



**An Bille um Chomhionannas Fostaíochta (Leasú) (Comhaontuithe
Neamhnochta), 2021**

Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021

Mar a tionscnaíodh

As initiated



**AN BILLE UM CHOMHIONANNAS FOSTAÍOCHTA (LEASÚ) (COMHAONTUITHE
NEAMHNOCHTA), 2021
EMPLOYMENT EQUALITY (AMENDMENT) (NON-DISCLOSURE AGREEMENTS)
BILL 2021**

Mar a tionscnaíodh

As initiated

CONTENTS

Section

1. Interpretation
2. Amendment of Principal Act
3. Short title and commencement

ACTS REFERRED TO

Employment Equality Act 1998 (No. 21)

Protected Disclosures Act 2014 (No. 14)



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NEAMHNOCHTA), 2021
EMPLOYMENT EQUALITY (AMENDMENT) (NON-DISCLOSURE AGREEMENTS)
BILL 2021**

Bill

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entitled

An Act to restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination.

Be it enacted by the Oireachtas as follows:

Interpretation

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1. In this Act—

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth;

“non-disclosure agreement”, means a provision in writing in an agreement, however described, between an employer and an employee whereby the latter agrees not to disclose any material information about the circumstances of a dispute between them concerning allegations of sexual harassment or discrimination which are unlawful under this Act;

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“Principal Act” means the Employment Equality Act 1998;

“relevant employee” means the employee who has experienced or made allegations about the sexual harassment or discrimination;

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“relevant individual” means the person who committed or is alleged to have committed the sexual harassment or discrimination.

Amendment of Principal Act

2. The Principal Act is amended by the insertion of the following section after section 14A:

“Non-disclosure agreements

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14B. (1) Other than in accordance with subsection (2), an employer shall not enter into a non-disclosure agreement with a relevant employee where—

(a) the employee has experienced or made allegations of sexual harassment (within the meaning of section 14A), or

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(b) the employee has experienced or made allegations of discrimination which are unlawful under this Act,

and the non-disclosure agreement has the purpose or effect of concealing the details relating to a complaint of discrimination or harassment under paragraphs (a) or (b).

- (2) An employer may only enter into a non-disclosure agreement with a relevant employee in accordance with this section if such an agreement is the expressed wish and preference of the relevant employee concerned. 5
- (3) Where an agreement is made under subsection (2), the agreement shall only be enforceable where—
- (a) the relevant employee has been offered independent legal advice, in writing, provided at the expense of the employer, 10
 - (b) there have been no undue attempts to influence the relevant employee in respect of the decision to include a confidentiality clause,
 - (c) the agreement does not adversely affect— 15
 - (i) the future health or safety of a third party, or
 - (ii) the public interest,
 - (d) the agreement includes an opportunity for the relevant employee to decide to waive their own confidentiality in the future, and
 - (e) the agreement is of a set and limited duration. 20
- (4) An employer may not enter into a separate non-disclosure agreement solely with the relevant individual where the agreement has the purpose or effect of concealing the details of a complaint relating to the sexual harassment or discrimination concerned.
- (5) Where a non-disclosure agreement following an incident of workplace sexual harassment or discrimination is made that does not comply with subsections (3) or (4), that agreement shall be null and void. 25
- (6) An employer who enters into a non-disclosure agreement after the coming into operation of this section that is not made in accordance with this section is guilty of an offence. 30
- (7) Where a non-disclosure agreement was made before the coming into operation of this Act, it shall only be enforceable if it was made in accordance with subsection (3), save for any provisions protecting the identity of the relevant employee, which shall remain in effect.
- (8) An agreement made in accordance with subsection (2) shall not apply to— 35
- (a) any disclosure of information under the Protected Disclosures Act 2014, or
 - (b) any communication relating to the harassment or discrimination between the relevant employee and: 40

- (i) An Gardai Síochána;
 - (ii) a legal professional;
 - (iii) a medical professional;
 - (iv) a mental health professional;
 - (v) a relevant State regulator; 5
 - (vi) the Office of an Ombudsman;
 - (vii) the Office of the Revenue Commissioners;
 - (viii) a prospective employer; or
 - (ix) a friend, a family member or personal supporter.
- (9) An agreement made under subsection (2) shall, insofar as is possible, be written in plain English. 10
- (10) The Minister shall make regulations to provide for the standard form for an agreement to be made under subsection (2) and for any other purpose to enable this Act to have full effect.
- (11) The Minister shall publish guidelines for employers, employees and legal professionals to aid compliance with this section. 15
- (12) In this section, all references to a non-disclosure agreement shall be taken to also reference non-disparagement agreements where a non-disparagement agreement has the effect or purpose of concealing details relating to an incident of sexual harassment or discrimination.”. 20

Short title and commencement

3. (1) This Act may be cited as the Employment Equality (Amendment) (Non-Disclosure Agreements) Act 2021.
- (2) This Act comes into operation three months after its passing or on such earlier day as the Minister may appoint by order. 25

An Bille um Chomhionannas Fostaíochta
(Leasú) (Comhaontuithe Neamhnochta),
2021

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chur srian le húsáid comhaontuithe neamhnochta mar a bhaineann siad le teagmhais ghnéaschiaptha agus idirdhealaithe san áit oibre.

Na Seanadóirí Lynn Ní Ruadháin, Proinséas Ní Dhuibh, Eileen Ní Fhloinn agus Alice-Mary Ní Uiginn a thug isteach,

1 Meitheamh, 2021

Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021

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An Act to restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination.

Introduced by Senators Lynn Ruane, Frances Black, Eileen Flynn and Alice-Mary Higgins,

1st June, 2021

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