



Government promises NDA legislation - but is light on details

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The government has announced plans to introduce legislation to crack down on the misuse of non-disclosure agreements (NDAs) in the workplace but has revealed few details. Under proposals published by the Department for Business, Energy & Industrial Strategy yesterday, individuals signing NDAs would have to receive independent legal advice on the limitations of so called 'gagging' clauses. The advice will stress that information may still be disclosed to the police, doctors, lawyers and social workers.

Solicitors will also receive guidance on how to draft settlement agreements.

The legislation will also require employers to explain the limitations of a confidentiality clause in plain English, both in a settlement agreement and in a written statement for the employee. New enforcement measures to deal with unlawful NDAs will also be introduced, the government said. For example, a settlement agreement that does not comply with the new legislation will be legally void.

The department said the legislation will crack down on employers exploiting NDAs to cover up sexual harassment, racial discrimination and assault. The announcement follows a consultation on confidentiality clauses that was issued in March.

Business minister Kelly Tolhurst MP said: 'We will not tolerate the use of NDAs to silence and intimidate victims from speaking out. The new legislation will stamp out misuse, tackle unacceptable workplace cultures, protect individuals and create a level playing field for businesses that comply with the law.'

Susan Clews, chief executive of the Advisory, Conciliation and Arbitration Service (Acas), said: 'We support this proposed legislation. Acas is developing new guidance on the appropriate use of NDAs that will incorporate any new changes in the law.'

President of the Law Society Simon Davis also welcomed the proposals. He said: 'These clauses are a legitimate tool for bringing

closure to an employment relationship, but they should not be used to intimidate a person from whistleblowing or reporting wrongdoing to the police.'

However, Iain Miller, partner at London firm Kingsley Napley, said more information was needed. 'We do not know the detail of what is proposed. What is important for solicitors is that there is clarity on where the boundaries lie between protecting their client's interests and acting in the wider public interest as the current position is unclear.'

Paul Quain, partner at GQ Littler, a specialist employment firm, added: 'Lawyers for employees have been advising their clients about the precise limits of confidentiality clauses for years. The government's commitment to make this an express requirement might help ensure this is done universally, but will not impact the majority of cases.'

'Also, the proposals will still allow non-disclosure agreements to prevent disclosure of non-criminal forms of sexual and racial discrimination.'

You can read the full article [here](#).