



---

**An Bille um Chomhionannas Fostaíochta  
(Leasú) (Comhaontuithe Neamhnochta), 2021  
Employment Equality (Amendment)  
(Non-disclosure Agreements) Bill 2021**

---

*Meabhrán Míniúcháin  
Explanatory Memorandum*

---





---

**AN BILLE UM CHOMHIONANNAS FOSTAÍOCHTA  
(LEASÚ) (COMHAONTUITHE NEAMHNOCHTA), 2021  
EMPLOYMENT EQUALITY (AMENDMENT)  
(NON-DISCLOSURE AGREEMENTS) BILL 2021**

---

**EXPLANATORY MEMORANDUM**

---

**Need for Change**

Following the growth of the #MeToo movement globally, the legal ramifications for those who engage in sexual harassment have come under increased scrutiny. For many decades now, it is clear that many influential individuals have been able to escape legal accountability for their abuse by requiring legal non-disclosure agreements (NDAs) as part of settlement agreements with the complainants. Non-disclosure agreements legally silence victims of harassment and allow perpetrators to continue their harassing behaviour without facing the consequences of their actions; it is the continued use of these agreements that has motivated this legislative proposal.

In Ireland and around the world, there have been many high-profile accounts of the widespread use of these agreements within many prominent public and private institutions. At a time where Ireland is currently reckoning with a shameful history of institutional mistreatment, incarceration and silence, it is unacceptable for non-disclosure agreements to further contribute to a culture of silence; restricting what victims are allowed to say and share in relation to their experiences. This bill is proposed as an attempt to remedy a legal vacuum within which perpetrators of abuse have thus far been able to act with impunity.

**Proposal for Legislative Reform**

The Employment Equality Act 1998 is the primary law in Ireland regulating how employees are treated in the workplace and the rights that employers must guarantee for those that work for them. The provisions relevant to this proposal are the Part II prohibitions on workplace discrimination and sexual harassment.

The Employment Equality (Non-Disclosure Agreements) (Amendment) Bill 2021 would insert a new section 14B into the original 1998 Act to restrict the use of non-disclosure agreements following such incidents of workplace sexual harassment or discrimination.

**Policy Intention**

When a crime has been committed, a non-disclosure agreement must never be used to prevent accountability for that crime, or to cover up a public or private institution's continued record of inaction following bullying or harassment in the workplace.

This bill would essentially prohibit non-disclosure agreements following incidents of workplace sexual harassment or discrimination in almost all circumstances. The only exception to this rule would be when the person who experienced the harassment or discrimination requests a non-disclosure agreement to protect their own confidentiality or a so-called ‘victim’s exception’ to a general prohibition rule.

**Provisions of the bill**

*Section 1* is a standard interpretation section.

*Section 2* is the main substantive provision and would insert a new section 14B into the Employment Equality Act 1998 to restrict the use of non-disclosure agreements following incidents of workplace sexual harassment and discrimination.

*Subsection (1)* sets out the general prohibition on employers entering into non-disclosure agreements following incidents of workplace sexual harassment or discrimination.

*Subsection (2)* sets out the so-called ‘victim’s exception’ to this general rule so a non-disclosure agreement can only be made when it was the preference of the employee who experienced the harassment or discrimination.

*Subsection (3)* sets out a number of conditions that must be adhered to in order for a non-disclosure agreement made under subsection 2) to be enforceable.

*Subsection (4)* prohibits an employer from entering into a separate agreement with the relevant individual.

*Subsection (5)* would render null and void any non-disclosure agreement that was not made in accordance with this section.

*Subsection (6)* creates an offence for any employer that enters into a non-disclosure agreement that does not comply with this section.

*Subsection (7)* ensures that non-disclosure agreements made before the coming into force of this Act would only be enforceable if it had been made in accordance with subsection (3).

*Subsection (8)* explicitly states the forms of communication to which a non-disclosure agreement made under this section cannot apply.

*Subsection (9)* would require non-disclosure agreements to be written in clear and plain English, insofar as is possible.

*Subsection (10)* requires the Minister to make regulations under the Act, including for a standard form for agreements made thereunder.

*Subsection (11)* provides that the Minister shall publish guidelines to employers, employees and legal professionals to aid compliance with this section.

*Subsection (12)* ensures that any non-disparagement agreements that have the effect or purpose of concealing workplace sexual harassment or discrimination would also be covered under this Act.

*Section 3* is a standard commencement section.

*Senator Lynn Ruane, Senator Frances Black, Senator Eileen Flynn,  
Senator Alice-Mary Higgins,  
Meitheamh, 2021.*