

# Vicarious Liability in Hospital Employment



Reading time:  
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Are you concerned about your cover when working outside of standard hours?

In general terms employers; such as Australian hospitals, by law are vicariously liable for their employees. Vicarious liability refers to a situation where a superior is responsible for the acts of their subordinate. In the case of hospital doctors this means the hospital has a responsibility for the healthcare services their employee doctors provide in the course of, and in accordance with, their employed role.

If you are conducting healthcare services on behalf of your hospital outside of standard hours (eg overtime) this vicarious liability still applies provided your work is within the normal scope of your duties and you are not disobeying a direct order to cease work.

In the normal course of a doctor's duties there may be an expectation of work beyond standard hours. This could be in the event of a medical emergency or where there is a staff shortage etc, to which the vicarious liability of the hospital clearly applies.

Time sheets must be filled out correctly in all instances and doctors should ensure they follow their hospital's policy for work hours. Should you need to rely on a time sheet as legal evidence it would reflect poorly on you if it was falsified.

In some cases, an employer may not be vicariously liable, eg if a doctor was found to be operating outside of the scope of their duties and without required supervision.

If a hospital refused a MIPS member indemnity for an incident that occurred outside of standard hours, but where vicarious liability should apply, the member can approach MIPS for assistance to ensure the hospital fulfils its obligations.

If you have any questions relating to this area of your membership, you may contact any of MIPS' clinico-legal advisers for further clarification.

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