

What changes has the Act made to the law?

Non-Disclosure Agreement (NDAs) are agreements between two or more parties that seek to keep certain information confidential. They are often used by employers in employment contracts or settlement agreements to protect commercial or other sensitive business information.

The government believes that NDAs should not be used to cover up misconduct in the workplace.

The new measure means that an NDA between an employer and a worker will be void where it seeks to prevent the worker from speaking out about:

- “Relevant harassment or discrimination¹.”; or
- Their employer’s response to the relevant harassment or discrimination, or the making of an allegation of relevant harassment and discrimination.

The Act also gives the Department for Business and Trade Secretary of State the ability, in the future, to:

- Set out what conditions need to be met for an NDA between worker and employer to still be valid, even in cases of relevant discrimination and harassment. This is known as an “excepted agreement”.
- Outline who workers who enter into an “excepted agreement” can still speak to about the relevant harassment and discrimination.
- Expand the group of people who this new measure applies to, beyond the standard definition of “worker” in the Employment Rights Act 1996.

These details will be defined in regulations following a government consultation.

How is this different from the previous legislation?

The Act does not replace any previous NDA legislation. It builds on several other new legal restrictions on NDAs designed to protect workers and others from harm. These include:

- **A ban on certain NDAs in higher education:** From 1 August 2025, higher education providers in England are prohibited under part A1 of the Higher Education and Research Act 2017 from entering into NDAs with staff, students, members or visiting speakers in relation to a complaint about sexual abuse, sexual harassment, sexual misconduct, or other forms of harassment and bullying.
- **Restrictions on NDAs for victims of crime:** NDAs entered into on or after 1 October 2025 are unenforceable under section 17 of the Victims and Prisoners Act 2024 insofar as they

¹ Relevant harassment and discrimination refers to certain types of misconduct as defined in the Equality Act 2010. This includes direct and indirect discrimination (section 13, 19 and 19A), disability and reasonable adjustments discrimination (sections 15 and 21), gender reassignment discrimination (section 16), pregnancy and maternity discrimination (sections 18 and 19) and harassment, including sexual harassment, (section 26).

For the harassment or discrimination to be relevant it must be:

- Carried out (or alleged to have been carried out) by the employer or a fellow worker (i.e. another worker of the employer). The victim may or may not be the worker signing the NDA.
 - For example, it could include harassment that a worker witnesses their employer carry out against a customer; or
- The victim (or alleged victim) of the harassment or discrimination is the worker that enters into the NDA or their fellow worker (i.e. another worker of the employer). The perpetrator may or may not be a fellow worker or the employer. For example, it could include harassment the worker suffers at the hands of the employer’s client (i.e. not their employer or fellow worker).
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seek to prevent victims and direct witnesses of crime (or those who reasonably believe they fall within these categories) from making certain disclosures to specified bodies and for specified purposes, such as to bodies with law enforcement functions for reporting a crime, to regulators for cooperating with them in relation to the crime, or to certain bodies for accessing confidential advice or support. The government also intends to strengthen this protection and bring it more in line with the new NDA measure (section 202A of the Employment Rights Act 1996).

This will not impact on the legitimate use of NDAs, for example, to protect commercially sensitive information, ideas or intellectual property in business transactions. In addition, an NDA cannot prevent a worker from whistleblowing by making a protected disclosure under the Employment Rights Act 1996 (inserted by the Public Interest Disclosure Act 1998).

When will these changes come into force?

These changes will be commenced after consultation, with a commencement date to be announced in due course.

What further detail will be consulted on and when?

The government acknowledges that workers may sometimes want confidentiality in cases of harassment or discrimination and that it may be appropriate for employers to want confidentiality in some circumstances.

The government will consult on the proposed criteria for an “excepted agreement” under which an NDA can still be valid in cases of relevant discrimination and harassment. We will also seek feedback on the types of individuals and bodies that workers with excepted agreements can still speak to about the relevant harassment and discrimination, irrespective of what is said in their agreement (e.g. their lawyer or doctor) and whether this new NDA measure (section 202A) should be extended in the future to people who do not currently meet the standard definition of “worker” in the Employment Rights Act 1996; for example, agency workers supplied to a hirer and the self-employed. The consultation will seek views on these details and to inform regulations.

Key Stats

Evidence suggests that harassment and discrimination in the workplace is prevalent and widespread:

- a. According to the ONS Crime Survey², based on data collected between October 2022 and March 2023, over 1 in 10 people aged 16 years and over experienced at least one form of harassment in the past 12 months. Of the 75% of victims that experienced this in person 18% reported it occurring in workplace environments.
- b. A survey conducted by HR and payroll software provider Ciph³ of 4,000 adults, was carried out in two waves: July-August 2024 and November 2024. It found that 45% of respondents felt they have experienced some form of workplace discrimination in the UK.

Common questions

Who will this measure apply to?

- This measure will apply to workers and employees as defined in the Employment Rights Act 1996.

²[Experiences of harassment in England and Wales - Office for National Statistics](#)

³<https://www.ciph.com/infographics/workplace-discrimination-statistics>

- The Act includes a power that will allow the Secretary of State to make regulations to extend this measure to other individuals that do not meet the standard definition of worker, such as to certain self-employed persons.
- The government will consult on this matter.

Will this measure apply retrospectively?

- No, this NDA measure will not apply retrospectively. It will only apply to agreements entered into after the measure and associated regulations has come into force.