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UK GOVERNMENT CONSULTS ON USE OF CONFIDENTIALITY CLAUSES IN EMPLOYMENT CONTEXT

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15 Mar 2019*

The UK government is seeking views on improving the rules for using nondisclosure or confidentiality agreements in the employment context — including in settlement agreements — to prevent misuse. The [consultation](#) is open until 29 Apr 2019, and government proposals and guidance are expected later in 2019 or 2020.

The action follows a parliamentary committee inquiry into sexual harassment in the workplace concluded in July 2018. In a [report](#) on its findings, the committee noted that confidentiality clauses have been used to deter victims of harassment or discrimination from reporting an incident or speaking out about their experience. In response, the government [confirmed](#) in December 2018 that it would publish a consultation.

Confidentiality clauses usually are typically used two ways in the employment context — as part of an employment contract to protect trade secrets and other confidential information, or in settlement agreements to protect the terms of a dispute and allow a clean break between the parties.

The consultation seeks feedback on:

- Limits on the use of confidentiality clauses in the employment context and clarification of the situations in which employees can make disclosures — for example, whistleblowing, report of a criminal offence, or compliance with other statutory obligations.
- A duty on employers to ensure that workers signing confidentiality clauses understand their rights. The government acknowledges that confidentiality clauses can play a positive role for both parties but warns that some agreements are drafted to hide the rights and protections from workers. Workers signing a confidentiality clause would have to receive independent advice on the limitations of the clause included either in settlement agreements or in the written statement of employment particulars or employment contract that the employee received when starting work.
- Enforcement of new regulations on confidentiality clauses. Different enforcement measures would apply to employment contracts and settlement agreements because they are used at different stages of the employment relationship and are enforced by different courts. Employment tribunals would consider confidentiality clauses included in employment contracts and could declare void those not meeting the new requirements. Separate mechanisms would apply to the enforcement of settlement agreements. The government confirmed that its proposals won't include standard, approved wording for employers to use in contracts of employment or settlement agreement.

RELATED RESOURCES

- [Government Consultation](#) (UK Government, 3 Mar 2019)
- [House of Commons Women and Equalities Commission Inquiry Report](#) (25 Jul 2018)
- [UK Government Response](#) (18 Dec 2018)

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