

Nondisclosure agreements in the workplace

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Last Review Date

February 18, 2026

Learn about limitations on nondisclosure agreements in the workplace.

1. Basics

What is a nondisclosure agreement?

A nondisclosure agreement (NDA) is a contract where someone agrees not to disclose specific information, or where both parties signing the contract agree to secrecy. Nondisclosure agreements can have other names too, like a **Confidentiality Agreement** or **Limited Disclosure Agreement**.

Disclosure means telling the information to anyone at all or to people specifically named in the agreement.

Nondisparagement provisions are a type of nondisclosure agreement. Washington State laws that apply to nondisclosure agreements **also apply** to nondisparagement provisions.

Are nondisclosure agreements in the workplace legal?

Yes, generally. Under many circumstances, your employer can ask you to sign an NDA. If you do agree to sign it, it will usually be legally binding. There are limitations on NDAs under Washington State law.

NDAs **can't** restrict disclosure of illegal employer behavior including treatment that could be discrimination, harassment, wage violations, or retaliation.

NDAs signed during hiring or employment **prior to June 9, 2022**, were made invalid by state law **unless** the agreement was also part of an agreement to settle a legal claim.

There are many types of NDAs.

These are some of the most common kinds of nondisclosure agreements:

- **General confidentiality agreements** about any confidential information that **doesn't include unlawful acts**. This can include confidential information agreements about clients, guests, or customers, financial information, product information, training information or materials, and other sensitive data.
- **Company equipment agreements** may include **deadlines to return company equipment after you leave a job**. Company equipment may include work owned laptops, disk drives or hardware, computers, software, email accounts, and phones. When you leave a job, many workplaces require you to immediately return company equipment especially if it contains sensitive information.
- **Trade secret protection agreements** that cover sensitive trade related information or proprietary company information.
- **HIPAA agreements** that cover confidential medical information.
- **Noncompete agreements** that restrict where and how you can compete with a former employer may be included in some NDAs.

2. What goes in an NDA

What should be in an NDA?

An NDA should follow the laws and use clear, easy to understand language that specifically tells you:

- **What is expected of you.** It should be easy for you to understand what you need to keep private and it should be clear what will happen if you don't.
- **What specific information is to be kept confidential.** The NDA should list the specific information you're not allowed to disclose.
- **How long you must keep the information private.** NDAs may include unlimited time limits. Many NDAs may only last up to a year after the end of the job and signing of the NDA.
- **What types of behaviors are considered to break the agreement.** When a party breaks the agreement, it is called a "breach". NDAs may restrict you from taking work products, USB drives, or files home with you, taking pictures on company property, or making copies of certain work information or materials. You might not be able to use your company laptop on open networks or take company equipment home.
- **What will happen to you if you break the agreement.** Often the NDA will tell you what kind of money damages you may owe if you break the agreement.
- **Instructions for how to cancel the agreement.** This is called a "termination clause" and it should give instructions for how **either** party can cancel the agreement.

NDAs can't prevent you from discussing unlawful treatment.

Since 2022, Washington State law has protected workers from certain types of agreements.

An NDA **can't** include limitations on a worker's right to discuss unlawful acts of:

- Discrimination
- Harassment
- Retaliation
- Wage and hour violations
- Sexual assault
- Anything against public policy

Agreements to limit disclosure of illegal treatment are invalid and could cost your employer a fine if they ask you to sign one. Learn more about worker protections and illegal discrimination at work.

What else can an NDA include?

NDAs can include terms about:

- **Money damages.** Try to avoid “liquidated” or unlimited damages clauses in NDAs if you can. They might not be enforceable. Get legal advice if an unlimited damages NDA is being enforced against you or if you are asked to sign one.
- **Specific time limits** including unlimited time limits.
- **Accidental breaches. Examples:** You accidentally used your company laptop on an open network when prohibited by an NDA or you unintentionally brought NDA restricted work files home with you but returned them immediately on your next workday once you realized they were restricted.
- **Ongoing breaches.** These are also called continuous breaches like using a protected work trade secret in your new product code that you sell to a competitor business. This is when you use an NDA protected piece of information in an ongoing way that can be treated like many breaches lumped together.

NDAs **shouldn't** include any agreements that ask workers to stay silent about unlawful treatment in the workplace.

3. Laws

Nondisclosure agreements are limited by state law.

Washington law protects workers (<https://app.leg.wa.gov/rcw/default.aspx?cite=49.44.211>) from certain types of nondisclosure agreements (NDAs). The law includes **non-disparagement provisions** in any agreement too.

NDA protections cover independent contractors and any current, former or prospective employee who is a **resident** of Washington when they sign such agreements.

You can read the law with these prohibited NDA provisions at RCW 49.44.211. (<https://app.leg.wa.gov/rcw/default.aspx?cite=49.44.211>)

An NDA is in violation of the law and is void and unenforceable if it asks you to sign away your rights to discuss or disclose any of these:

- Conduct or treatment that you reasonably believed violated Washington, federal or common laws protections against illegal discrimination, illegal harassment or sexual assault, illegal retaliation, or wage and hour violations.
- Conduct or treatment that you reasonably believed violated a recognized, clear mandate of **public policy**.
- The existence of any **settlement** about conduct or treatment that you reasonably believed violated Washington, federal or common laws protections against illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, or sexual assault.

The conduct covered by the law includes anything prohibited that happened:

- At the workplace
- At work-related events coordinated by or through your employer
- Between employees (whether at the workplace or outside of work)
- Between an employer and an employee (whether at the workplace or outside of work)

The **amount of a monetary settlement is allowed** to be in an NDA, but the agreement can't otherwise restrict your ability to discuss or disclose any prohibited conduct like discrimination, retaliation or harassment.

Don't sign an NDA that asks you to sign away any of these rights or the rights to other protected legal claims you might have. If an agreement asks you to sign away your legal protections and then your employer punishes you if you won't sign, that may be retaliation and is also illegal. It is illegal for your employer to use threats, retaliation, or other means to get you to sign a prohibited agreement. Try to get legal help.

4. During hiring, quitting and firing

What if my employer asks me to sign a non-disclosure agreement when I am hired?

When you are hired and during employment, new employers may ask you to sign a nondisclosure agreement related to sharing work products or trade secrets, client information, and other private, confidential, or sensitive information that you may have access to at your job and **that doesn't involve illegal acts**. This can be very common in certain industries. But a new employer shouldn't ask you to sign away protected employment rights that you have under the laws or ask you to sign an NDA that restricts your disclosure of illegal acts.

If you sign an NDA or non-disparagement provision as a part of your required hiring paperwork or employment contract, only the **legally valid parts** of the agreement are enforceable. If the agreement includes a restriction on your ability to disclose discriminatory, retaliatory, or harassing treatment, then that part of the agreement won't be legally valid or enforceable even if other parts of the agreement might be.

What if my employer asks me to sign a non-disclosure agreement when I am fired?

If you are fired, your employer shouldn't ask you to sign a nondisclosure agreement that would violate any of your protected rights. They could ask you to sign a nondisclosure agreement about certain things if you are involved in a settlement. Try to get legal advice before you sign a nondisclosure agreement related to any firing or settlement from a firing.

Learn about your rights and responsibilities if you recently lost your job

What if my employer asked me to sign a nondisclosure agreement about discriminatory treatment?

If your employer **doesn't** fix or stop the discrimination after you tell them about it, you can report them to the state anti-discrimination agency (<https://www.hum.wa.gov/employment>) if state laws apply to your situation.

You **shouldn't** sign any NDA that violates employment discrimination protections or asks you to waive your rights to those protections. Try to get legal advice before you sign a non-disclosure agreement related to any discriminatory treatment. An NDA or other agreement that restricts your ability to discuss discrimination you experienced at work **won't be enforceable and is illegal**.

WashingtonLawHelp.org gives general information. It is not legal advice. Find organizations that provide free legal help on our Get legal help page.