

LAW & POLICY GROUP**GRIST**

UK TO OUTLAW MISUSE OF NONDISCLOSURE AGREEMENTS IN BIAS SITUATIONS

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Organizations could not misuse nondisclosure agreements (NDAs) — or confidentiality agreements — to cover up incidents of workplace sexual harassment, race discrimination or assault, under [outline proposals](#) published by the UK government. However, the government acknowledges that NDAs in employment contracts and settlement agreements still have “a useful and legitimate purpose,” such as protecting commercial confidentiality. Legislative proposals will be published “when Parliamentary time allows.”

The government's proposals follow a March 2019 [consultation](#) and a 2018 [parliamentary committee report](#) that highlighted numerous recommendations and concerns about the use of NDAs in the discrimination area. A separate [consultation](#) on sexual harassment in the workplace and steps to tackle inappropriate workplace culture launched by the Government Equalities Office closes on 2 Oct 2019.

HIGHLIGHTS OF THE GOVERNMENT'S RESPONSE

- The government will publish legislative proposals to ensure that NDAs can't be used to prevent an individual from disclosing harassment and discrimination to the police, regulated health and care professionals, or legal professionals.
- Employees asked to sign an NDA would have to receive a clear explanation of terms, either as part of a settlement agreement or in the written statement of particulars given to new hires. The legislation will require that the wording used in NDAs is “clear and specific.”
- The government would publish guidance to help ensure the correct drafting of confidentiality clauses.
- New enforcement measures would apply to NDAs that don't comply with legal requirements. Any confidentiality clause in a written statement that doesn't meet the new drafting requirements would make the employee eligible in certain circumstances to seek additional compensation before an employment tribunal.

RELATED RESOURCES

- [Confidentiality Clauses, Measures To Prevent Misuse in Workplace](#) (UK Government, 21 Jul 2019)
- [Consultation on Sexual Harassment in the Workplace](#) (Government Equalities Office, 11 Jul 2019)
- [Sexual Harassment in the Workplace](#) (House of Commons, 26 Jul 2018)

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