

## EMPLOYMENT UPDATE

# New Guidance on Confidentiality Agreements

The Equality & Human Rights Commission (EHRC) has launched new guidance providing employers with best practice guidelines for confidentiality clauses and non-disclosure agreements in discrimination cases.

**Status of the guidance**

The EHRC has issued [guidance](#) for the use of confidentiality clauses (including in settlement agreements and non-disclosure agreements or 'NDAs') in relation to discrimination, harassment and victimisation claims.

Whilst the guidance itself is non-statutory, it includes a summary of the legal principles governing confidentiality clauses. Moreover, the courts are more likely to uphold clauses that abide by the latest EHRC guidance.

**Why the new guidance?**

The EHRC recognises that confidentiality clauses have legitimate uses in agreements in an employment context e.g. protection of trade secrets.

However, the new guidance is driven by the EHRC's concerns that confidentiality agreements:

- > Can and have been used to 'cover up' unlawful discrimination; and
- > Are becoming too commonplace.

**What action should employers take?****Negotiation of future confidentiality clauses or NDAs:**

- > If a confidentiality clause or NDA is required, use plain English to explain exactly what a worker can and cannot do.
- > The clauses or NDA should be tailored and targeted to address the employer's principal concern (i.e. how much an employee is paid on termination).
- > Any restrictions placed on the worker should be clear and specific, and where possible, mutual.
- > Use of confidentiality clauses or NDAs should be signed off by a director or appropriate delegated senior manager.
- > Allow a worker the opportunity to take independent advice, without placing the worker under undue pressure or duress to sign any confidentiality clause or NDA.

**Record-keeping and training:**

- > Keep a central record of discrimination complaints and the use of confidentiality agreements (subject to data protection laws).
- > Inform (and, if necessary, provide training to) personnel responsible for drafting and/or negotiating these agreements to ensure compliance with the new guidance.

**Templates and policies:**

- > Review template agreements (including template clauses and any related drafting/guidance notes) and relevant workplace policies to ensure compliance with the above points (and the EHRC guidance more generally).

**If you would like any further advice or assistance on this new guidance, please contact our Employment Lawyer, Jamie Feldman (Jamie.Feldman@northridgelaw.com)**