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Publication of Confidentiality Clauses Consultation

I am pleased to write to inform you that my Department on Monday will publish a consultation on non-disclosure agreements (NDAs) and measures to prevent misuse of confidentiality clauses in situations of workplace harassment or discrimination. These proposals will boost understanding amongst workers and employers of their rights and legal responsibilities and is part of our modern Industrial Strategy to create a fairer workplace.

I welcome the work your Committee is currently undertaking on the use of NDAs in discrimination cases, and I am looking forward to discussing these issues further with you, as part of your enquiry, next month.

There is increasing evidence that NDAs and confidentiality clauses are being abused by a minority of employers to intimidate victims, conceal harassment and discrimination – including sexual assault, physical threats and racism. This is unacceptable. Today's proposed reforms will help put an end to the unethical use of these agreements and encourage good practice from employers and lawyers. They include:

- Legislating that confidentiality clauses cannot prevent any disclosure to the police
- Requiring a clear description of the limits of confidentiality provision with a written statement of particulars or within a settlement agreement
- Extending the requirement for workers to receive independent advice before signing a settlement agreement to cover the limits of any confidentiality clauses included in the settlement agreement

Most businesses use NDAs and confidentiality clauses in agreements legitimately to prevent the disclosing of confidential information. In addition, Settlement Agreements are often utilised to help resolve workplace disputes without the need to escalate matters further.

However, a minority abuse their power in the workplace to conceal victims of harassment or discrimination through NDAs or confidentiality clauses. For example, by suggesting that a worker cannot 'blow the whistle', despite the fact that no provision can remove a worker's whistleblowing protections.

In addition, through an NDA or Settlement Agreement, employers could insist that a worker is unable to discuss an issue with other people or organisations, such as the police, a doctor or a therapist. This can leave victims afraid to report an incident or speak out about their experiences, leaving others exposed to similar situations, and putting customers and other businesses at risk. The proposals set out today will help end this unethical practice, through extending the requirement to receive independent advice to cover limits on confidentiality clauses, and by requiring that signatories must be provided with a clear overview of their rights.

Our modern Industrial Strategy is creating a fairer and more equal workplace, to boost productivity and earning power for all. Our proposals support this by helping to create a more level playing field between workers and employers, providing more understanding over rights and legal responsibilities.

The consultation period will run for eight weeks until 29 April 2019 and can be found on the gov.uk website.



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