

## THE FACTS

# END THE SILENCE

## END THE MISUSE OF NDAs



### What is a non-disclosure agreement (NDA)?

A non-disclosure agreement is a legal contract that establishes confidentiality (keeping secret) a sexual harassment or other workplace issue. It requires the worker who suffered harassment to keep their experience completely confidential - that is, they are not allowed to talk about what happened to them.

Although NDAs require all parties (employer, victim-survivor, and sometimes the perpetrator) to maintain confidentiality, the agreement is almost always requested by the employer, not the employee.

Victims of workplace sexual harassment often feel they have no choice but to agree to confidentiality to resolve their complaint.

### What's the problem with NDAs?

**Harm to the victim survivor:** NDAs and confidentiality clauses are usually 'forever'. That means a worker who has experienced sexual harassment is not able to speak about what happened to them, or how it was resolved, ever. Workers have reported that being silenced through an NDA is disempowering and isolating and can worsen the trauma of the initial harassment.

*"I had to sign an NDA in order to get any compensation, and it wasn't much. I felt distressed that I couldn't speak about my situation with my supports."*

**Cover ups:** Employers are required to provide safe workplaces, free from the risk of sexual harassment and other hazards. NDAs are a powerful tool that employers use to cover up failings, avoid accountability and protect their business reputation.

*"NDAs cause a great deal of anxiety for those who have raised concerns and it's just another way for the employer to maintain power and control."*

**Put others at risk:** We can fix issues collectively when we know there's a problem. When workers can't openly talk about their experiences at work, it puts other workers at risk. NDAs exacerbate cultures of silence around harassment, increase feelings of shame and isolation and prevent organising.

*"If they did the wrong thing, why should they be protected? It puts other people at risk of experiencing similar concerns."*

**Misrepresent the nature of harassment settlement:** Settling a harassment claim is about compensating a worker who has suffered due to the employer's failure to provide a safe workplace. It is NOT about buying the silence of that worker.

Workers deserve compensation for workplace injury - and should be free to share their experience with others.

*"The organisations perpetrators go off to continue their careers while victim/survivors are the ones who have to rebuild their lives."*

**Skew the data:** NDAs send a message: "protecting our business reputation is more important than the safety of other workers". Knowledge is power - without accurate data and transparency, we can't eradicate violence from the workplace.

*"They were so manipulative, unethical and immoral. They just wanted to get rid of me rather than working on preventing the problem from happening again."*



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### Why are we campaigning?

Every worker deserves a safe workplace free from sexual harassment and gendered violence. We know that NDAs cause harm to victim survivors. That needs to end. We want workers to be free to talk to each other and organise. It's time for bosses to be held accountable for preventing sexual harassment in the workplace.

### Are NDAs ever ok?

Confidentiality should not be seen as a standard term of settlement of a harassment complaint, but there are valid reasons why a victim survivor may want and request confidentiality as part of any settlement agreement. The victim survivor may want to protect their own privacy, they may be happy with the proposed resolution and feel more in control with an NDA. Resolution of workplace sexual harassment matters should always be victim-centred and trauma informed.

### So, what do we want?

We want legislation to ban the misuse of NDAs in cases of workplace sexual harassment other than those initiated and expressly requested by victim survivors to protect their own privacy. Where an NDA is initiated by a victim survivor, there should be clear safeguards in place. These include that the worker has not been coerced and has been able to obtain legal advice. Any agreed confidentiality should be time limited, and the worker should be able to speak out in the future.

## TAKE ACTION

**VOLUNTEER** with other activists and campaign to end the misuse of NDAs

**SIGN** our petition

**SHARE** your experience with an NDA on our anonymous tip line



**organise for  
equality**  
WE ARE **UNION**

