
2-2-2023

How Do Broad Non-Disclosure Agreements Affect Labor Markets?

Jason Sockin

U.S. Treasury Department, jsockin@sas.upenn.edu

Aaron Sojourner

W.E. Upjohn Institute for Employment Research, sojourner@upjohn.org

Evan Starr

Robert H. Smith School of Business at the University of Maryland, estarr@umd.edu

Upjohn Author(s) ORCID Identifier:

 <https://orcid.org/0000-0001-6839-2512>

Follow this and additional works at: https://research.upjohn.org/empl_research



Part of the [Labor Economics Commons](#)

Citation

Sockin, Jason, Aaron Sojourner, and Evan Starr. 2023. "How Do Broad Non-Disclosure Agreements Affect Labor Markets?" *Employment Research* 30(1): 4-7. [https://doi.org/10.17848/1075-8445.30\(1\)-2](https://doi.org/10.17848/1075-8445.30(1)-2)

This title is brought to you by the Upjohn Institute. For more information, please contact repository@upjohn.org.

State Tax Strategies to Reduce Care Costs

Havnes, Tarjei, and Magne Mogstad. 2011. "Subsidized Child Care and Children's Long-Run Outcomes." *American Economic Journal: Economic Policy* 3(2): 97–129.

Herbst, Chris M. 2018. "The Rising Cost of Child Care in the United States: A Reassessment of the Evidence." *Economics of Education Review* 64: 13–30.

Michalopoulos, Charles, Philip K. Robins, and Irwin Garfinkel. 1992. "A Structural Model of Labor Supply and Child Care Demand." *Journal of Human Resources* 27(1): 166–203.

Miller, Benjamin M., and Kevin J. Mumford. 2015. "The Salience of Complex Tax Changes: Evidence from the Child and Dependent Care Credit Expansion." *National Tax Journal* 68(3): 477–510.

Pepin, Gabrielle. 2020. "The Effects of Child Care Subsidies on Paid Child Care Participation and Labor Market Outcomes: Evidence from the Child and Dependent Care Credit." Upjohn Institute Working Paper No. 20-311. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

This article is part of a report from the Upjohn Institute's "Promise: Investing in Community" initiative, which offers strategies to create good jobs and guidance for local and state policymakers to implement them. The report, [Bridging Research and Practice to Achieve Community Prosperity](#), features short articles demonstrating key takeaways from research and practice on each of these themes. Focusing on economic and workforce development, it showcases how state governments can do more to help their distressed places, highlighting the role of neighborhood employment hubs that bring job assistance directly to residents.

Gabrielle Pepin is an economist at the Upjohn Institute.

How Do Broad Non-Disclosure Agreements Affect Labor Markets?

Jason Sockin, Aaron Sojourner, and Evan Starr

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 three outcomes:

- 1) public measures of firms' reputation
- 2) the ability of competing employers to differentiate themselves within the market
- 3) labor market sorting of workers across firms

Using data drawn from worker reviews of employers on Glassdoor,

ARTICLE 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.

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.

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 Restricting NDAs Affects Firm Reputation

We ask whether 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

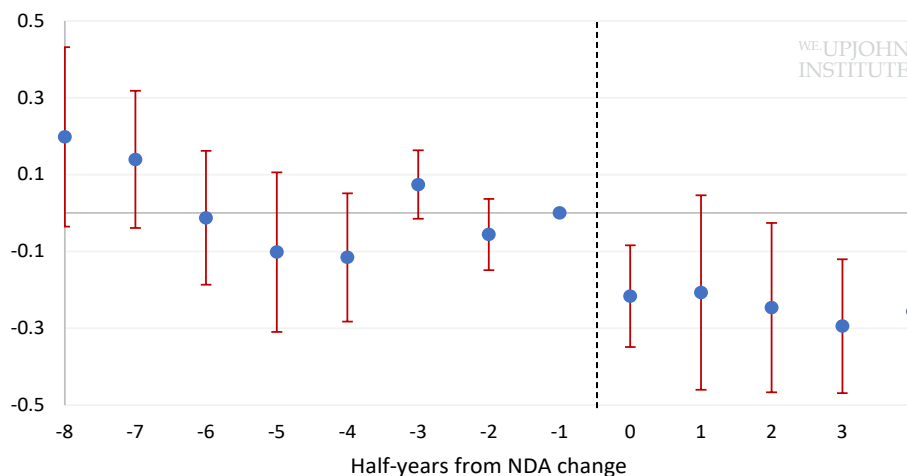
Indeed, management increasingly requires workers to sign broad NDAs as a condition of employment, with the express goal of limiting employees from sharing negative information about the employer, even on supposedly anonymous websites like Glassdoor.

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 1). These decreases are driven by more one-, two-, and three-star 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 2) or the interquartile range (Panel B). High-road employers thus became better able to distinguish themselves from those with low-road practices.

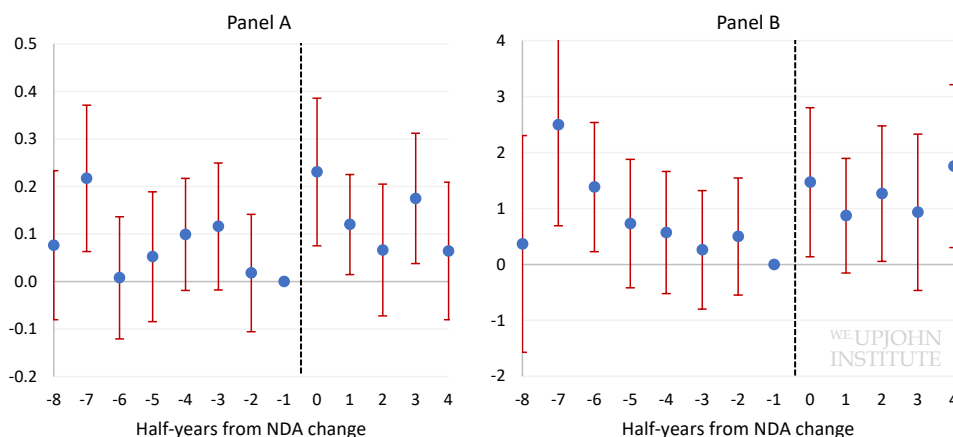
Figure 1 Overall Star Rating



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.

Figure 2 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.

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.

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.

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 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

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, 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

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.

References

Balasubramanian, Natarajan, Evan Starr, and Shotaro Yamaguchi. 2022. “Bundling Employment Restrictions and Value Appropriation from Employees.” SSRN Working Paper. <https://dx.doi.org/10.2139/ssrn.3814403>.

Hoffman, David, and Erik Lampmann. 2019. “Hushing Contracts.” *Washington University Law Review* 97(1): 165–220.

This article is based on a working paper, which can be found at <https://dx.doi.org/10.2139/ssrn.3900285>. This article does not represent the views of the U.S. Treasury Department.

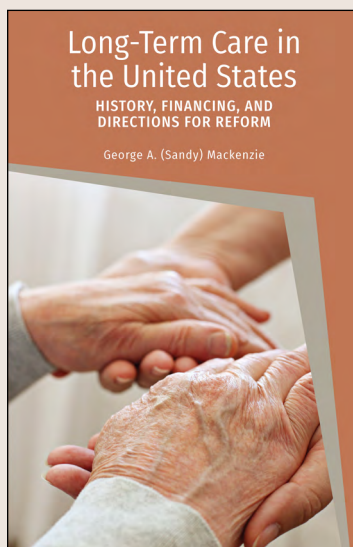
Jason Sockin is an economist at the U.S. Treasury Department, Aaron Sojourner is a senior researcher at the Upjohn Institute, and Evan Starr is an associate professor at the Robert H. Smith School of Business at the University of Maryland.

New Book from the Upjohn Press

Long-Term Care in the United States History, Financing, and Directions for Reform

NEW!

George A. (Sandy) Mackenzie



This new book from the Upjohn Press shows that the system for providing long-term care (LTC) in the U.S. has several serious weaknesses, including how it is financed and staffed, the compensation paid to providers, and the fact that family members of the elderly are compelled to provide much of the care. The author, George A. (Sandy) Mackenzie, provides an accessible look at the extent of these issues, delves into how LTC is financed in the U.S., sizes up the U.S. system compared to those in other developed nations, and discusses the impacts of the COVID-19 pandemic on older Americans in nursing homes and other care facilities.

Mackenzie concludes with a chapter that establishes a benchmark for a more equitable LTC system in the U.S. Comparing the current system to this proposed benchmark, he finds several areas where the U.S. falls short. So, recognizing that legislation aimed at meeting

this benchmark would face a difficult political landscape, he offers three approaches for improving the system: a simple approach that would leave the existing Medicaid structure in place, a second that adds remuneration for unpaid relatives who provide home-based care, and a third that would comprise a complete overhaul of the U.S. system.

This book provides a much-needed framework for improving the LTC system in the U.S., especially considering the aging population and growing economic inequality. It describes how the LTC system currently operates, points out the problems in the system, and offers practical policy solutions to those problems.

2022 \$14.99 978-0-88099-0-688-4

Download this book for free at https://research.upjohn.org/up_press/270/ or call 269-343-5541 to purchase.

WE focus
series