



Guide to employment law for medical practices

Who is the guide aimed at?

This guide is aimed at private medical practices employing staff such as practice nurses and reception staff in the federal employment system.

It is not aimed at state or territory government employers (such as hospitals).

It is not intended as a guide to the employment of GP Registrars, although many of the key principles will still apply (please see the National Terms and Conditions for the Employment of Registrars ([NTCER](#)))

Some of its basic principles will apply to the employment of doctors, however most doctors in private medical practice are not employees. For more details see the AMA's Guidelines on Service

Contracts Between Doctors And Medical Practice Principals

Being an employer

Being an employer is a serious responsibility. Employees will rely on you for regular, prompt payment. They are likely to have serious financial responsibilities themselves such as rent, mortgage, etc. Most medical practitioners will require employees at some stage. These may include reception and administrative staff and/or a practice nurse. These employees will be vital to the successful running of your practice.

However, you should only take on an employee if you intend to treat them properly and abide by relevant laws. Being an employer is to some extent a 'common sense' role. In its most basic form, a person works for you and you pay them.

However, it is usually more complicated than that. You may require employees on a full time, part time or casual basis. They may want to 'job share'. They may have been at the practice, accruing entitlements when you bought it and took over. They may bring a claim against you for unpaid wages or other entitlements. They will need to take leave. They may be entitled to long service leave. Hopefully they will give you years of loyal service.

At the other extreme, they may not do a good job, or you may not get on with them and want to terminate their services. They may even be dishonest, disloyal or undermine your business. All of these things are potentially part of employing another person.

What is important is that whatever happens, you uphold your legal obligations. What you need to do legally in a given situation may not be what you feel you need to do instinctively. For example, you need to think very carefully before summarily dismissing a person (firing them 'on the spot'). You may also be influenced by the way things are done in your home country. The laws surrounding employment are likely to be very different from what you are used to if you come from overseas.



Who are you?

You may operate your business as a sole trader, partnership, company or trust, or some combination of these. You may have business partners to work with. An employer does not have to be an individual, although an employee has to be an individual. If you operate as a company or trust, for example, that entity may be the entity that employs staff in your practice. Some practices set up service companies to handle the administrative side of the business, including employing staff. Whatever your trading entity, you have responsibilities as an employer which cannot be diminished or altered due to the type of entity you use to employ staff.

The Australian industrial relations system

The Australian industrial relations system is quite complex, mostly because it is divided up into several jurisdictions. If you did your internship in a state or territory hospital, you were most likely employed under a State award and related industrial instruments.

However, if you are a private practice employer in any state other than Western Australia (see note below), you will be a national system employer, meaning that the Fair Work system, including the Fair Work Act 2009 (Cth) will apply to you, regardless of what state or territory you are in.

This also means your employees will be entitled as a minimum to the protections and conditions available to national system employees.

This starts with the National Employment Standards as a minimum 'safety net' of conditions (see below). From there, your employees will be covered by an Award (most likely the Health Professionals and Support Services Award), and possibly an individual contract as well. It is unlikely they will be covered by an Enterprise Agreement.

NOTE: For private practice in Western Australia: A State Award and/or the Minimum Conditions of Employment Act (WA) 1993 may be relevant. For further information, contact AMA(WA) telephone 08 9273 3000.

Bullying, harassment and discrimination

Bullying, harassment and discrimination are complex matters. They can be difficult to identify and define. They are unlawful in the workplace every State and Territory.

Bullying is the repeated verbal, physical, social or psychological abuse by an employer or manager, another person or group of people at work.

Workplace bullying can happen in any type of workplace, including medical practices. It may be that an employee of yours is bullied by another employee and you are not aware of it.

Workplace bullying can happen to regular permanent and casual employees, volunteers, work experience students and interns.

Some types of workplace bullying can be criminal offences including violence, assault and stalking. These may attract the attention of the police.



Some examples of bullying in the workplace:

- repeated hurtful remarks
- making fun of an employee (including their family, sex, sexuality, gender identity, race or culture, education or economic background)
- sexual harassment, including unwelcome touching and sexually explicit comments and requests that make an employee uncomfortable
- excluding an employee or stopping them from working or taking part in activities that relate to work
- 'mind games', ganging up on people, or other types of psychological harassment
- intimidation
- making an employee feel less important or undervalued
- giving an employee pointless tasks that have nothing to do with their job
- giving an employee impossible jobs that can't be done in the given time or with the resources provided
- deliberately changing work hours to make it difficult for an employee
- deliberately holding back information that employees need to do their work properly
- physical behaviour such as pushing, shoving, tripping, grabbing
- attacking or threatening with equipment or any other type of object that can be turned into a weapon
- initiation or 'hazing' where an employee is made to do humiliating or inappropriate things in order to be accepted as part of the team.

Bullying and harassment can have serious consequences. It can affect people's work and damage them psychologically. In some cases it can lead people to depression or even suicide.

Not all 'firm action' is workplace bullying

This does not mean that employees can get away with not doing their job. Reasonable management action, such as fair discipline, making it clear that a person's performance is not satisfactory, counselling an employee or directing them to do a task is not bullying or harassment, even if it is unpleasant – as long as it is necessary and done appropriately. Reprimanding an employee is not bullying, unless done in front of others. Any public reprimanding is best avoided.

If you need to counsel an employee, it is a good idea to do it when you are not 'angry'. Take a step back, calm down and think it through. Speak to the employee, and ask for explanation. If no satisfactory explanation is given, then advise the employee that this is not acceptable and make it clear that you expect the situation to improve. Make a note of the conversation. If the situation does not improve, put your position in writing to the employee. This may need to take the form of a written warning. Put your position to the employee clearly, without emotion.



For example, if an employee is arriving at work late, you can write or say something like:

'You were late this week on two occasions: On Tuesday you arrived 30 minutes late, and on Thursday you arrived 40 minutes late, both times without explanation'.

Rather than:

'You are ALWAYS late!! Is this how you live your life? What does your husband think? You need to get your life in order. Start by losing some weight!'

In the second example, it is emotion talking, not facts, and there is an element of irrelevant rambling. These things may be considered bullying or harassment.

It is good to have a witness present if you intend to have a disciplinary meeting with an employee. This protects you and the employee. You should also invite the employee to bring a support person (including their union if relevant). Keep a record of all meetings and disciplinary action.

Remember that you may come from a culture where publicly admonishing an employee is acceptable. It is rarely acceptable in Australia.

The National Employment Standards (NES)

As noted above, the National Employment Standards ('the NES') set the minimum safety net of conditions of employment for Australian workers.

The 10 minimum entitlements of the NES are:

Maximum weekly hours –

An employee can work a maximum of 38 ordinary hours in a week.

Requests for flexible working arrangements

Employees who have worked with the same employer for at least 12 months can request flexible working arrangements if they are the parent, or have responsibility for the care, of a child who is school aged or younger, are a carer, have a disability, are 55 or older, are experiencing family or domestic violence, or provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

Parental leave and related entitlements

Parental leave can be taken when an employee gives birth, or their spouse or de facto partner gives birth, or they adopt a child under 16. Parental leave entitlements include: maternity leave, paternity and partner leave, adoption leave, special maternity leave, a safe job and no safe job leave, a right to return to old job.

Employees are entitled to 12 months of unpaid parental leave. They may also request an additional 12 months of leave, and such a request can only be refused on reasonable business grounds.



) Annual leave

All employees, except for casual employees, are entitled to paid annual leave. Full-time employees get 4 weeks of annual leave, and part-time employees get 4 weeks pro rata, based on their ordinary hours of work. Shiftworkers may get up to 5 weeks of annual leave per year. Some practice employees may be shiftworkers.¹

Annual leave accumulates from the first day of employment, even if an employee is in a probation period, and accumulates gradually during the year. Any unused annual leave will roll over into the next year. Annual leave accumulates even when an employee is on paid leave including paid annual leave, personal leave, long service leave or any other form of paid leave.

Annual leave does not accumulate when the employee is on unpaid annual, sick or unpaid parental leave. The Government's Paid Parental Leave Scheme is not considered to be paid leave. An employee does not accumulate annual leave while being paid by the Paid Parental Leave Scheme.

Personal carers leave

Sick and carer's leave (also known as personal leave) lets an employee take time off to help them deal with personal illness, caring responsibilities and family emergencies. The employees entitlement to Personal Careers Leave is 10 paid days per year, and accumulates from year to year

Sick leave can be used when an employee is ill or injured or needs to take time off to care for an immediate family or household member who is sick or injured or help during a family emergency. This is known as carer's leave but it comes out of the employee's personal leave balance.

) Family and domestic violence leave

Family and domestic violence leave means: violent, threatening or abusive behaviour by an employee's close relative that seeks to coerce or control the employee or causes harm or fear. The eligible employee is entitled to 5 days unpaid leave per year.

A close relative is:

an employee's: spouse or former spouse, de facto partner or former de facto partner, child, parent, grandparent or sibling

an employee's current or former spouse or de facto partner's child, parent, grandparent

grandchild or sibling; or a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules

¹ See [Health Professionals and Support Services Award 2010](#), (HPSS Award) cl29



) Compassionate leave

All employees, including casuals, are entitled to compassionate leave, which can be taken when a member of an employee's immediate family or household dies or suffers a life-threatening illness or injury. Immediate family is an employee's:

- spouse
- de facto partner
- child
- parent
- grandparent
- grandchild
- sibling, or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

Employees will be able to take compassionate leave for other relatives (eg. cousins, aunts and uncles) if they are a member of the employee's household, or if the employer agrees to this.

Employees are entitled to 2 days compassionate leave each time an immediate family or household member dies or suffers a life threatening illness or injury. This can be taken as a single continuous 2 day period, or 2 separate periods of 1 day each, or any separate periods the employee and the employer agree to.

An employee does not accumulate compassionate leave. It can be taken any time an employee needs it. If an employee is already on another type of leave (eg. annual leave) and needs to take compassionate leave, the employee can use compassionate leave instead of the other leave.

Full-time and part-time employees receive paid compassionate leave and casual employees receive unpaid compassionate leave.

An employee taking compassionate leave must give their employer notice as soon as they can and an employer can request evidence about the reason for compassionate leave.

An award or registered agreement can include terms about the kind of evidence that an employee must provide to get compassionate leave.

Community service leave

Employees, including casual employees, can take community service leave for certain activities such as voluntary emergency management activities and jury duty. Voluntary emergency management activities are generally unpaid, but jury duty is paid.

Jury duty

An employee, other than a casual employee, has to be paid 'make-up pay' for the first 10 days of jury duty. This equates to the difference between any jury duty payment the employee receives from the court and the employee's base pay rate for the ordinary hours they would have worked.



) Voluntary Emergency Management

An employee engages in a voluntary emergency management activity if:

- the activity involves dealing with an emergency or natural disaster
- the employee engages in the activity on a voluntary basis
- the employee was either requested to engage in an activity, or it would be reasonable to expect that such a request would have been made if circumstances had permitted
- the employee is a member of, or has a member-like association with a recognised emergency management body.

A recognised emergency management body is a body that has a function for coping with emergencies or natural disasters prepared by the Commonwealth or a state or territory.

This includes bodies such as the State Emergency Service (SES), the Country Fire Authority (CFA), the RSPCA (in respect of animal rescue during emergencies).

There is no limit on the amount of community service leave an employee can take. An employee is entitled to take community service leave while they are engaged in the activity and for reasonable travel and rest time.

An employee who takes community service leave must give their employer notice of the absence as soon as possible and the expected period of absence.

) Long service leave

An employee gets long service leave after a long period of working for the same employer.

Most long service leave comes from long service leave laws in each state or territory which set out:

- how long an employee has to be working to get long service leave (eg. after 7 years)
- how much long service leave the employee gets.

In some states and territories long serving casuals are eligible for long service leave. To find out about long service leave entitlements, contact your local AMA or the long service leave agency in your state or territory:

ACT - [WorkSafe ACT](#) 

NSW - [NSW Industrial Relations](#) 

NT - [NT Government](#) 

Qld - [Queensland Industrial Relations](#) 

SA - [SafeWork SA](#) 

Tas. - [WorkSafe Tasmania](#) 

Vic. - [Business Victoria](#) 

WA - [Commerce WA](#) 



Public holidays

Public holidays can be different depending on the state or territory you work in. It's important to know when public holidays are because employees can get different entitlements on these days.

Public holidays include:

26 January - Australia Day

Good Friday

Easter Saturday

Easter Monday

25 December – Christmas Day

Employees (except casual employees) who normally work on the day a public holiday falls will be paid their base pay rate for the ordinary hours they would have worked if they had not been away because of the public holiday.

The base pay rate doesn't include:

- any incentive-based payments
- bonuses
- loadings
- monetary allowances
- overtime or
- penalty rates

An employee's roster can't be changed to deliberately avoid this payment.

Notice of termination

A notice period is the length of time that an employee or employer has to give to end employment.

To end an employee's employment (also known as firing or terminating employment), an employer has to give them written notice of their last day of employment.

An employer can give notice to the employee by:

- delivering it personally
- leaving it at the employee's last known address, or
- sending it by pre-paid post to the employee's last known address

Employees who are resigning don't need to give notice in writing - they can give it verbally. Employment can be terminated during leave, but the correct amount of notice still needs to be given.



Notice may be paid out instead of worked. An employer can either:

- let the employee work through their notice period, or
- pay it out to them (also known as pay in lieu of notice)

If the employer pays out the notice, the amount paid to the employee must equal the full amount the employee would have been paid if they worked until the end of the notice period. This includes:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime
- penalty rates
- any other separately identifiable amounts

If an employee's employment is ended while they're on probation, they still have to get or be paid out notice based on their length of service.

When an employee is terminated on the grounds of serious misconduct, the employer does not have to provide any notice of termination. However, the employer does have to pay the employee all outstanding entitlements such as payment for time worked or annual leave.

Serious misconduct is when an employee causes serious and imminent risk to the health and safety of another person or to the reputation or profits of their employer's business, or deliberately behaves in a way that is inconsistent with continuing their employment.

Examples include theft, fraud, assault, or refusing to carry out a lawful and reasonable instruction that is part of the job.

Redundancy pay

Redundancy happens when an employer either doesn't need an employee's job to be done by anyone, or becomes insolvent or bankrupt.

Redundancy can happen when a practice:

- introduces new technology (eg. the job can be done by a computer)
- slows down due to lower volume
- closes down
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens

When an employee's dismissal is a genuine redundancy the employee isn't able to make an unfair dismissal claim.

A dismissal is not a genuine redundancy if the employer:

- still needs the employee's job to be done by someone (eg. hires someone else to do the job)
- has not followed relevant requirements to consult with the employees about the redundancy under an award or registered agreement or
- could have reasonably, in the circumstances, given the employee another job within the employer's business or an associated entity.

Fair Work Information Statement



Employers have to give every new employee a copy of the Fair Work Information before, or as soon as possible after, they start their new job. The Statement provides new employees with information about their conditions of employment and has information on:

- the National Employment Standards
- right to request flexible working arrangements
- modern awards
- making agreements under the Fair Work Act
- individual flexibility arrangements
- freedom of association and workplace rights (general protections)
- termination of employment
- right of entry
- the role of the Fair Work Ombudsman and the Fair Work Commission

The Statement can be given to new employees:

- in person
- by mail
- by email
- by emailing a link to our website
- by fax

The statement is available at: <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/fair-work-information-statement>

Casual employees and the NES

Casual employees are entitled to NES entitlements relating to:

- unpaid carer's leave
- unpaid compassionate leave
- community service leave
- the Fair Work Information Statement.

In some states and territories long serving casuals are eligible for long service leave. Check with your state's long service leave authority.

Where there is an expectation of ongoing work for a casual and the casual has been employed regularly and systematically for at least 12 months, they have extra entitlements from the NES, including the right to request for flexible working arrangements and access to parental leave.

Awards

Awards are enforceable documents containing minimum terms and conditions of employment in addition to any legislated minimum terms. They cover such things as minimum pay rates, working hours, casual loading, leave and other entitlements. You must give your employees at least the pay and conditions stated in the award. Many practices pay their employees 'above award rates' to attract and retain good staff. Even if you have a separate contract of employment to engage staff, you cannot ignore awards.



It is most likely that if you employ support staff, they will be employed under the [Health Professionals and Support Services Award 2010](#).

If you employ a practice nurse, that person will be covered by the [Nurses Award 2010](#).

It should be noted that awards are subject to change and updates occur regularly. Some of them are minor, but they can impact on staff entitlements.

The relationship between an award and a contract of employment

There is nothing to stop you from having a contract of employment in place to hire employees. An award is not a contract – it is an industrial instrument. So why have a contract if there is an award?

An award will provide things like ordinary hours of work. For example, the Health Professionals and Support Services Award provides that:

The ordinary hours of work for a day worker will be worked between 7.30 am and 9.00 pm Monday to Friday and between 8.00 am and 4.30 pm on Saturday.

But that does not tell your employee when they have to work. It is merely a guide as to what are considered 'ordinary hours' in the award. Your contract of employment might then provide that the employee is engaged to work from 8.00 am to 4.00 pm Monday to Friday. In other words, your contract will fill in the specific details of what is expected of the employee. The award is a set of broad minimums that must be observed.

Calculating pay

Calculating pay is usually straightforward, but can be difficult if employees are working across a range of shifts. The Fair Work Ombudsman publishes a useful pay [calculator](#) and the [Fair Work Commission](#) publishes a full list of Awards and Agreements

Terminating an employee

There are several ways an employee's employment can be terminated. It is important to be clear on why and how this happens, and to do it properly and lawfully, or you could face legal action.

Full time, casual, permanent? – status anxiety

Although a person who does not work full time hours may be referred to as a 'part-timer', they may be permanent part time or casual. It is important to be clear on the status of employees so you know what they are entitled to under the relevant award, and what they are entitled to on termination. It can also have implications for things such as long service leave.



While a casual employee can be given flexible hours (or even no hours), a permanent part time employee 'is engaged to work less than the full-time hours of an average of 38 hours per week and ...has reasonably predictable hours of work.'² In most respects, a permanent part time employee is just like a permanent full time employee, but they work fewer hours. That means they get paid recreational and personal leave, long service leave (if they qualify) and other benefits of being permanent. They are paid a lower hourly rate than casuals.

Casual employees are paid a higher hourly rate (usually with a loading of 25%) but they get no paid leave, and usually no long service leave (but in some states they may be entitled to LSL – check with the LSL authority in your state). Their hours can be changed, increased or decreased according to the needs of your business. The minimum engagement per shift is 3 hours but they can be given no hours. Legally, it is arguable that each shift given to a casual is a separate employment contract, but that is a technical argument which it is not necessary to explore here.

Strictly speaking, casual workers do not have access to notice of termination, or pay in lieu of notice of termination. However this does not mean casuals are completely expendable or can be abused or exploited. Casuals are still entitled to protection under the Fair Work Act. For example, casuals are entitled to 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion and unpaid community service leave.

Long term casuals, after 12 months of regular employment, where it is probable the regular employment will continue, can request flexible working arrangements and take parental leave.

Long term casuals (generally those who have served for longer than 12 months) are entitled to some protections under the Fair Work Act.

Casual workers have the right to an action for unfair dismissal if they have worked in a small business (such as most medical practices) for at least 12 months.

So if you have a casual employee who has been working regular hours for a period of more than 12 months, and has an expectation of ongoing employment it would be prudent to give them the same notice as a permanent employee to avoid an action for unfair dismissal.

Casual workers have the same right to take action for 'adverse action' and unlawful discrimination as other workers. It is unlawful to treat casuals poorly at work or terminate their employment on unlawful grounds such as discrimination.

So while there is more flexibility involved in hiring casuals, they must still be treated lawfully.

Note carefully that switching employees from permanent to casual or full time to part time without their consent or valid legal basis can be adverse action under the *Fair Work Act*.

² [HPSS Award](#) cl10.3 (a)



Example:

Jane is a receptionist at Dr Pillalot's practice. She has been with him on a full time, permanent basis for three years. She is well regarded and works hard. She is not married. She becomes pregnant and informs Dr Pillalot of the good news. Dr Pillalot grew up in a country where single mothers are frowned on. He quietly tells Jane she must leave his practice and look after her child. He tells her to go by the end of the week. He wants her out of the practice before her shame is apparent. He helpfully advises her to 'get married and try and minimise the shame she has brought upon herself.'

Fixed term contract

It is also possible to employ a person full time, part time or casual on a fixed term contract. This means you might hire them for 6 months or 12 months, or any period (normally not more than a couple of years). If you do this you should make it clear exactly what the fixed term is – that is, its starting date and finishing date. If you intend to keep the employee on after the end of the fixed term, put it clearly in writing what is going to happen. This causes a lot of problems in employment contracts. If you employ someone for an initial one year contract, then let them stay on without making it clear what their status is, they may argue they are now permanent. That may not be what you had in mind. It is best to make it clear in writing that they are starting a new fixed term, if that is what you intend. If you hire someone in the same job for multiple fixed term contracts over a number of years, they are likely to be able to argue that they are permanent.

Example

Samantha was hired by Jackie, the practice manager at Dr Vakseen's practice. Initially she was given a 12 month contract to work on a full time basis cover a busy period with people on leave. After the initial 12 months had expired, Samantha continued to work at the practice on a full time basis. Jackie did not update Samantha's status or contract. Jackie was happy with Samantha's work. Samantha continued to work for a further 12 months beyond her first contract. About 2 ½ years after she first started, Jackie said to Samantha: 'Sweetie, I'm going to morning tea. By the way, your contract will end next week. It has been nice working with you. I am bringing back a cake to farewell you!'

Using temporary staff – labour hire firms

Labour hire firms can provide short-term relief staff (such as the 'office temp') or ongoing outsourcing of work, without the practice actually employing a person. When you use an agency, your contract is with the agency. You are not the employing entity.

If you are satisfied with the work of someone who comes to you via labour hire firm, and you decide to offer them a job, you usually will have to negotiate with the labour hire firm, which will impose a fee.



But you must realise that there are potentially serious consequences where an employer-employee relationship is found to arise when you hire someone through a labour hire firm. As well as making your practice accountable for employment-related benefits and protections, if your practice is found to be the person's employer, certain risks and liabilities shift to you. Some businesses have also been heavily penalised for engaging in 'sham contracting' where they have misrepresented the nature of the relationship, claiming it to be a labour contracting arrangement when it is not.

The courts have held that labour hire workers are employees of the host business, because a direct or implied contract was found to exist between the business and the labour hire workers. This can be because of a pre-existing relationship, a documented intent to create legal relations directly, or a lack of genuine independence in the enterprise of the labour hire entity.

You need to ensure that your use of labour hire workers is consistent with a genuine labour hire arrangement, and does not create a direct contractual relationship with the worker.

Enter into commercial arm's length arrangements with labour hire firms which also supply services to other entities in the industry. It is risky to create your own labour hire firm to hire employees to yourself.

The decision whether to employ a particular worker should be made by the labour hire firm, not you.

Language used by your practice should be consistent with labour hire arrangements. Request for workers for 'assignments' is appropriate. Avoid references to 'a position or role'.

Pay should be generally negotiated directly between the labour hire firm and the worker. You do not need to know anything other than the rates you are paying the labour hire firm.

Leave requests and arrangements should be administered directly by the labour hire firm.

Any rewards, warnings or discipline should generally be handled by the labour hire firm. You can directly supervise the work of labour hire workers and give feedback on their performance but ultimately you should report on the worker's overall performance to the labour hire firm.

Communication about the work and ongoing employment should remain matters for the labour hire firm. You may decide that a worker is no longer required, but generally you should not consult with the worker about this issue.

It should be noted that employers (and other persons conducting a business or undertaking) have work health and safety obligations to persons other than employees (including labour hire employees). This means your duty to create a safe workplace extends equally to those on labour hire contracts.



Case note

[FP Group Pty Ltd v Tooheys Pty Ltd \[2013\] FWCFB 9605](#)

Labour hire workers employed by a company known as FP Group took action against Tooheys claiming that Tooheys was their employer in respect of dismissal claims . FP Group was established by Tooheys and had employed former Tooheys employees. FP Group had a contract with Tooheys to provide labour hire services to it.

The Fair Work Commission found that Tooheys' practical administration of its contract with FP Group meant there was no employer-employee relationship with the labour hire workers, despite a high degree of control over their daily work. It found that FP Group and Tooheys were not fully independent businesses.

Tooheys provided tools supervised the workers on a day-to-day basis, but Tooheys had not gone so far as to create a direct employment relationship. It was also noted that FP Group was carrying on a genuine independent business which offered services to other businesses as well as Tooheys.

Work Health and Safety (WHS)

Previously known as Occupational Health and Safety (OHS), WHS is vitally important. Basically, you must provide a safe system of work for your employees and a safe environment for employees and patients. That sounds simple enough, but it can get complicated. While medical practices may not be particularly dangerous places physically (although any workplace can be dangerous), they can be places where psychological dangers lurk...

Before 2012, health and safety laws were known as OH&S laws. Differences in the OH&S laws across the states and territories were confusing for business owners and employers.

To make the laws more consistent across Australia, in 2012 the state and territory governments agreed to develop model laws (WHS Act and Regulations), on which they could base their health and safety laws.

All states and territories have made new WHS laws based on the model laws, except for Victoria and Western Australia. This is why the Victorian and Western Australian acts and regulations still refer to OH&S (or OSH) instead of WHS.

Creating a safe work environment is crucial to your role as a business owner. Though it may cost money to implement safe practices and install safety equipment, the effect of not taking action can be severe.

As a business owner you have responsibilities regarding health and safety in your workplace. You must ensure that your business doesn't create health and safety hazards for your employees, contractors or patients.

WHS should not be viewed as a burden. It is better to deal with health and safety issues before they arise.



For assistance with WHS/OH&S requirements specific to your industry, you can contact your state or territory WHS authority for advice and kits on how to incorporate safety management into your business.

Basically, under WHS legislation you are obliged to provide:

- safe premises
- safe machinery and materials
- safe systems of work
- information, instruction, training and supervision
- a suitable working environment and facilities.

Most medical practices deal with issues such as medical waste or 'sharps' conscientiously, but they also need to address issues such as lighting, trip and fall hazards, electrical hazards and psychological hazards, to name a few. It is not possible to provide an exhaustive list. If an employee raises a WHS issue, you should take it seriously and address it promptly.

Complying with these duties can prevent you from being prosecuted and fined, and help you to retain skilled staff.

WHS authorities in each state and territory and Safe Work Australia have responsibilities for enforcing the WHS legislation. They provide education, training and advice on health and safety at work. You can get information about your workplace health and safety obligations and other valuable WHS/OH&S resources both in hard copy and online from their websites.

Please note that legal obligations of employers vary according to circumstances. You may wish to seek independent legal advice on what is applicable to your situation.

Example

Dr Givadam runs a practice in a small shopping centre. One morning the fire alarms went off. It seems the local take away shop had burnt some food. A lot of smoke was created and everyone was directed to evacuate the centre by the nearest exit. Shelley, Dr Givadam's receptionist, was out the back making a cup of tea when the alarm went off. She tried to open the back door clearly marked 'Fire Door' but it was locked and bolted shut from the inside. Dr Givadam did this to prevent break-ins.

Employment records

Keeping proper records of your employees is very important for the purposes of the Fair Work Act 2009 and other obligations, such as Taxation.

For the purposes of the Fair Work Act, employee records must:

- be in a form that is readily accessible to a Fair Work Inspector
- be in a legible form and in English (preferably in plain, simple English)
- be kept for seven years
- not be altered unless for the purposes of correcting an error
- not be false or misleading to the employer's knowledge



Confidentiality

Employee records are private and confidential. Generally, no one can access them other than the employee, their employer, and relevant payroll staff.

However, Fair Work Inspectors and organisation officials (such as a trade union) may access employee records (including personal information) to determine if there has been a contravention of relevant Commonwealth workplace laws.

Information that must be made and kept in employee records

A range of information must be made and kept for each employee as prescribed by the *Fair Work Act 2009* and *Fair Work Regulations 2009*.

General employment records must include all of the following:

- the employer's name
- the employer's Australian Business Number (ABN) (if any)
- the employee's name
- the employee's commencement date
- the basis of the employee's employment (full or part-time and permanent, temporary or casual).

Pay records must include all of the following:

- the rate of pay paid to the employee
- the gross and net amounts paid and any deductions from the gross amount
- the details of any incentive-based payment, bonus, loading, penalty rate, or other monetary allowance or separately identifiable entitlement paid.

Records of hours worked by employees should include the following:

In the case of a casual or irregular part-time employee who is guaranteed a pay rate set by reference to time worked, a record of the hours worked by that employee
For any other type of employee, the record must specify the number of overtime hours worked each day, or when the employee started and finished working overtime hours (but only if a penalty rate or loading must be paid for overtime hours actually worked)

A copy of the written agreement if the employer and employee have agreed to the employee taking time off instead of being paid for overtime worked

A copy of the written agreement if the employer and employee have agreed to an averaging of the employee's work hours.

If an employee is entitled to leave, the record must include both:

- leave taken, if any
- the balance of the employee's entitlement to that leave from time to time.

Superannuation records must include all of the following:

- the amount of the contributions made
- the dates on which each contribution was made
- the period over which the contributions were made
- the name of any fund to which a contribution was made
- the basis on which the employer became liable to make the contribution, including a record of any election made by the employee (including the date) to have their superannuation contributions paid into a particular fund.



Where the employment has been terminated, the records must state:
whether the employment was terminated by consent, by notice, summarily, or in some other manner (specifying that manner)
the name of the person who terminated the employment.

Pay slips must be issued to each employee:
within one working day of pay day, even if an employee is on leave
in electronic form or hard copy.

It is best practice for pay slips to be written in plain and simple English.
Pay slips must contain details of the payments, deductions, and superannuation contributions for each pay period and must include all of the following:

- the employer's name
- the employer's ABN (if any)
- the employee's name
- the date of payment
- the pay period
- the gross and net amount of payment
- any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates, or other separately identifiable entitlement paid.

Where relevant, a pay slip must include:

If the employee is paid an hourly pay rate, the ordinary hourly pay rate and the number of hours worked at that rate and the amount of payment made at that rate

If the employee is paid an annual rate of pay (salary), the rate as at the last day in the pay period

Any deductions made, including the name, or the name and number, of the fund or the account of each deduction

If the employer is required to make superannuation contributions for the benefit of the employee:

- o the amount of each contribution the employer made or is required to make during the pay period
- o the name, or name and number, of any superannuation fund into which the contributions were made or will be made.

What if I make a mistake?

If you make an error, such as underpaying a staff member, you need to deal with it as promptly as possible. Minor mistakes can simply be dealt with in the next pay run.

It is best to document the error and communicate your intention to correct it in writing to the staff member concerned. Heavy fines may apply for mistakes, but in the case of honest mistakes, dealt with quickly, normally simple back payment will suffice.



If you feel you can correct a mistake by informing your employee and providing appropriate back-pay or making up lost conditions to them, you should do this. However, if a serious, long term error has occurred you may wish to seek independent advice in relation to it.

Ready to employ someone?

Make sure new employees know their:

- employment status
- full-time, part-time or casual
- permanent or fixed term contract
- classification level
- hours of work
- pay rate

The Fair Work Ombudsman provides template letters of engagement [here](#)

[Contact](#) your State or Territory AMA for advice and assistance (see “States” section on AMA home page tool bar)
