



Assessing the Impact of Non-Disclosure Agreements and Forced Arbitration Clauses on Survivors of Workplace Sexual Harassment and Discrimination



What do NDAs mean for signees?

“Overly broad and egregious... trying to capture everything under the sun” (Woman, 39).

“The NDA’s application is so stretched that essentially nothing could be discussed” (Woman, 57).

“It’s like being put in this little pea pod and closing the lid” (Woman, 51).

“Silencing and awful” (Woman, 33).

“NDAs are wrong” (Woman, 52).

The Michelle R. Clayman Institute for Gender Research at Stanford University has been a leading force in advancing gender equality through interdisciplinary research for 50 years. Lift Our Voices, co-founded by Gretchen Carlson and Julie Roginsky, is a nonprofit organization advocating for workers’ rights by challenging silencing mechanisms, empowering survivors of workplace abuse, and promoting awareness of workers’ rights against misconduct.

EXECUTIVE SUMMARY

For this research initiative, the Clayman Institute for Gender Research at Stanford University and Lift Our Voices collaborated to show the lasting impact of non-disclosure agreements (NDAs) on the lives of survivors of workplace sexual harassment and discrimination. These legal mechanisms silenced and punished survivors in order to prioritize organizations.¹

Through a qualitative study involving 23 individuals who signed NDAs while navigating workplace harassment and discrimination, we arrived at three big takeaways:

- 1. The language in NDAs was extremely broad, far-reaching, and often unclear and confusing to employees.**
- 2. Companies exploited the overly broad nature of NDAs to coerce employees into settlements and silence while protecting perpetrators.**
- 3. The detrimental effects of NDAs bled into other aspects of employees’ personal lives.²**

Our research points to the need for a wider conversation and examination of the fundamental rationale behind NDAs and forced arbitration clauses. By their very existence, NDAs contribute to a culture of secrecy, hindering the accountability of perpetrators and impeding transparency in cases of harassment and discrimination. Our findings ought to prompt lawmakers and organizations to consider whether the distress NDAs impose on survivors outweighs their benefits.

Here is a roadmap to this report:

- First, we describe what it is like for an employee to sign an NDA.
- Then, we discuss how NDAs shape employees' legal proceedings, career outcomes, and lives.
- Next, we show how NDAs are a reflection of toxic workplace cultures.
- Finally, we imagine possible pathways forward to create workplaces that support survivors of harassment and discrimination.

INTRODUCTION

Non-disclosure agreements were historically created to safeguard a company's confidential information. However, NDAs have evolved into a common part of standard employment contracts that employees sign during onboarding. NDAs contain provisions that limit how and what kinds of information employees can share about their experiences at work. These agreements become problematic when an employee experiences sexual harassment or discrimination in the workplace because NDAs limit the extent to which an employee can disclose these experiences and seek support or help.

A recent decision from the National Labor Relations Board prohibited NDAs that were "too broad" (Burke 2023); however, many employees remain largely uninformed about their legal protections after signing NDAs.

The #MeToo movement also brought renewed attention to the prevalence of workplace sexual harassment, which in turn spurred legislative action around NDAs. In 2022, President Biden signed the bipartisan Speak Out Act, which curbs the use of pre-dispute non-disclosure and non-disparagement clauses that restrict survivors of sexual harassment and sexual assault from speaking publicly about workplace misconduct.

Other legislative efforts ensured that workplace survivors of sexual assault or harassment could seek redress in the courts rather than be forced to settle cases through arbitration. Legislation that makes it easier to retroactively redress sexual misconduct at the workplace is an important first step towards supporting survivors.

Our research, however, points to the need for a wider conversation and examination of the fundamental rationale behind NDAs. Our research shows that individuals who signed NDAs, both pre- and post-dispute, at their workplaces continue to experience negative repercussions when faced with sexual harassment and discrimination.



- More than a third of the U.S. workforce was subjected to NDAs in 2018 (Lobel 2018).
- In 2022, 1 in 3 workers were subjected to NDAs that suppress sexual misconduct in order to protect companies' reputations. (Price 2022).



A Non-Disclosure Agreement (NDA) is a contractual agreement designed to establish confidentiality between involved parties. NDAs have traditionally served legitimate purposes such as safeguarding trade secrets and proprietary information. However, NDAs are often used as a legal tool to silence survivors of sexual harassment and discrimination.

Forced arbitration clauses are a deeply entrenched legal problem. Forced arbitration clauses dictate that disputes between an employer and employee are to be resolved by a neutral third party, called an arbitrator, rather than in court. The arbitrator serves as a private judge, hearing evidence and making a ruling on the outcome of the dispute. Most commonly, the arbitrator's decision is final and thus cannot be appealed (Tsurkov 2021).

In 1991, two percent of American corporations used arbitration clauses. It is estimated that since the early 2000s, the share of workers subject to mandatory arbitration exceeds 55 percent (Colvin 2018).

THE EXPERIENCE OF NDAs AND FORCED ARBITRATION

NDAs and forced arbitrations functioned as mechanisms to silence and coerce the survivors we spoke to. An NDA or forced arbitration clause was usually introduced in the workplace through two methods.

First, NDAs were introduced to employees through non-negotiable and largely overlooked sections of employment agreements at onboarding. Companies often required a new employee to sign an NDA as a condition of their employment. One participant described to us their experience of signing an NDA at onboarding:

“[The NDA was] part of the standard package, like all the HR forms and non-disclosure agreements [are] in there...” -Male, 45, Data Processing, Hosting, and Related Services

The NDAs signed at onboarding shaped employees’ future workplace disputes. When workplace harassment or discrimination arose, these employees were unable to speak to anyone about their experiences because they signed NDAs. In some cases, these survivors were not even aware that they signed NDAs at onboarding, as one individual shared with us:

“I wanted to speak out. And I was reminded—I signed an NDA and not to speak, not to disclose what happened.... I was already down. I was already devastated.” -Woman, 34, Data Processing, Hosting, and Related Services

The second way employees were subjected to NDAs was in response to workplace disputes. In cases of sexual harassment or discrimination at work, companies would require survivors to sign NDAs as part of settlement agreements. Survivors shared with us that they regularly did not have legal representation when signing these agreements with their companies, creating a large information and power imbalance. One survivor we spoke to signed an NDA after she was sexually assaulted by a colleague. As a result, she was subject to a new set of terms outlined in the NDA after-the-fact.

“[The NDA is] very brief. I think it’s two pages double spaced. It doesn’t have a termination date. It says it was a mutual agreement. It was not.... I read it one time and I nearly threw it away. I was so mad.”
-Woman, 79, Health Care and Social Assistance

“

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LEGAL REPERCUSSIONS OF NDAs

Non-disclosure agreements contained ambiguous language and unclear instructions that could lead to serious legal ramifications for participants. However, it was only after survivors experienced workplace misconduct that they began to fully grasp the contents of the NDA they had signed during onboarding. For instance, one survivor explained to us that most people in their industry did not understand the meanings behind the NDAs they had signed at onboarding:

“There’s just a bunch of legal stuff [in the NDA] that I don’t think the average server or bartender or even a restaurant manager truly understands.” -Woman, 37, Food Manufacturing

Once these documents were signed, any conflicts that arose between the company and the employee often



unfolded without legal representation for the employee, resulting in a strikingly uneven dynamic, as described by participants here:

“I’ve thought about talking to an attorney, but I also thought about the money involved. I just broke down.” -Woman, 34, Data Processing, Hosting, and Related Services

“I am an individual; I have no money. I don’t have an inheritance; you the company do.” -Woman, 31, Other Services

Participants were reluctant to pursue litigation, often opting to accept the terms instead. Many cited the significant personal, emotional, and financial burdens as the primary deterrents against legal action. They believed the odds would heavily favor the corporation in such a legal battle. One participant described their decision making process to us:

“All I know is I need to get to recovery as quickly as possible. Right? And so, you’re basically willing to sign almost anything.” -Woman, 57, Food Manufacturing

HOW NDAs SHAPE CAREER OUTCOMES

The aftermath of workplace misconduct left a lasting mark on survivors’ career trajectories. While a fortunate few received empathetic support from Human Resources, leading to proactive changes, many found themselves compelled to leave their positions because of either managerial pressure, a hostile work environment, or a pervasive sense of disillusionment. Participants shared with us how they came to their decisions to leave their workplaces:

“I resigned after about 8 months. I resigned from the company. I was trying to heal; I was traumatized. I felt humiliated. I felt bad about the whole incident.” -Woman, 34, Data Processing, Hosting, and Related Services

“It felt like the walls were kind of closing in on me, and it was becoming clear that there was nothing I could do to make it work there.” -Woman, 33, Administrative and Support and Waste Management and Remediation Services

When survivors chose to leave, their career options were sometimes limited because the NDAs they signed contained a non-compete clause. These clauses preclude individuals from working in the same industry for a specific period of time after leaving their current position. Non-compete clauses can create prolonged periods of unemployment for survivors and can even push survivors out of their respective industries. One survivor we spoke to, who worked most of her career for a renowned Oscar-winning director, was legally prohibited from discussing her previous professional relationship with him due to an NDA she signed. She described to us how her career was impacted by the non-compete provision:

“My resume is like a joke. [...] No one has ever even tried to have an interview with me.” -Woman, 55, Arts, Entertainment, and Recreation

Another survivor, who worked in the promotional industry, was pushed out of her chosen profession because of the non-compete clause in an NDA:

“I can’t work for anybody else. I can’t have any other job without [my supervisor’s] approval. I can’t. If I leave her company, I can’t compete. I can’t go to a competitor for two years. I work in this industry. That’s my livelihood.” -Woman, 31, Other Services

This poignant account highlights the profoundly restrictive nature of non-compete clauses that are embedded in NDAs. Legal silencing mechanisms not only limit survivors’ career options but also place significant control over survivors’ professional trajectories in the hands of their former employers.

THE IMPACT OF NDAs AND FORCED ARBITRATION ON EMPLOYEES’ LIVES

It was challenging for survivors to balance their emotional need to disclose their experience of harassment or discrimination with potential legal repercussions. Survivors often wanted to speak out about their experience as a cautionary tale or for personal catharsis. Some relied on informal whisper networks or private outlets to express themselves, as described by some participants:

“[My coworkers and I] all talked about it in break rooms. And we talked about it for weeks afterwards, you know, behind closed doors.” -Man, 45, Data Processing, Hosting, and Related Services

“I just kept [my feelings] in... [to] myself and just [thought] about it at home, but it felt like it was kind of... consuming my mind.” -Woman, 51, Health Care and Social Assistance

NDAS REFLECT TOXIC ORGANIZATIONAL CULTURES

Frequently, sexual harassment or discrimination incidents served as reflections of deeper issues within the organizational culture. Survivors of sexual harassment and discrimination shared with us systemic issues within their workplaces that enabled or perpetuated their mistreatment.

“The management team seemed like they were interested in getting [the discriminatory behavior] out [of] the way, rather than actually fixing the situation

and holding the person accountable.” -Man, 45, Data Processing, Hosting, and Related Services

“It’s the age-old story of the person that is reporting becomes the target. And the HR department is there to protect the company, not to protect the employee.” -Woman, 64, Food Manufacturing

These toxic organizational behaviors had a ripple effect on workplace relationships. One participant, a 60-year-old professor, was informed by her colleague that “once you become a whistleblower... people think you’re a troublemaker.” Whistleblowers frequently encountered bullying and isolation from their peers. For example, four of the interviewees stated they were “bullied” and “mobbed” after whistleblowing.

The impact of these events transcended the workplace by shaping survivors’ emotional and mental health, their work reputation, and future job prospects. In the words of one participant: “It’s like your whole life gets turned upside down.”

“

I can’t work for anybody else. I can’t have any other job without [my supervisor’s] approval. I can’t. If I leave her company, I can’t compete. I can’t go to a competitor for two years. I work in this industry. That’s my livelihood.

CONCLUSION

We find that the landscape of NDAs and forced arbitrations are a microcosm for larger inequalities in society. Unbeknownst to an excited, new employee, their signature on an NDA at onboarding could impact their workplace relations, force engagement with the legal system, negatively shape short- and long-term career prospects, and influence their emotional well-being. These legal mechanisms have emboldened perpetrators of sexual harassment and discrimination and deprived the public of their right to know. By muzzling survivors, NDAs and forced arbitration clauses serve to protect companies and reinforce toxic organizational cultures.

While generating concrete policy recommendations is beyond the scope of this study, we envision a future in which the enforceability of NDAs and forced arbitration, particularly in instances of sexual harassment and discrimination, is subject to reconsideration. We hope the participants' stories in this report highlight the need for more research and better data to document survivors' experiences of NDAs and forced arbitrations. This would allow employees, companies, researchers, policymakers, and activists alike to make data-driven decisions about how to address these issues. We compel decision-makers, policy makers, and business leaders to take the findings from this research to reimagine work environments and legal landscapes where all voices are heard and valued.

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ACKNOWLEDGEMENTS

The authors and the Clayman Institute for Gender Research would like to extend our gratitude to Lift Our Voices for their invaluable partnership throughout the research process. Lift Our Voices supported participant recruitment, provided feedback on previous iterations of the report, and assisted with report publication and dissemination. The authors would also like to thank Cynthia Newberry, Lily Forman, Lauren Koong, Sawyer Williams, and Olivia Ziegler for their feedback on the report.

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ENDNOTES

¹ We use the term “survivor” throughout this report, rather than “victim.” However, research finds that there is not one specific identity that all individuals who experienced sexual harassment and discrimination identify with. Individuals might vacillate between identities, embrace multiple identities, or distance themselves from other identities given a variety of circumstances (Boyle and Rogers 2020; Sweet 2021; Warner 2024).

² The research team conducted interviews with 27 participants (as of 3/22/2024), of which 23 interviews were considered directly relevant to the results covered in this report. Among the subset of 23 participants, seven signed NDAs as part of their onboarding process, 11 signed them as part of settlement, resolution, or severance agreements, one signed as part of a stock issuance contract, one signed as part of a protective order, two signed as part of arbitration processes, and one signed NDAs during both the onboarding process and upon severance.

³ Author(s) was responsible for data collection, data analysis, and report composition.

⁴ Author(s) was responsible for research design and provided report feedback and review.

APPENDIX

TABLE 1. Characteristics of Individuals in the Sample

	FREQUENCY	PERCENT
GENDER		
Woman	24	88.89
Man	3	11.11
Trans or Non-Binary	0	0.00
RACE/ETHNICITY		
White	15	55.56

	FREQUENCY	PERCENT
Black	17	25.93
Latinx	1	3.70
Asian	2	7.41
Multi-Ethnic	2	7.41
AGE (YEARS)		
18-29	7	25.93
30-39	5	18.52
40-49	6	22.22
50-59	5	18.52
60-69	2	7.41
70+	2	7.41
HIGHEST DEGREE ATTAINED		
Less than highschool degree	0	0.00
High school degree or equivalent (e.g., GED)	4	14.81
Some college	3	11.11
Associate degree	1	3.70
Bachelor degree	9	33.33
Graduate degree	10	37.04
INCOME (DOLLARS)		
0 – 9,999	2	7.41
10,000 – 19,999	0	0.00
20,000 – 29,999	1	3.70
30,000 – 39,999	3	11.11
40,000 – 49,999	2	7.41
50,000 – 59,999	1	3.70
60,000 – 69,999	2	7.41
70,000 – 79,999	1	3.70
80,000 – 89,999	2	7.41
90,000 – 99,999	1	3.70
100,000 – 199,999	8	29.63
200,000+	2	7.41
Prefer not to disclose	2	7.41
SEXUALITY		
Heterosexual	22	81.48
LGBTQ+	4	14.81
Does not know	1	3.70

	FREQUENCY	PERCENT
YEARS WORKED IN INDUSTRY		
Less than a year	1	3.70
1-5	6	22.22
6-10	4	14.81
11-15	2	7.41
16-20	4	14.81
20+	3	11.11
Missing (did not ask)	7	25.93
NDA STATUS*		
NDA part of onboarding process	10	37.04
NDA as part of the settlement, resolution / severance	13	48.15
NDA part of stock issuance contract	1	3.70
Arbitration	3	11.11
Other	1	3.70
missing (did not ask)	1	3.70
JOB CATEGORIES**		
Administrative Support and Waste Management and Remediation Services	3	11.11
Arts, Entertainment, and Recreation	1	3.70
Chemical Manufacturing	1	3.70
Data Processing, Hosting, and Related Services	3	11.11
Education Services	3	11.11
Financial Activities	1	3.70
Food Manufacturing	5	18.52
Health Care and Social Assistance	2	7.41
Other Services	2	7.41
Professional, Scientific, and Technical Services	2	7.41
Real Estate and Rental and Leasing	1	3.70
Retail Trade	2	7.41
Truck Transportation	1	3.70

Notes: Data are from respondent interviews with 27 individuals. *Categories are not mutually exclusive. **Respondent job categories were classified according to the North American Industry Classification System provided by the U.S. Bureau of Labor Statistics.