Rebecca Hilsenrath said:

The landscape of women's employment has been littered with the misuse of NDAs in order to hide harassment, protect perpetrators and silence victims. We really welcome the measures set out today by the government which will help to empower victims and ensure no one is forced to sign a gagging clause against their will. But regulating NDAs alone will not prevent workplace sexual harassment.

To fundamentally change workplace cultures and ensure everyone enjoys a working environment that allows them to reach their full potential, employers must take steps to prevent sexual harassment from happening in the first place. We believe that such a duty should be made mandatory for all employers.

Acas Chief Executive Susan Clews said:

The misuse of NDAs has quite rightly been in the media spotlight and I'm sure many employers and workers would welcome greater clarity around their use.

We're keen to work with the government to help develop clearer guidance on NDAs that reflects new changes in the law.

The [consultation](#) will run until 29 April.

The government's modern [Industrial Strategy](#) published in 2017, sets out how the whole of the UK can build on its strengths, extend them into the future, and capitalise on new opportunities.

The government's [Good work plan](#) responds to Matthew Taylor's review, [Good work: the Taylor review of modern working practices](#) in which he outlines the '7 principles for good quality work for all'.