

# Non-disclosure agreements

## 1 . Using non-disclosure agreements

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

A non-disclosure agreement can also be known as a 'confidentiality clause'.

It's a written agreement and could be:

- in an employment contract
- in a conciliation agreement (COT3) – written up when an agreement is reached through early conciliation
- in a settlement agreement
- in a separate, stand-alone document

## When a non-disclosure agreement might be used

A non-disclosure agreement might be used during someone's job or after a job ends.

For example, a non-disclosure agreement might be used:

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

## Using a non-disclosure agreement as part of a settlement agreement

An employer and their employee or worker might use a [settlement agreement](#) to resolve a dispute at work.

In some cases, employers might also ask the employee or worker to sign a non-disclosure agreement to keep certain things about the settlement agreement confidential.

### Keeping the details of a settlement agreement confidential

A non-disclosure agreement might be used if the employer or the employee or worker wants 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 the employer or the employee or worker from telling others that a settlement agreement has been made.

### Keeping the fact a settlement agreement has been made confidential

This is when the employer or the employee or worker wants to keep confidential that a settlement agreement has been made.

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

## Other reasons for using a non-disclosure agreement

Non-disclosure agreements might also be used:

- to keep an organisation's information confidential
- when an employer needs to protect customer or client identities, intellectual property or other sensitive or important business information
- to keep certain things the employee knows about the organisation confidential
- to stop someone making critical or insulting comments – for example about the employer or employee, specific people in the organisation, 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

For example, a new employee joins a tech company. They're asked to consider and agree to a non-disclosure agreement that stops them giving company information to competitors.

## When an employer cannot enforce an agreement

A non-disclosure agreement cannot stop anybody:

- [whistleblowing](#)
- reporting a crime to the police
- discussing their pay with anyone at work for reasons relating to [equal pay](#)

If there's a non-disclosure agreement in place, it might still be enforceable for other reasons.

## Example of when a non-disclosure agreement would still be enforceable

An employee raises concerns over their organisation's emissions data. They've already signed a non-disclosure agreement which says they:

- cannot report the organisation's emissions data to anyone
- cannot sell the organisation's data to competitors

Even though they've signed the agreement, there's nothing the employer can do by law to stop the employee from whistleblowing.

However, the employee then sells the organisation's data to a competitor. The employer could now claim that the employee has breached the agreement.

## Discrimination, harassment and sexual harassment

A non-disclosure agreement should not be used to stop an employee or worker from reporting discrimination. This includes harassment and sexual harassment.

### Example 1 of when a non-disclosure agreement should not be used

Jay works in a hotel where high profile guests often stay. When they started the job, they were asked to sign a non-disclosure agreement. It said, 'you must not discuss anything that is said or happens in the hotel with anyone at all'.

When at work Jay is sexually harassed by their line manager. Because of the agreement Jay feels they cannot report this to HR or speak to their family about what has happened.

In this case the employer should not have used this non-disclosure agreement. This is because it could deter employees from reporting sexual harassment.

### Example 2 of when a non-disclosure agreement should not be used

When at work Kayo is sexually assaulted by another employee. They report this to HR, who ask Kayo to sign an agreement. The agreement says Kayo cannot discuss this with anyone including the police.

In this case the employer should not have used a non-disclosure agreement. This is because it deters employees from reporting sexual assault to the police.

[Find out more on the use of confidentiality agreements in discrimination cases from the Equality and Human Rights Commission](#)

## Other times when a non-disclosure agreement should not be used

A non-disclosure agreement should not be used:

- before seeing if another solution can be used instead
- when confidentiality is not needed
- when the need for confidentiality already exists – for example some issues might be already covered by data protection law (UK GDPR)
- to cover up inappropriate behaviour or misconduct, especially if there's a risk of it happening again
- to avoid addressing disputes or problems
- to mislead someone
- if it could cause serious moral or ethical issues
- if it could cause any other negative outcomes or effects
- as a matter of routine

## 2. Resolving problems in other ways

There are several things employers can do to try and resolve problems at work.

### Follow the correct policies and procedures

Instead of using non-disclosure agreements, employers should follow full and fair procedures to try and resolve any issues at work.

For example, they should follow organisation procedures such as:

- [disciplinary or grievance procedures](#)
- [investigations](#)
- [whistleblowing procedures](#)

This can help:

- avoid problems getting worse
- avoid legal action
- stop employers from losing talented employees and workers

- keep employees and workers feeling valued and motivated
- encourage a more open and productive organisation

## Create a good culture at work

If non-disclosure agreements are used for the wrong reasons, it can create a culture of distrust at work.

Instead of using a non-disclosure agreement, it's a good idea for employers to:

- encourage an open, inclusive culture at work
- 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

[Find out more about dealing with a problem raised by an employee](#)

## Train managers

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

- improve productivity
- stop problems getting worse
- avoid legal action

[Find out more about Acas training for managers](#)

## 3. Using agreements fairly

If it is appropriate to use a non-disclosure agreement, employers should explain to employees and workers:

- why it is appropriate
- what it is trying to achieve

Employers should make sure:

- the wording of the agreement is clear
- employees are given a reasonable amount of time to read and understand agreements and get advice if needed
- employees are not pressured into signing an agreement
- they consider employees' mental health and wellbeing

When using a non-disclosure agreement, employers should explain to employees or workers:

- when confidentiality does and does not apply
- that they are free to speak to professional legal advisers or medical or healthcare professionals, including counsellors and therapists
- that the agreement does not prevent them from [whistleblowing](#)
- the agreement does not prevent them from reporting any form of discrimination, including harassment and sexual harassment

- that the agreement does not prevent them from exercising their employment rights

## Monitoring the use of non-disclosure agreements

Employers should monitor the use of non-disclosure agreements to make sure the organisation is using them appropriately. It can also help identify patterns of events at work and make sure they are dealt with correctly.

## Get more advice and support

If you have any questions about what non-disclosure agreements are, you can [contact the Acas helpline](#).

If you have concerns about using non-disclosure agreements, you should [get legal advice](#) before making any decisions.