

I would like to add a comment on the use of non-disclosure agreements by employers to silence those who may have reached a settlement for workers compensation injuries. A recent enquiry by a UK parliamentary committee was damning of the practice:

*"It is completely unacceptable that allegations of unlawful discrimination and harassment in the workplace are routinely covered up by employers with legally drafted non-disclosure agreements (NDAs). It is clear that in some cases allegations of unlawful discrimination are not investigated properly—or at all—by employers. The difficulties of pursuing a case at employment tribunal and the substantial imbalance of power between employers and employees, mean that employees can feel they have little choice but to reach a settlement that prohibits them speaking out."*

Part of the NDA process is to also impose NDA and no disparaging comment clauses on all employees. That is the employer enters into legal agreement to use its power to silences not only the person who was injured but the entire staff. It is foreseeable that employment could be terminated of people who were not aware of the agreement. That because government departments enter into these agreements that this also relates to public servants.

One of items for discussion is the stigma and discrimination around mental health. Simply put - How can the stigma regarding mental health be improved if no one is allow to talk about it?

Not only unable to talk about it but that they cannot be made aware of it to be even have the choice to talk about it. In workplaces with a toxic workplace culture are likely persist and cost productivity because of the failure to adequately deal with a problem.

Often the cause of workplace injuries lies in the culture of the employer and failure by managers to properly follow workplace policies. Mental health injuries are often contested by employers because they relate to issues of bullying of from senior staff and failure of managers to follow policies. Therefore in an attempt to save face there is a tendency for managers to attempt to hide the problem.

It is possible for the very managers responsible for overseeing the culture are the people whom impose the NDA. This has the impact of preventing oversight, criticism and reflection and improvements to workplace culture. That in the case of government department serves to protect the image of managers at the expense of workers/the state and the workplace culture within department. That these actions are the very antithesis of transparency and good governance.

These NDAs can have serious health implications on those whom are required to sign them. There is a growing realisation that these agreements can be a form of secondary abuse. The process of return to work is extremely stressful for a person who has already experienced mental health injuries to the extent that they have substantially impacted their ability to work.

The inclusion of these clauses are considered by many in the legal profession to be "standard practice." Which means that employees may not be made aware that an employer will not agree to a settlement if they are not included. This can lead to initial acceptance of a settlement and notification to the employment tribunal which halts proceedings. When final documentation is provided to the employee Non-disclosure agreement and no derogatory comments are often included. If an employee then refuses to accept the new terms that are offered a new date for a hearing will need to be set which would likely be in 6 months' time.

The employer can often be a state/federal government with immeasurably greater financial resources. Because of psychiatric evaluations required employers are aware of the stress that the process is having on the employee. That can there for use this information to put an employee in an

impossible situation. Both options would cause significant further mental distress either accept a settlement with an NDA and experience ongoing mental health issue because of the enforced silence or reschedule a hearing. This would result in months of significant mental distress because of the delay caused by the employer negotiating in bad faith. I would assert that a government department putting someone in this situation is a form of abuse.

In terms of productivity I have outlined the impact to workplace culture and the employee. There is also the injured person finds it difficult to find employment in the same sector. Consequently years of study and knowledge is lost for the work place.

In terms of ways to improve mental health in the workplace I offer these suggestions:

- Employers and especially governments should be forbidden to include NDA clause in settlements. Employees should be allowed to request them. Governments should voluntarily make such a commitment even if there are no changes to workplace laws. I understand this has been proposed in the UK. Other companies could as a part of a commitment to open and transparency committee to such a provision. I would add this has benefits of improving workplace culture around sexual harassment.
- The terms of accepted settlements, even those with “without prejudice” should be enforceable if non acceptance of new terms would result in significant delay. This is because employers have access to psychiatric information which they may use to exploit and impose conditions on employees whom would otherwise not have accepted.
- Governments should be required to post a register of the number of accepted return to work incidents, the number of days hours lost to work place injury (broken down into physical and psychological) and NDA imposed by each government agency, branch and division to be transparent on potential issues of workplace culture.
- That Governments should reach out to those with whom they have imposed NDAs to see if they would like to remove the clause to enable a dialog with these people and improve management within their agency. This would also allow other staff to be able to talk about these issues.

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<sup>i</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1720/172003.htm>