



RESPECT@WORK

Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints – Fact Sheet for Individuals

This fact sheet complements the *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*.

What is a confidentiality clause?

In response to a complaint of workplace sexual harassment, you may be asked to sign an agreement to settle the complaint. This is called a settlement agreement. It sets out the actions that the people involved in the case have agreed to take to settle the complaint. A settlement agreement might include a confidentiality clause.

A confidentiality clause requires particular information to be kept confidential as part of reaching a settlement agreement. Confidentiality clauses are sometimes referred to as non-disclosure agreements or NDAs.

How do you want information about your complaint to be managed?

Confidentiality clauses should not be seen as a standard term of workplace sexual harassment settlement agreements and should be used on a case-by-case basis.

You have a choice about what goes into a settlement agreement. The need for a confidentiality clause should be considered on a case-by-case basis. If you agree to the use of a confidentiality clause in your settlement agreement, consider whether it should be limited in scope and duration. What do you want to be able to talk about after the settlement agreement is made, and to whom? Might you change your mind in future? For example, you may wish to be able to talk to family members, medical or mental health practitioners, regulators or external authorities, law enforcement, professional advisers or others about the workplace sexual harassment complaint. You might also want to be able to participate in organisational surveys, reviews or investigations that deal with culture and systemic issues (whether internal or conducted by external authorities).



If you have a person who is helping you, such as a counsellor, someone from your union or a lawyer, you can talk about these questions with them before making a settlement agreement.

Do you have appropriate support?

Negotiating a settlement agreement can be a stressful experience. It might help to have independent advice to support you through the process, and to assist you in understanding your settlement agreement.

Consider if you require counselling or other emotional support, such as an independent support person, to assist you throughout the settlement process.

Independent legal advice can assist you to participate in discussions about a settlement agreement, including what it should say. You may be able to access free legal support (see **below**). If you are a union member, you can also reach out to your union representative for guidance.

Mediation or conciliation might also help with the settlement of a complaint. In mediation and conciliation, a person who is impartial and usually independent of the parties helps to identify the issues that need to be resolved and to develop options for reaching an agreement to resolve the dispute.

Do you understand the settlement agreement?

Before you sign a settlement agreement, it is important that you understand what it means and what the responsibilities of both parties will be once the settlement agreement is made. If you agree to a confidentiality clause, it should clearly state what information can and cannot be disclosed, how long the clause will apply, and any legal rights and responsibilities the confidentiality clause can't or won't remove.

If there are parts of the settlement agreement that you do not understand, you can ask for more information, or for the document to be re-written into plain English or translated into a language that you understand.

Do you need more time?

If you do not understand the details of a settlement agreement, you can ask for more time to consider whether to sign it. You should only sign a settlement agreement when you understand what it means.



Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints

When you are negotiating a workplace sexual harassment settlement agreement, you should consider the *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*. These Guidelines set out an approach to negotiating a settlement agreement to resolve an allegation of workplace sexual harassment, which aims to ensure the appropriate use of confidentiality clauses. Not all sexual harassment complaints are the same and confidentiality will not always be helpful, appropriate or in the best interests of the parties to the complaint. The approach set out in the Guidelines involves the following principles:

1. Consider the need for a confidentiality clause on a case-by-case basis.
2. The scope and duration of the confidentiality clause should be as limited as possible.
3. Confidentiality clauses should not prevent organisations from responding to systemic issues and providing a safer workplace.
4. All clauses in a settlement agreement should be clear, fair, in plain English and, where necessary, translated and/or interpreted.
5. The person who made the allegation should have access to independent support or advice to ensure they fully understand the meaning and impact of the settlement agreement, including any confidentiality clause.
 - This includes ensuring that the person who made the allegation has adequate time to seek support or advice and ensure they understand the impact of the confidentiality clause.
6. Negotiations about the terms of a settlement agreement should ensure so far as possible the wellbeing and safety of the person who made the allegation, and be trauma-informed, culturally sensitive and intersectional.

Some questions to consider

- Do I want aspects of the incident to be able to be made public, such as to other employees, and why?
- Do I want to be able to talk about the incident in the future, and why is this important?
- Who might I want to talk to about what happened?
- Do I want to talk about the settlement outcome?
- Have I sought independent legal advice about the draft agreement?



- Do I need, and do I have access to support services, including translators, interpreters, my union or another person to support me?
- Are the settlement discussions being led by someone who is impartial and independent from the workplace and are they qualified?
- Do I feel pressured to agree to a confidentiality clause, or a settlement agreement?
- Do I understand what I am being asked to sign? What will help me to better understand the settlement agreement?

Who can I contact for more information or support?

Where to seek help (sexual harassment and sexual assault support services, legal services, mental health services and advocacy support)

- [Respect@Work website](#)

For complaints and more information about workplace rights and entitlements

- [Fair Work Commission website](#)
- [Australian Human Rights Commission website](#)
- [Fair Work Ombudsman website](#)

Guide to external pathways to address sexual harassment (support services, anti-discrimination and human rights bodies, workplace relations bodies and work health and safety regulators)

- [Guide to external pathways](#)

Other support services

- [Translating and Interpreting Services website](#)
- [Blue Knot Foundation website](#)