

# Employee vs Contractor: Legal Distinctions



Reading time:  
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How you are employed, or self-employed, affects your Ahpra registration indemnity requirements as well as the cost of any indemnity insurance (eg MIPS membership) you purchase.

Be clear about whether you are an employee (typically indemnified by your employer) or a contractor (typically require their own medical/dental indemnity insurance).

## Why is this important:

- **Clarification of potential civil liability** – Hospitals and other employers are vicariously responsible for the acts or omissions of their employees acting in accordance with their employment role. Hospitals normally carry insurance to cover claims for medical negligence and are insured for this civil liability. Always confirm this arrangement in writing. If you are an independent contractor however, you probably bear your own responsibility and require private practice medical or dental indemnity insurance.
- **Ahpra require appropriate professional indemnity insurance arrangements to be in place** – You must be appropriately insured or indemnified for each context in which you practice (employment or contractual). A declaration confirming your insurance or indemnity arrangement is required at each renewal of registration and is subject to audit by Ahpra.
- **Clarification of your superannuation, taxes, leave and holiday entitlements and remuneration.**

Failure to understand your employment and indemnity arrangements may expose you to personal liability and Ahpra action, so it pays to get this right from the start.

## Is employer indemnity enough?

Even if your employer provides indemnity, you should consider whether membership with a medical defence organisation (eg MIPS) would provide you with added protection for matters such as:

- Complaints to Ahpra or your State healthcare complaints entity
- Medicare, Drugs & Poisons and other healthcare investigations
- Disputes or employer issues with your employer or hospital
- Assistance or legal representation for coronial inquests.

## Contracts

When signing a contract make sure you understand clauses relating to indemnity, insurance and or restraints. Ask yourself the following:

- Are you being asked to accept liability for matters not under your control?
- Are you being asked to provide insurance cover beyond your own medical indemnity, such as for public liability or workers compensation?
- Are restrictions being put on your ability to practice and where, after the conclusion of the contract?
- Before accepting these contracts, obtain adequate expert advice on the contract from your industry association, solicitor or medical defence organisation to ensure a full understanding.

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