

Non-Disclosure Agreement (NDA) Fact sheet for Employers

What are NDAs?

A non-disclosure agreement, or NDA, is a legal document designed to stop an employee from sharing information. NDAs can be standalone agreements or form part of a larger agreement. NDAs are also called confidentiality or non-disparagement clauses.

Historically, companies used NDAs to protect trade secrets from competitors. In recent years, NDA use has grown. Some employers are using NDAs as part of their response to sexual harassment complaints, often in the settlement process.

Types of NDAs

- **Confidentiality clause:** an agreement to keep something confidential. The scope can vary from not sharing the amount of compensation, to not sharing the 'contents of the complaint' or the details of the sexual harassment or assault. Sometimes confidentiality clauses are found in arbitration clauses, in which parties agree to go to private dispute resolution rather than a court or tribunal.
- **Non-disparagement clause:** an agreement to not say anything negative about the employer, even if true.
- **Pre-emptive agreement:** an agreement signed at the beginning of employment that states if something bad happens, the employee cannot share it.

Should you ask your employee to sign an NDA?

Many governments around the world are limiting or banning NDAs in sexual harassment cases. British Columbia has not limited or banned NDAs at this time, but that may change. While NDAs are legal at present, there are good reasons not to use them.

NDAs can negatively impact the physical and mental health of employees in sexual harassment cases. NDAs prevent the employee from processing and

healing from the experience, which may cause more trauma. NDAs can also leave your employee at a disadvantage if they can't explain why they left their job or why they don't have a reference.

NDAs may also be detrimental to your workplace culture. This is because NDAs protect respondents and company reputation instead of protecting complainants. This can promote a culture of silence and fear and increase the risk of harassment. An increase in harassment will likely increase employer liability long-term. Instead, consider settlement strategies that maintain transparency and respect for complainants. Your approach should signal to all employees that it is safe to come forward. Increased reporting (paired with appropriate responses) may decrease the risk of future harassment and reduce employer liability long-term.

Why would you settle without an NDA?

There are many other reasons to settle a complaint, including: to save time, effort and legal costs, to have control over the outcome, and to avoid a public hearing of the allegations. Settling without using an NDA also benefits employers by sending the message that you can resolve complaints without resorting to silencing employees, which promotes a respectful workplace culture.

To learn more about NDAs and the campaign against the misuse of NDAs in BC visit: <https://clasbc.net/FightMisuseofNDAs>