

FACTSHEET 7

MAKING NDAs FOR HARASSMENT OR DISCRIMINATION UNENFORCEABLE IN EMPLOYMENT AGREEMENTS

WHAT'S CHANGING?

The use of non-disclosure agreements in employment disputes has been the subject of much discussion in recent years.

s24 *Employment Rights Act 2025* ('ERA 2025') renders void any provision in a contract between an employer and a worker that attempts to prevent the worker from making allegations or disclosures about harassment or discrimination (as defined within the *Equality Act 2010*). Any confidentiality clauses in employment contracts, settlement agreements or other agreements that seek to prevent a worker speaking about an allegation of harassment or discrimination will be null and void.

This also applies to disclosures about how the employer responded to such allegations or

disclosures. Clauses which attempt to prevent a worker from disclosing alleged failure to make reasonable adjustments do not, at the present time, appear to be covered.

The provision applies to both current and former workers, and can be extended by Regulations to include individuals such as contractors, trainees, and those on work experience.

The protection applies whether the alleged discrimination is by the employer or by another worker, and whether the victim is the complainant or another worker.

There will be exceptions for an 'excepted agreement' which meets conditions to be specified in regulations. We do not have any detail on what will constitute an 'excepted agreement' and how this will differ from a settlement agreement.

We don't have a date for implementation of this change as yet – it was not included in the government's 'roadmap' to implementation which it published back in July 2025.

HR IMPACT – WHAT TO DO NOW

The law hasn't changed – yet. However, HR should:

- Undertake an audit now of confidentiality wording in contracts, template settlement agreements and policies. Any clause attempting to silence disclosures about equality breaches will, under ERA 2025's provisions (once enacted), be unenforceable and financially and reputationally risky. Be aware of this and be ready to roll-out legally compliant wording when the change comes in.
- Be ready to draw-up or source new templates for valid 'excepted agreements' once details of these are known.
- Make management aware that, should these changes take effect, there is likely to be no easy way of preventing employees from making discrimination allegations public, even if they have signed a settlement agreement. This may have an impact on the business's appetite for settlement in impacted cases.