Non-disclosure agreements

What a non-disclosure agreement is

An employer might use a non-disclosure agreement (NDA) to stop an employee or worker sharing information.

An NDA can also be known as a ‘confidentiality clause’.

It’s a written agreement and could be:

- in an employment contract
- in an Acas settlement form (‘COT3’), written up when an agreement is reached through ‘conciliation’
- in a settlement agreement
- in a separate, standalone document

This might be when a job starts or ends, or at another stage.

Examples of reasons an employer and employee or worker might agree to an NDA include:

- when someone starts a new job, to protect company secrets
- after a dispute, to keep details confidential

When an employer should not use an NDA

An NDA cannot stop anybody:

- ‘whistleblowing’
- reporting a crime to the police

Example

After an employee raises concerns over their organisation’s emissions data, their employer tries to get them to sign an NDA to stop them reporting it (whistleblowing).

But even if they do sign it, there’s nothing the employer can do by law to stop the employee from whistleblowing.

An NDA should also not be used:

- before seeing if another solution can be used instead
- when they’re not needed
- to stop someone reporting discrimination, harassment or sexual harassment
- to cover up inappropriate behaviour or misconduct, particularly not if there’s a risk of it happening again
• to avoid addressing disputes or problems in the workplace
• to mislead someone

Example
An employer asks a new employee to sign an NDA in a rush on their first day of the job. The employee does not have time to read and understand the NDA.

The employee later experiences sexual harassment at work. They think they cannot talk about it because they signed an NDA and are not sure what it covered.

What else the employer can do

Use workplace procedures and policies

It’s a good idea for the employer to follow full and fair procedures to try and resolve any workplace issues, instead of using NDAs.

For example, they should follow workplace procedures such as:

• a disciplinary or grievance procedure
• an investigation
• a whistleblowing procedure

This can help:

• avoid problems getting worse
• avoid legal action
• stop the employer from losing talented employees and workers
• keep employees and workers feeling valued and motivated
• encourage a more open and productive workplace

Create a good workplace culture

If NDAs are used for the wrong reasons, it can create a culture of distrust in the workplace.

Instead of using an NDA, it’s a good idea for employers to:

• encourage an open, inclusive workplace culture
• support employees

Employees and workers should feel they can:

• speak up about any issues
• be confident they’ll be heard
• have their problems addressed in an appropriate way

Training managers to spot early signs of disagreements and resolve issues can help:

• improve workplace productivity
• stop problems getting worse
• avoid legal action

Find Acas training for managers.

Checking if an NDA is really needed

If an employer is considering using an NDA, they should look carefully on a case-by-case basis to see if:

• it’s definitely needed, for example some issues might be already covered by data protection law (GDPR)
• it could cause serious moral or ethical issues
• it’ll cause any other negative outcomes or effects

When an NDA might be used

When an employer and employee or worker make an agreement to resolve a dispute in the workplace, they might use an NDA to keep either of the following confidential:

• the details of an agreement
• the fact that an agreement has been made

Keeping details of an agreement confidential

This is when an employer and employee or worker want to settle an issue and one or both of them want to keep confidential:

• the sum of money agreed in a settlement agreement
• some or all of the other settlement terms
• some or all of the circumstances leading to the settlement agreement

This does not stop someone from saying that an agreement has been made.

Keeping an agreement confidential

This is when someone wants to keep confidential that an agreement has been made.

This might be when only certain people know about the agreement and they do not want others to know.

Other reasons for using an NDA

NDAs might also be used:

• to keep an organisation’s information confidential
• when an employer needs a lot of protection for customer or client identities, intellectual property or other sensitive or important business information
• to keep confidential certain things the employee knows about the workplace or business
• to stop someone making critical or insulting comments, for example about the employer or employee, specific people in the workplace, the service that an employer provides, or their customers and clients
• to help protect someone if the details of a dispute or dismissal became widely known

**Example**
A new employee joins a tech company. They're asked to consider and agree to an NDA that stops them giving company information to competitors.

If the employer has concerns, it's important to [get legal advice](#) before making any further decisions.

[Find out more about NDAs](#) (PDF, 110KB, 22 pages).