

## NDA REFORM: A NEW DAWN FOR THE APPROACH TO SETTLING WORKPLACE DISPUTES?

On 8 July 2025, the Labour Government [announced](#) a significant amendment to the Employment Rights Bill that will ban the use of non-disclosure agreements ("NDAs") to silence "harassment and abuse". This will extend to confidentiality and non-disparagement clauses in settlement agreements, currently well-established and commonly used provisions in the settlement of workplace disputes. The changes will also cover confidentiality clauses in employment contracts.

### WHAT IS PROPOSED?

It is proposed that (subject to an exemption to be set out in secondary legislation which is likely to be in limited prescribed circumstances) any contractual clause between an employer and a worker that seeks to prevent the worker from making an allegation or a disclosure of information relating to harassment (including sexual harassment) or discrimination (both direct or indirect discrimination) or relating to the employer's response to these matters ("Relevant Disclosures") will be void.

### HOW DOES THIS CHANGE THINGS?

It is already the position under legislation protecting whistleblowers that NDAs/ confidentiality provisions cannot lawfully prevent a worker from making "protected disclosures", this will cover a disclosure of information if the employee reasonably believes it to be in the public interest and that it tends to show harassment, discrimination or victimisation/ retaliation has taken place. Further, confidentiality clauses drafted by a lawyer must comply with the [Solicitors Regulation Authority \(SRA\) Warning Notice on the use of NDAs](#) and therefore cannot restrict individuals from reporting concerns to law enforcement or regulatory bodies.

However, the proposals go further than these existing limitations. For the proposed confidentiality restrictions to "bite" there will be no need for a Relevant Disclosure to meet the legal test for a 'protected disclosure', for example it is not necessary to show a reasonable belief that the disclosure was made in the public interest. Further, discussing an employer's response to allegations of discrimination and harassment will also be a Relevant Disclosure, and this would not usually amount to a protected disclosure under

#### Key issues

- What is proposed?
- How does this change things?
- Are there any circumstances where employers will be able to rely on an NDA?
- What impact will the proposals have on the use of settlement agreements in settling workplace disputes?
- What changes may need to be made to settlement agreements?
- When will the changes come into effect?

whistleblowing legislation. Arguably prohibiting disclosures about an "employer's response" to allegations of discrimination and harassment would mean that a worker cannot be prohibited from making reference to any alleged victimisation, the fact that the employer entered into a settlement agreement, if and how it investigated the issue and whether there was any disciplinary action taken.

It has also been clarified that non-disparagement clauses will also be void to the extent they prevent workers from making a Relevant Disclosure.

It is important to note that if the proposed legislation comes into effect, confidentiality clauses may still be valid in other contexts, as confirmed by the [Department of Business and Trade](#) on 17 July 2025. For example, clauses that protect trade secrets, intellectual property, or commercially sensitive information remain enforceable. It would also still be possible to impose confidentiality restrictions in relation to other allegations of wrongdoing, e.g. that there has been bullying (to the extent this does not fall under the definition of harassment, which is currently unclear) or retaliation against a whistleblower. The current draft wording also does not appear to prohibit an NDA that prevents a worker from making an allegation of, or a disclosure of information that the employer has failed to take reasonable steps to prevent a third party harassing the worker during employment.

## **ARE THERE ANY CIRCUMSTANCES WHERE EMPLOYERS WILL BE ABLE TO RELY ON AN NDA?**

Under the proposed Employment Rights Bill amendments confidentiality clauses will be permitted in certain circumstances to be specified in secondary legislation ("**Exempted NDAs**"). An earlier draft of the revisions to the Employment Rights Bill indicated that the Government was considering that an Exempted NDA would have to meet the following criteria:

1. The NDA must be requested by the worker, not imposed by the employer.
2. The worker must:
  - give fully informed consent;
  - receive independent legal advice explaining alternatives.
3. The NDA must:
  - not harm third parties or the public interest;
  - include a waiver clause allowing the worker to withdraw at any time;
  - be limited to a maximum of three years;
  - be written in plain English.
4. Even under an exempted NDA, the worker must be allowed to speak with:
  - legal, medical, and mental health professionals;
  - social workers, spiritual counsellors, and community elders; and
  - friends, family, personal supporters, and ombudsmen.

On 24 July 2025, [a Letter](#) from Labour Peer Baroness Jones of Whitchurch stated that the Government will consult on secondary legislation that will set the criteria for Exempted NDAs.

The consultation will consider further, amongst other things:

- whether independent legal advice should be a mandatory requirement before a worker signs an Excepted NDA;
- whether an Exempted NDA should be time limited, or, whether the worker should simply have the ability to opt-out. It is currently proposed that there will be a three-year time limit and a worker can opt-out at any time, if this proposal is retained this is likely to be particularly concerning to employers and by itself will make Exempted NDAs an unappealing option in many cases.
- which categories of individuals a worker should retain the ability to speak to and in what circumstances (we assume the reference to "circumstances" will include whether or not that individual should themselves be subject to confidentiality obligations). Currently, it is quite common for a settlement agreement to permit the departing worker to discuss the terms of the settlement and circumstances leading to the settlement with specified individuals such as a spouse or close family member, provided that they are bound by an obligation of confidentiality.

## WHAT IMPACT WILL THE PROPOSALS HAVE ON THE USE OF SETTLEMENT AGREEMENTS IN SETTLING WORKPLACE DISPUTES?

Employers will often pay to settle claims for discrimination, harassment and/or victimisation in return for a (current or former) worker signing a settlement agreement providing that the worker agrees to waive claims against the employer and its employees, but also agrees to keep the allegations that formed the basis of those claims confidential, i.e. the allegations cannot be repeated by the worker including to current and former employees of the employer, the press and other third parties. In order to draw a line under matters it will also frequently be agreed that the worker will not continue any grievances or appeals that they had in relation to those complaints.

Even in situations where the employer may question the merit in the worker's allegations, a settlement may still be attractive in order to avoid costly and time-consuming litigation. An employer may also decide, in the context of a settlement, that it is unnecessary to undertake a time and resource intensive investigation into the allegations (as related claims will have been settled).

Employers will in the future have to approach settlements with the understanding that workers retain the right to disclose their experiences internally and externally, including to the press, even if they have concluded a settlement agreement for which they have received a compensation payment.

This is likely to have the following consequences:

Consequence	Practical analysis
Reluctance to settle claims	Employers may be more reluctant to settle claims / potential claims (or to settle claims at the same value). If an employee can still go to the press or raise the issues internally, a settlement may not be

Consequence	Practical analysis
	<p>an end to the matter (although it does not look as though anything in the new rules will prevent workers and employers agreeing that grievances or appeals will be discontinued, which will still help provide some finality).</p> <p>Employers may be concerned that if a worker were to give details to the press or another interested third party of an allegation of discrimination, harassment or victimisation, including the fact that a settlement has been reached (the settlement of the claim arguably part of the employer's 'response' to the claim or allegation which would mean it is a <b>"Relevant Disclosure"</b>) this could lead to an implication of culpability and lead to associated damage to reputation.</p> <p>An employer may opt to defend the claim with a view to achieving a public judgment in its favour, or a withdrawal of the claim by the claimant which the employer could publicly refer to. This could lead to a greater number of disputes progressing to litigation, increasing the workload and backlog of the already overburdened Employment Tribunal systems.</p> <p>We recognise that in many situations there will still be a benefit to settling claims and potential claims to avoid the prospects of costly litigation, but we do expect to see a shift in approach to such settlements (see further below).</p>
<b>Employer's confidentiality commitments</b>	<p>If a worker cannot be bound by certain confidentiality provisions, an employer will not want to be bound by a unilateral confidentiality provision; it will want to be able to put forward its side of the story in the event that the allegations become public, which may include making negative (albeit true) comments about the worker. This is likely to be unpalatable to workers and may result in claims becoming un-settleable. A possible solution is to agree as part of the settlement a statement that can be made by the employer in a situation where the allegation becomes widely known, e.g. the allegations were investigated and found to be unsubstantiated by the employer. However, such provisions are likely to be difficult to agree to the satisfaction of both parties.</p>
<b>Negotiated Exits may become harder</b>	<p>In difficult exit discussions, (e.g. an employer considers a worker is a poor performer, and has a "protected conversation" to talk about the possibility of a mutual exit) it is not unusual for a worker to raise allegations, e.g. allege discrimination by his/</p>

Consequence	Practical analysis
	her manager, and harassment during the course of the performance discussions). If an employer cannot have contractual protection against such allegations being repeated, a negotiated exit may become less attractive and as such we may see a decrease in negotiated exits, which will mean that employers need to be prepared to follow through with a formal process in order to fairly dismiss an employee e.g. a performance management process.
<b>Investigating allegations</b>	<p>In the interests of being able to defend its position if an allegation becomes public, employers may choose to investigate all allegations raised by workers. This may mean pausing settlement negotiations to investigate matters or conducting an investigation after a settlement agreement has been concluded. As part of the settlement, the worker may even be asked to cooperate in an investigation. From the individual's perspective, postponing a settlement until the outcome of what could be a potentially lengthy investigation is likely to be unattractive if they wish to achieve finality and move on.</p> <p>Many employers are already taking this approach, particularly in light of the obligation to take reasonable steps to prevent sexual harassment in the workplace – soon to be "all" reasonable steps once the amendments to the Employment Rights Act 1996 come into effect and regulated entities who are taking steps to demonstrate to the FCA and PRA that they are taking allegations of non-financial misconduct seriously.</p>
<b>Unintended consequences for individuals</b>	For individuals, the proposed changes may have unintended consequences. If employers become more reluctant to settle claims due to the lack of guarantee of confidentiality and the potential of increased reputational damage from disclosures, workers may face longer and more adversarial processes, which could discourage reporting and lead some to leave quietly rather than pursue a formal complaint. The transparency and cultural change the legislation seeks to promote is as such potentially undermined.
<b>Changes in negotiating landscape</b>	Employees may be less likely to 'throw the kitchen sink' at settlement negotiations - adding what may seem like spurious complaints about discrimination or harassment (which may not even relate to that individual employee or be central to the main issue in dispute), as this may make the claim more difficult to settle, for the reasons set out above.

Consequence	Practical analysis
	The negotiating landscape may change such that as a "give" during settlement negotiations, employees offer to request an Exempted NDA. However, employers may be reluctant to rely on Exempted NDAs due to their expected limitations, including, based on the current proposal, the worker can withdraw their consent to an Exempted NDA at any time. The language of settlement agreements may evolve; e.g., to include express confirmation from the worker they have no intention to withdraw their consent, but such provisions are likely to be of limited value, not least as it is anticipated that anti-avoidance measures will be put in place and the unattractiveness of pursuing an individual for breach of contract and/or repayment if they renege on that stated intention.
<b>Preventative measures</b>	Employers may also need to invest more in preventative measures, such as training, to mitigate the risk of future claims and demonstrate a commitment to workplace safety and accountability, if a claim or allegation does arise.

## WHAT CHANGES MAY NEED TO BE MADE TO SETTLEMENT AGREEMENTS?

If the proposals are implemented employers may need to revise their standard settlement agreement templates to ensure compliance. Specifically:

- It should be made clear that confidentiality and non-derogatory statement provisions are not attempting to prohibit Relevant Disclosures;
- Exempted NDAs, if requested by the worker, must meet strict conditions (details to be confirmed following consultation).

## WHEN WILL THE CHANGES COME INTO EFFECT?

The Employment Rights Bill is expected to receive Royal Assent later this year; however, the timeframe for implementation of its provisions on the use of NDA's is not yet known as it was a very late amendment and not included in the 'Implementing the Employment Rights Bill Roadmap' and we now await the Government's consultation on the secondary legislation.

Whether or not this legislative proposal is implemented, the value of NDAs in the workplace has arguably already been weakened by the new duty to take reasonable steps to prevent sexual harassment introduced in October 2024. The use of NDAs to settle sexual harassment claims without a proper investigation could be seen as inconsistent with this Reasonable Steps Duty, suggesting that the employer is prioritising reputational management over accountability and prevention. Against this backdrop employers should scrutinise their approach to investigating and addressing allegations of discrimination, harassment and victimisation, notwithstanding any settlement agreement in place.

## Useful Links

[Government Press Release](#)

[Original tabled NDA Amendments to the Employment Rights Bill](#)

[Letter dated 24/07/2025 from Baroness Jones of Whitchurch to Lord Lucas regarding the misuse of non-disclosure agreements](#)

[Latest version of the Employment Rights Bill tabled at Lords Report Stage \(23 July 2025\)](#)

For an overview of employment law in a large range of key jurisdictions see our easy-to-use digital guide: [Clifford Chance Employment Law Guide App](#)

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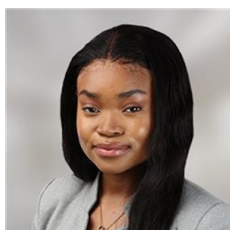
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