

# Negotiating Employment Contracts in Healthcare



Reading time:  
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MIPS has thousands of members who are employees. These are both employees who are indemnified by their employer (eg doctors/dentists working in a public hospital) and those who are required to obtain their own indemnity as a requirement of their employment in private practice.

It is critical that you understand whether your contract provides indemnity or if you are required to obtain your own indemnity. It is typical that practitioners in private practice must obtain their own indemnity such as that which is a benefit of MIPS membership.

## Negotiating a Written Contract

- They are usually not set in stone – always feel free to negotiate the terms.
- Remember the employer want to employ you for your skills and expertise
- “Read the fine print”

## Am I an Employee or Contractor?

- Rule of thumb: Are you (a) performing services as a business owner or (2) working for another person's business as a representative of that business.
- Is the contract an employment contract or a facilities agreement?
- What are the consequences? leave entitlements, superannuation, unfair dismissal, insurance, tax, GST, other.

## Modern Awards

- Many medical practitioners in private practice are award free due to coverage of the Medical Practitioners Award 2020.

## Nature of employment

- Full time or part time?
- Fixed term or ongoing?
- What are the duties? Duties statement should be included.
- Working for multiple practices

## Leave entitlements

- Fixed by the National Employment Standards, Fair Work Act 2009 (Cth)

## Hours and remuneration

- Ensure that hours and rostering arrangements in writing.
- Uncertainty creates disputes
- How many patients per hour? Administration time?

## Intellectual property

- May be important where the practice is developing a new practice/procedure/equipment.
- Usually the employer will want to secure IP rights but always subject to terms of the employment contract.

## Termination/resignation

- Minimum notice periods for termination by employer are in the Act but contract can provide for longer notice periods.
- Generally notice of resignation and notice of termination periods reflect each other.

## Employment Policies

- Policies to regulate and ensure best practice in the workplace in line with ethical and professional responsibilities.

## Post employment restraints

- To enforce a post-employment restraint, the employer must prove it has a legitimate interest and the restraint is no wider than reasonably necessary in terms of time and area.
- Employees should think ahead.
- No employment lasts forever

## Insurance/Indemnity

- Is the employee indemnified by the employer or is your own separate professional (medical) indemnity insurance required? AHPRA requires you to have an indemnity arrangement for all aspects of your practice.
- Is the employee being asked to accept wider liability for matters outside of his/her control – eg public liability or workers' compensation?
- Check coverage with your Medical Defence Organisation.

## Sale/Transfer of Business

- Get legal advice
- Transfer of entitlements is the usual outcome

There are pitfalls in employment law and we strongly recommend you take advice to ensure both compliance with relevant laws and to ensure that your rights are protected.

MIPS members can contact MIPS Professional Services for advice around contractual insurance and indemnity clauses or issues around employment disputes. You can also obtain independent counsel through a legal firm such as Moray & Agnew.

### Moray & Agnew Lawyers

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