

Handling Employee Contract Disputes in Healthcare

Reading time:

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A written agreement is easier to defend than a handshake. However, before signing an employment contract, you should be very clear on the key clauses relating to indemnity, insurance or restraints. It is essential that you carefully read your contract noting; the key clauses are often in the **fine print**.

The following provides some areas that may lead to a dispute. You should therefore ask yourself:

Am I an employee or a contractor?

A critical issue as it impacts the need for your own medical indemnity and possibly other insurances or indemnities. It determines entitlements such as superannuation, leave and workers compensation insurance.

Is my role and its responsibilities clearly defined?

If all parties are clear and unequivocal about the role and responsibilities, and that is accurately reflected in the contract, there is unlikely to be any contractual misinterpretations.

Term of contract (ongoing or fixed term), remuneration, working hours and leave

All parties must be satisfied and in agreement about these very important contract terms before signing a contract. Arguing the point afterwards is likely to fail.

Use of intellectual property (mine or employer)?

Generally, an employer will own the intellectual property created by its employees in the course of their employment. Disputes about intellectual property can be very serious and costly. You need to clearly understand your position and do not deviate from that contractual obligation.

Termination and resignation?

If you do not agree with these clauses, seek to amend them before you sign the contract. Once the contract is signed, it is unlikely you will have any remedies if you then consider these conditions to be onerous or unfair.

Restrictive clauses and restraint of trade?

Be aware of any post-employment obligations such as restraint of trade/working within geographic limits. If you do not agree with them, seek to amend them before signing. For example, practitioners are often sued for breaching a contract condition setting the minimum distance of their new practice location from their past practice location.

Most employers should provide you time to consider and understand your employee contract and help with any clauses that are unclear or confusing.

Before accepting a contract, make sure that you discuss any concerning terms and conditions and attempt to resolve issues. It is important that when changes are agreed on that you have them documented in writing and dated.

Liability and other insurances

Am I being asked to accept liability for matters not under my control? Am I being asked to provide insurance cover beyond what MIPS can provide, for example for public liability or workers compensation?

Some contracts require you to provide public liability damage to premises, product liability or similar insurances. Some contracts might also require you to indemnify other parties, such as the practice entity or controlling company. MIPS does not provide this insurance or indemnity cover and members are advised to obtain independent legal advice before signing.

If the contract requires additional non-medical indemnity insurance cover, it is suggested that an insurance broker be contacted.

MIPS will not indemnify parties other than the member named on the Membership Benefits Schedule in any circumstances and it is recommended that members seek detailed advice professional from associations such as the AMA/ADA or a solicitor.

Seeking external advice

MIPS strongly encourages members to seek expert advice on work contracts from their industry association or solicitor. You are usually bound by the contract you sign and breaches of contract may result in legal proceedings against you.

Pleading ignorance in contract disputes is not a defence. Ensure you are familiar with each of the above points, retain all information of your contract and maintain an 'issues register' of any matters you considered unsatisfactory so you can address these at contract renewal time.

How can MIPS assist?

The MIPS Medical Indemnity Insurance Policy can only respond to claims arising out of the provision of healthcare to a patient, this excludes providing advice in relation to employee contracts outside of areas relating to indemnity. This would also usually exclude disputes around breach of contract; because in general terms there is usually no defence for breach of contract, it should simply not occur.

Members may approach MIPS for discretionary assistance under MIPS Protections for non-medical/clinical indemnity matters relating to professional activities that may not otherwise be covered by insurance arrangements. A request for assistance in a contract dispute will be considered in accordance with the MIPS Constitution and the law.

For example, if you were being treated unfairly, unjustly or unlawfully in relation to a contract issue, MIPS may consider assistance under MIPS Protections.

Other Resources

- You should start with your employer or principal and in-house HR department
 - Solicitor or employment law specialists
 - Professional industry associations like [AMA](#) or [ADA](#)
 - Fair Work Commission [disputes](#) page
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