

# Medico-Legal: Employee or Contractor?

Reading time:

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## Be clear on your status



Clarifying and understanding your employment status has a huge bearing on your indemnity requirements, the cost of indemnity, and appropriate membership category.

MIPS regularly receives enquiries from members regarding their employment status and the benefits of MIPS membership. When queried, in some cases, members are uncertain as to whether they are an employee or whether they are a contractor.

The following outlines why this is important:

- Clarification of superannuation contributions, deduction of monies for taxation, leave and holiday entitlements and remuneration.
- Clarification of potential civil liability – is your employer (whether they think they are or not) vicariously liable for you as an employee (employer indemnified)? Or are you an independent contractor who bears your own responsibility (require a private practice membership category)?
- Ahpra require appropriate professional indemnity insurance arrangements to be in place. In summary, 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.

This clarification is a requirement of Ahpra and also directs your medical indemnity insurance requirements including appropriate membership category. Failure to understand your employment and indemnity arrangements may expose you to personal liability and regulator action.

The principle of vicarious liability means that an employer may be held responsible/liable for the negligence of their employee. Hospitals and some other institutions are employers and are therefore, vicariously responsible for the acts or omissions of their staff acting in accordance with their employment role. Hospitals normally carry indemnity insurance to cover claims for negligence and public hospitals are insured through the government authority in their jurisdiction for an employee's negligence when acting in good faith, during the course of and within the scope of their employment.

In general terms MIPS employer indemnified membership category excludes matters that are the responsibility of the employer. For example, these categories will not provide indemnity for civil claims arising from work undertaken as an employee.

Without clarification of indemnity status from your employer (which may be confirmation of your independent contractor status), legal clarification after an event is likely to be lengthy, costly and distressing. Employers should provide written confirmation that

they will provide you (the employee) with appropriate indemnity in the event a civil claim for damages brought against you and or your employer as MIPS cannot provide that information.

In summary:

- Review your employment contract or agreement and ensure you have this in writing
- Understand your indemnity status. Are there any indemnity and/or insurance clauses in such agreements?
- If employed, obtain written confirmation of your 'employer indemnity'
- Maintain an appropriate membership category with MIPS.

Proof of your MIPS membership can be downloaded from My Membership. Please note the benefits of MIPS membership do not extend to providing commercial advice such as advice in relation to commercial contracts outside of areas relating to medical indemnity or liability. MIPS Member Services can only provide financial advice of a general nature only.

Contact MIPS Member Service for further information 1800 061 113 or [info@mips.com.au](mailto:info@mips.com.au)

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