News

Use of legal measures to silence workplace harassment victims ‘more widespread than previously thought’

29 Mar 2018

By Annie Makoff-Clark

Parliamentary committee hears some businesses routinely deploy non-disclosure agreements

The use of non-disclosure agreements (NDAs) to silence employees from speaking out about workplace sexual harassment is far more widespread than previously thought, experts have warned.

A **parliamentary panel evidence session** held by the women and equalities committee yesterday (28 March) heard evidence on how the use of NDAs to silence sexually harassed employees had become endemic and had been part of some firms’ processes for many years – with some former employees only now starting to speak about them.

Giving evidence at the session, lawyer Suzanne McKie QC said tactics to silence claimants “happens a lot”, and that respondent lawyers working for employers were “behaving disgracefully” towards claimants and their

in a criminal investigation. “There cannot be a legal document that protects criminal behaviour or coercive behaviour – it’s a question of morality,” she said.

As *People Management* reported this week, the Equality and Human Rights Commission (EHRC) has called for changes to the law to help workers who have been sexually harassed bring legal cases, and to **stop employers requiring employees to sign NDAs**.

NDAs are routinely used in employment contracts to protect customer information, intellectual property or trade secrets, and within settlement agreements on termination of employment.

But in sexual harassment cases, evidence suggested they had been quietly and secretly used to bully employees into silence, even – and in particular – to cover employers’ discriminatory and unlawful behaviour.

Where sexual offences are committed during employment or by another employee, for example, this would be a criminal act, but some ‘gagging’ confidentiality clauses and NDAs may prevent the victim from speaking out about them at all.

The EHRC’s own research uncovered a “shocking and stark” reality of “corrosive cultures” that silence individuals and “normalise” harassment.

Three-quarters of those who had responded to the EHRC’s recent call for evidence of workplace sexual harassment confirmed that they had personally experienced it.

Half of those who reported sexual harassment said no action was taken, while others said their employers had attempted to silence them.

Rebecca Hilsenrath, chief executive of the EHRC, said the extent to which NDAs and other tactics were used to silence victims of workplace sexual harassment had been underestimated.

She said: “We need urgent action to turn the tables in British workplaces, shifting from the current culture of people risking their jobs and health to report harassment, to placing the onus on employers to prevent and resolve it.”

Rachel Krys, co-director of the End Violence Against Women Coalition, warned that women across the UK – including those in insecure employment or from marginalised communities – faced “significant barriers and a culture of silencing” when they wanted to report abuse and seek help.

A spokesperson for the women and equalities committee confirmed that legal experts had provided evidence about the prevalence of NDAs in sexual harassment cases – and their potential to “cover up” such cases and “enable re-offending” by the harassers.

Under English law, there is a requirement to include wording in a settlement agreement for employees that does not deter them from whistleblowing. The disclosure of information by employees may therefore be protected in certain circumstances, although many employees may not realise this.

Information relating to a criminal offence is one of the categories that allows an employee to disclose certain information, and any agreement that prevents this right is likely to be held invalid, said Jane Crosby, associate solicitor at Hart Brown.

But that leaves the onus on the employee to speak out against any terms of the agreement after signing it.

One education specialist who wished to remain anonymous told *People Management* that the use of NDAs was “rife” in the sector, to protect schools from reputation-damaging disclosures around potential mismanagement.

He said: "Settlement agreements, including gagging clauses, are widely used in schools when a staff member leaves. They can be used to keep secret anything the school's management might find embarrassing: from strategies to improve published exam results statistics to bullying and questionable financial transactions."

David Bradley, head of employment law and non-executive chairman at Ramsdens Solicitors, said it was standard to have a 'no disparaging remarks' clause in settlement agreements to protect the reputation of both employee and employer, but what is 'business sensitive' or not was often a grey area, he admitted.

Bristol
Salary range £67,653 - £77,802
Office for Students

centrica

Talent Manager

Windsor, England
Negotiable
Centrica

Share

Explore related articles

Legal

#MeToo: the US response

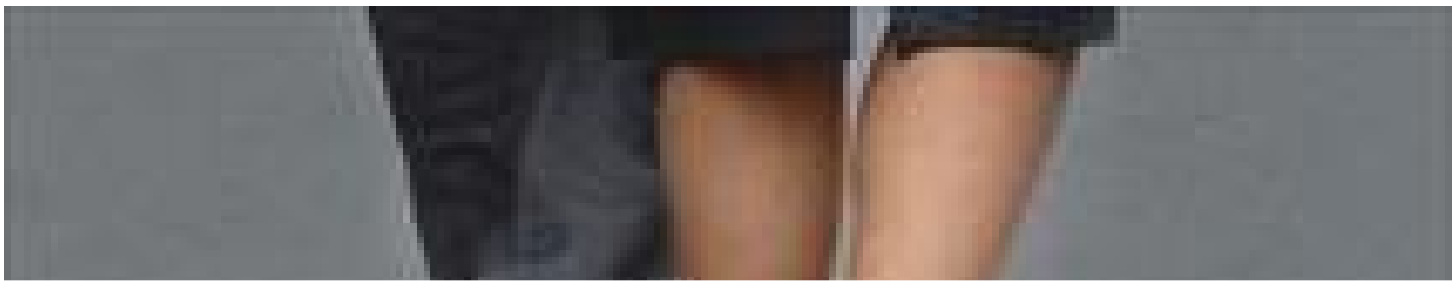
#WhatNext?

Long reads

After #MeToo, #WhatNext?

Comment

Don’t ignore the role of social media in workplace bullying



News

Employers should be duty-bound to prevent sexual harassment, say MPs