

## *This Week in Employment Law*

### New Laws Crack down on Misuse of Non-Disclosure Agreements

**Non-disclosure agreements (NDAs), or ‘gagging clauses’, have been under intense scrutiny on account of stories that they are used to cover up workplace abuse. In response, the government has promised new legislation to tackle the misuse of NDAs, which we will examine in more detail below:**

- Employers using NDAs will need to explain the limitations of any agreement to their staff in ‘plain written English’ to ensure they have a full understanding of what they are signing.
- Those signing NDAs will be able to receive further independent legal advice on their rights, including the ability to disclose information to the police, regulated health and care professionals, or legal professionals.
- New enforcement measures will also be introduced to deal with employers whose NDAs do not comply with amended legislation, which could result in them being held to be void.
- Whilst NDAs may still be used freely for legitimate reasons, these amendments aim to remove uncertainty amongst employees and prevent situations where they are used to cover up instances of harassment, discrimination or assault.
- Given the significant amount of attention on NDAs, using them incorrectly in the future could result in tribunal proceedings and have a detrimental impact on an employer’s reputation.

#### New time limit proposed for sexual harassment claims

The time limit for bringing tribunal claims relating to sexual harassment could be extended from 3 months to 6 months under new government proposals. This may well increase the opportunity for workers to lodge a claim following an incident of alleged sexual harassment.

##### Did you know?

Other proposals include introducing a new duty on employers to prevent incidents of sexual harassment at work, whilst there is also significant discussion on the re-introduction of third party liability for employers to prevent harassment at the hands of clients, customers or the general public.

#### Consultation on increasing family friendly entitlements

“Neo-natal leave” could be made available to parents whose newborn child requires an extended stay in hospital. Suggestions contained in a new consultation also include extending offerings of family friendly leave and improving the transparency around relevant policies.

##### Did you know?

Amongst a number of suggestions, the government has proposed that extra weeks of “neo-natal” leave should be added on at the end of employees’ maternity or paternity leave to compensate for the time they spent in hospital, meaning a greater overall length of absence from work.

#### 2 million workers denied annual leave entitlement

The TUC has reported that nearly 2 million workers are denied their legal entitlement to annual leave and pay, with 1 million not receiving any paid leave at all. This has been blamed on a lack of legal understanding and excessive workloads that encourage presenteeism.

##### Did you know?

Whilst employers can refuse holiday requests, staff must be given reasonable opportunity to take these at a later date as failing to do so could result in tribunal proceedings. It is also important to get holiday pay calculations correct, including overtime where necessary, to avoid unlawful deductions.

When used correctly, NDAs can be an effective and reasonable way to protect trade secrets and other intellectual property, however these mustn’t attempt to cover up unlawful acts such as harassment or discrimination. For further advice on how to construct NDAs correctly, give our expert 24 Hour Advisory Service a call.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.