11-30-2022

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Citation
Sockin, Jason, Aaron Sojourner, and Evan Starr. 2022. "How Do Broad Non-Disclosure Agreements Affect Labor Markets?" Policy and Research Brief. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. https://doi.org/10.17848/pb2022-55

W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

NOVEMBER 2022

POLICY BRIEF

How Do Broad Non-Disclosure Agreements Affect Labor Markets?

Jason Sockin, Aaron Sojourner, and Evan Starr

BRIEF HIGHLIGHTS

- *Non-disclosure and non-disparagement agreements (NDAs) cover more than half of U.S. workers.*
- *Firms use broad NDAs to prevent workers from speaking out about the harms they experience at work.*
- *Silencing workers with negative information to share makes it harder for better employers to stand out, and harder for workers to avoid bad employers.*
- *State laws that narrow NDAs mitigate these negative spillovers and help improve the flow of information about employers.*

For additional details, see the full paper at https://dx.doi.org/10.2139/ssrn.3900285.

As anybody who has ever changed employers knows, taking a new job is risky. Even aside from career concerns, there is a chance you may face an unpleasant working environment or even toxic behavior, such as sexual harassment, discrimination, or wage theft. Employers can exacerbate the uncertainty job seekers face by using broad non-disclosure and non-disparagement agreements (NDAs) to prohibit current and former employees from speaking about their negative experiences at work. These policies can keep job seekers in the dark about important aspects of working at a potential new employer.

The #MeToo movement put a spotlight on how common it is for firms to use broad NDAs to silence workers, helping perpetuate misconduct at work. Indeed, management increasingly requires workers to sign broad NDAs as a condition of employment, with the express goal of limiting employees from sharing negative information about the employer, even on supposedly anonymous websites like Glassdoor. Over half of U.S. workers are now bound by NDAs (Balasubramanian, Starr, and Yamaguchi 2022).

Despite this recent attention, the subsequent debates about whether firms should be allowed to silence workers with NDAs, and recent legislation passed by Congress to prohibit firms from using broad NDAs to conceal sexual harassment, little if any research has examined how broad NDAs influence labor markets. Our new study helps fill this gap.

Core to our study is the passage of laws in California, Illinois, and New Jersey, in the wake of the #MeToo movement in the late 2010s, that prohibited firms from using NDAs to conceal unlawful conduct at work. Using the passage of these laws as a natural experiment, alongside variation across industries where NDA use is low versus high—where the "bite" of the laws is greater—we ask how broad NDAs affect four outcomes:

1) the flow and value of information workers share about their employers
2) public measures of firms' reputation
3) the ability of competing employers to differentiate themselves within the market
4) labor market sorting of workers across firms

Using data drawn from worker reviews of employers on Glassdoor, we find that laws narrowing NDAs increase the amount of negative information workers share by 4.5 percent but have little effect on the amount of positive information shared. We similarly find a rise in sexual harassment complaints made to the Equal Employment Opportunity Commission, by both men and women. Additionally, these laws reduce the average firm's rating by about 5 percent, driven by an increase in low-star reviews. But these average ratings declines mask variation across employers, with some bearing large hits to ratings while others changed little, thus increasing the degree of differentiation across firms. Finally, we also find that narrowing NDAs led to declines in worker turnover as workers made more informed decisions of where to work.

Taken together, our results suggest that broad NDAs prevent workers from sharing their bad—but not their good—experiences at work. This bolsters the reputation of low-road employers relative to high-road employers, making it more difficult for workers to distinguish between them. The silence induced by NDAs therefore creates costs borne by high-road firms that are unable to differentiate themselves, and by workers who are unaware of the negative aspects of working at low-road employers.

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NDAs and #MeToo

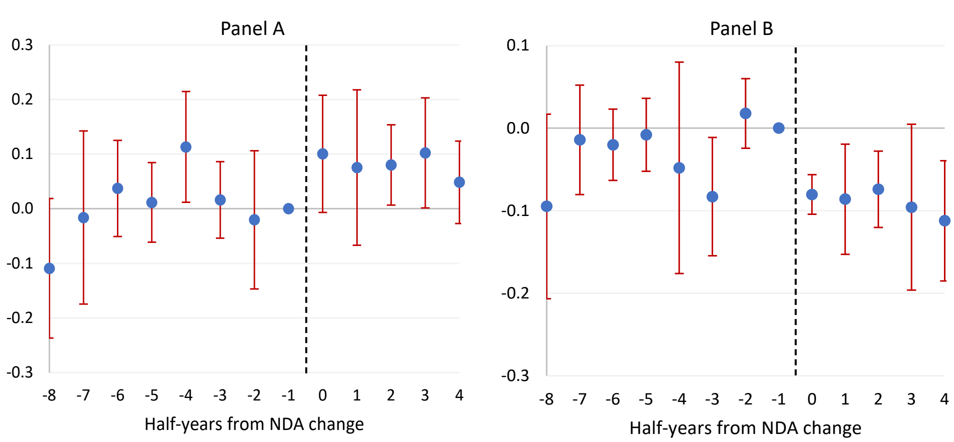
NDAs are one in a suite of employment restrictions that firms can use to limit what workers can do or share during and after their employment. Other restrictions include, for example, agreements not to compete and agreements not to solicit clients or coworkers. The canonical view of NDAs is that they are used primarily to protect company secrets. With just a few tweaks, however, they can be written to cover all sorts of information. For example, the non-disclosure agreement for the Weinstein Company covered “non-public” information “concerning the personal, social, or business activities” of everybody who worked for or with the company. Non-disparagement agreements, which are sometimes written within or alongside non-disclosure agreements (and which we include within our definition of broad NDAs), state directly that the worker is prohibited from disparaging the firm, often in perpetuity and in any way.

Legal scholars have long been concerned about the effects of these “hush contracts” on labor markets, and some suggest that broad NDAs should be unenforceable on public policy grounds (Hoffman and Lampmann 2019). However, until recently no state had changed their enforcement policy regarding NDAs, and data on NDA use was scarce. The uproar about NDAs following the #MeToo movement, however, spurred several states to reconsider their stance on NDAs. Some states took a narrow approach, focusing only on training regimens in response to the sexual harassment issue, while the three states we focus on prohibited firms from using NDAs signed as a condition of employment (as opposed to a severance or settlement) to conceal all unlawful conduct. We refer to these laws as “narrowing NDAs.”

How Narrowing NDAs Affects What Information Workers Share

As stated above, we find that restricting NDAs increased the amount of negative information workers share on Glassdoor. Specifically, we document that the length of the “Cons” section of workers’ reviews of their employers rose by 4.5 percent in states that narrowed the scope of NDAs relative to states that did not. This can be seen in Panel A of Figure 1, where the estimates cluster around 0 before the policy change—indicating little difference between the states that would change their NDA laws and those that would not—followed by a consistently elevated impact following the change. Although

Figure 1 Negative Information Flows and Job-Title Concealment



NOTE: The dependent variable in Panel A is the log length of the “cons” section of the employer review. The dependent variable in Panel B is the likelihood that the individual conceals their job title, conditional on the review having more negative than positive content. The sample period is 2015–2021, and point estimates are relative to the calendar half-year before the legislation goes into effect. Standard errors are two-way clustered by industry and state. Red vertical bars indicate 95% confidence intervals around each point estimate.

SOURCE: Authors’ calculations.

The silence induced by NDAs therefore creates costs borne by high-road firms that are unable to differentiate themselves, and by workers who are unaware of the negative aspects of working at low-road employers.

it's not shown, we find no effect of the policy change on the length of *positive* information shared.

We also find that workers who left negative reviews were approximately 18 percent less likely to hide their job title, presumably due to less concern about retaliation risk. Job seekers find information coming from less-anonymous sources more valuable, perhaps because such information is more credible and easier to evaluate for relevance (Sockin and Sojourner 2022), so we view this as a positive development. Consistent with relieving the worker of legal risk from sharing negative information on Glassdoor, we find that this effect is driven by relatively negative reviews (Panel B of Figure 1), with no statistically significant effect on job-title concealment among relatively positive reviews.

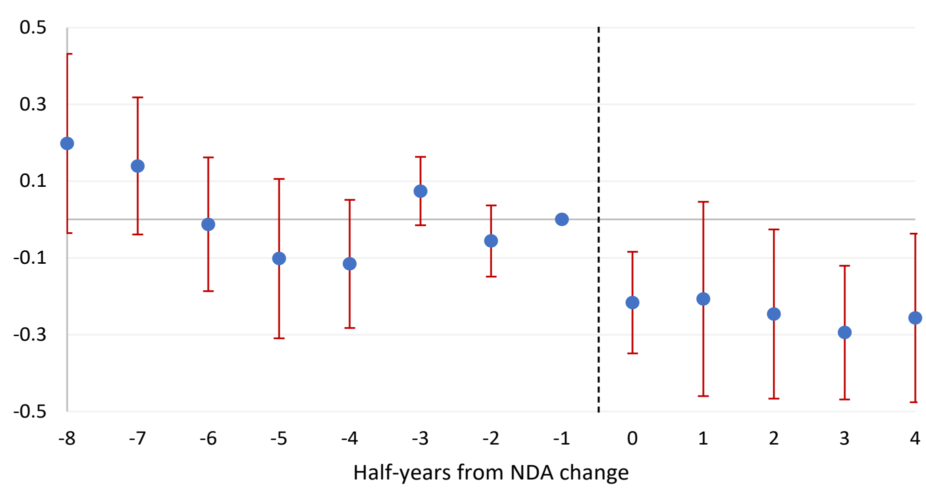
Additionally, we further estimate that narrowing NDAs led mentions of harassment and illegal conduct to rise by 22 percent and 95 percent, respectively. Collectively, these results imply that narrower scope for NDAs gives workers additional freedom to speak out about their negative experiences at work. Indeed, we bolster this analysis by confirming that claims of sexual harassment to the Equal Employment Opportunity Commission rose for both men and women after NDAs were narrowed.

How Restricting NDAs Affects Firm Reputation

Next, we ask whether these increased negative information flows lead to changes in the overall rating of the firm—a public measure of the firm's reputation. This question is important because if it's difficult for job seekers to find new negative information, and if this information doesn't show up in prominent measures of firm reputation, then laws that narrow NDAs may not have much punch for workers. It's also not immediately obvious that a firm's overall rating would be affected. After all, if somebody has a bad experience at work, they can always give their employer a one-star review, leave no identifying information, and likely face low legal risks. However, if workers begin to learn about wrongdoing in their workplace—of which they were previously unaware—then they may change both the information they share on Glassdoor and their overall rating. Alternatively, broad NDAs may discourage workers from sharing altogether, such that narrowing NDAs could also increase the number and composition of reviews.

We find that narrowing NDAs reduces the average firm rating by approximately 5 percent (Figure 2). These decreases are driven by more one-, two-, and three-star

Figure 2 Overall Star Rating



NOTE: The dependent variable in each regression is employee overall star rating. The sample period is 2015–2021, and point estimates are relative to the calendar half-year before the legislation goes into effect. Standard errors are two-way clustered by industry and state. Red vertical bars indicate 95% confidence intervals around each point estimate.

SOURCE: Authors' calculations.

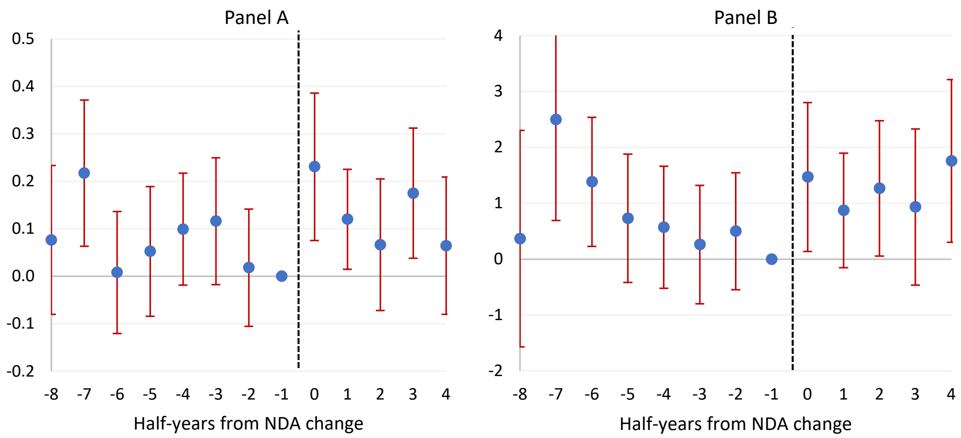
Allowing employers to use NDAs to prevent workers from speaking honestly about their work experiences makes the job market more inefficient by restricting the flow of information about job quality and concealing bad behavior.

reviews. We find some evidence that the composition of reviewers did change—for example, women are more likely to post a review after NDAs are narrowed—but these compositional changes are not responsible for the overall reputation effect.

The Good, The Bad, and the Sorted

Perhaps more importantly, not all firms were hit with an increase in bad ratings after NDAs were narrowed. Instead, while some firms experienced negative reputation shocks, others did not; consequently, the *dispersion* in ratings between firms within the same labor market increased, whether measured by the standard deviation (Panel A of Figure 3) or the interquartile range (Panel B). High-road employers thus became better able to distinguish themselves from those with low-road practices.

Figure 3 Dispersion in Ratings across Firms within a Market



NOTE: The dependent variable in each regression is the standard deviation (Panel A) or interquartile range of firms' average ratings (Panel B) within each industry-state-half-year. The sample period is 2015–2021, and point estimates are relative to the calendar half-year before the legislation goes into effect. Standard errors are clustered by industry cross state in Panel A due to convergence issues, and two-way clustered by industry and state in Panel B. Red vertical bars indicate 95% confidence intervals around each point estimate.

SOURCE: Authors' calculations.

Finally, using data on hiring and separations from the Census Bureau's Quarterly Workforce Indicators, we examine how the policy change in NDAs affected how workers match with employers. We find that after NDAs were narrowed, industrywide turnover rates fell (Figure 4), implying greater attachment of workers to employers. We expect that two mechanisms drive this pattern. First, given that narrowing NDAs increases the flow of negative but not positive information, job seekers may now turn down jobs that they would have otherwise accepted because they are more fully aware of negative aspects of the prospective job. Second, because workers are better informed, when workers do agree to a new job it is likely a better fit, leading to more stable matches.

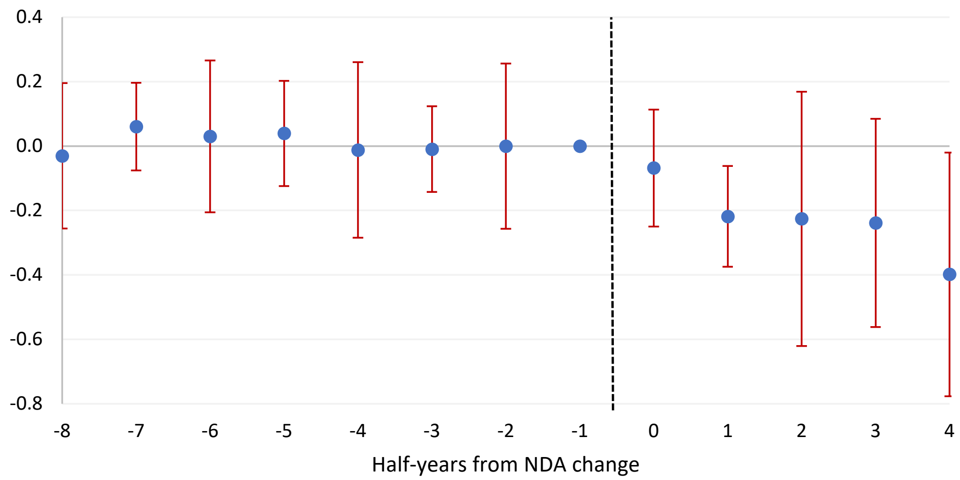
Conclusion

While narrow NDAs have legitimate purposes like protecting trade secrets, our results suggest that allowing employers to use NDAs to prevent workers from speaking honestly about their work experiences offers little to no economic benefit to society. Indeed, it makes the job market more inefficient by restricting the flow of information about job quality and concealing bad behavior.

Some argue that broad NDAs are justified because workers receive compensation for signing them. In some high-stakes settlement or severance arrangements (again, not the

Our results suggest that broad NDAs prevent workers from sharing their bad—but not their good—experiences at work.

Figure 4 Industrywide Turnover



NOTE: The dependent variable is the rate at which stable jobs begin and end by industry-state-half-year from the Quarterly Workforce Indicators. The sample period is 2015–2021 and point estimates are relative to the calendar half-year before the legislation goes into effect. Standard errors are two-way clustered by industry and state. Industry-state-half years are weighted by average employment. Red vertical bars indicate 95% confidence intervals around each point estimate.

SOURCE: Authors' calculations.

focus of the laws we study), this may be true—though many later regret giving up their voice. But when required to sign an NDA as a condition of hire, workers receive little, if any, compensation—at least in the form of higher salaries (Balasubramanian, Starr, and Yamaguchi 2022).

Some may also be concerned that these laws give workers an opportunity to make up harmful untruths about a company. This is unlikely to be the case. We already have laws related to defamation (e.g., libel, slander), which are unchanged over this time period. Moreover, the laws themselves explicitly or implicitly refer to "truthful statements or disclosures."

For too long, harm has thrived in the silence from overly broad NDAs. California, New Jersey, and Illinois have led the way in changing that situation. Building on this moment, Congress has recently passed the Speak Out Act, which prohibits firms from using broad NDAs signed as a condition of employment to conceal claims of sexual harassment. Our study suggests this is an important step toward improving labor markets. However, sexual harassment is just one form of unlawful conduct; our study suggests there is value in enabling workers to speak out about all sorts of misconduct in the workplace, which benefits both job seekers and employers with better employment practices.

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