

# Understanding your employment agreement



## Quick guide

- Read your proposed employment agreement carefully and ensure you understand its terms.
- If there is anything you do not understand or you do not agree with, speak with the practice and/or seek legal advice

This factsheet provides some useful information about the clauses that are typically included in private sector employment agreements with practitioners and support staff.

The purpose of this factsheet is to help you understand the terms and conditions of your employment agreement and to give you a brief explanation of the key terms and conditions that may be included in

your employment agreement. It will also provide you some guidance on clauses that may be missing from your employment agreement.

You should read any proposed agreement carefully and ensure that you understand its terms. If there is anything that you do not understand or you do not agree with, you should speak with your employer before signing the agreement or seek legal advice.

For more information or immediate medico-legal advice, call us on **1800 128 268**, 24/7 in emergencies. [avant.org.au/mlas](http://avant.org.au/mlas)



[avant.org.au/avant-learning-centre](http://avant.org.au/avant-learning-centre)

Employment Agreement	
Terms	<p>The terms of an employment agreement may be contained in an agreement, a contract, a deed or a letter.</p> <p>Some terms of an employment agreement may be verbal (i.e. agreed orally but not written down) or implied (for example, every employment agreement has an implied term that the employer will take steps to ensure the employee's health and safety at work). It is best for you and your employer that the key terms and conditions are in writing.</p>
Award application	<p>A modern award will regulate the minimum terms of employment of support staff and may regulate the employment of practitioners. An employment agreement must not be less favourable than the award and can, and often will, provide more beneficial terms than the award.</p>
Parties to the agreement	<p>There are two parties to an employment agreement:</p> <ul style="list-style-type: none"> <li>• the employer</li> <li>• the employee (who must be an individual).</li> </ul>
Employer name	<p>Your employment agreement should have one named employer.</p> <p>Your employment agreement should state the name of the legal entity that is the employer. The legal entity may be an individual, a company, partnership or joint venture. A trust, a business name or a practice name is not a legal entity and cannot be a party to an agreement. For example, if you work for the City Medical Practice which is owned by Smith Pty Ltd, your agreement should be with Smith Pty Ltd not City Medical Practice.</p> <p>Your employment agreement should state the ABN of your employer.</p>
Employee name	<p>An employee must be an individual (i.e. you).</p> <p>Your full name should be included in the agreement.</p>
Position	<p>Your employment agreement should state the position in which you are employed. It may say that your position title can be changed or you can be employed in another position for which you have the necessary skills and experience.</p>
Location	<p>Your employment agreement should state the location from which you will perform your work, including whether work can be performed from your home e.g. using telehealth or remote office work.</p> <p>This may be a single location or may be multiple locations (for example, 'all practices operated by Smith Pty Ltd' or '12 Smith Street and any other location to which the practice relocates').</p> <p>Your employment agreement could require you to travel (for example, to other practices or nursing homes) and may require you to relocate if the practice moves to a new location within a reasonable distance.</p>
Reporting arrangements	<p>Your employment agreement should state the person or position that you will report to. It will likely say that your reporting arrangements can be changed by your employer.</p>
Your duties and obligations	<p>Your employment agreement will set out your duties and obligations.</p> <p>It is common for an employment agreement to include a position description, which sets out the expected duties to be performed.</p>
Commencement date	<p>Your employment agreement should state the date on which it will commence. This should be after the date you sign the agreement.</p> <p>Your employment agreement may say that it will commence when a certain event occurs such as, obtaining a Medicare provider number or providing CPD information.</p>
Hours of work	<p>Your employment agreement should state the hours that you are expected to work. If you are full-time, this will generally be 38 hours per week. You may be required to work reasonable additional hours also.</p> <p>It is possible that the practice hours may vary in the future (for example, the practice may start to open on weekends or after 5pm). Your employment agreement may require you to work such extended hours in the future.</p> <p>If you are covered by an award, you should ensure that the "Hours of Work" clause complies with the award.</p>
Leave	<p>An employee (other than a casual employee) is entitled to be paid annual leave, personal / carer's leave and other forms of leave in accordance with the <i>Fair Work Act 2009</i> (Cth).</p> <p>An employee is entitled to long service leave in accordance with relevant state or territory legislation.</p> <p>A part-time employee is entitled to leave on a pro-rata basis.</p>
Type of employment	<p>Your agreement should state whether you are employed as a full-time, part-time or casual employee.</p>
Period of engagement	<p>The term of your employment agreement may be:</p> <ul style="list-style-type: none"> <li>• ongoing (i.e. your employment agreement will end if you resign or your employer dismisses you)</li> <li>• fixed term (i.e. your employment agreement will automatically end on the specified end date – it cannot be terminated by either party before this date. If your employment agreement is terminated before this date, the other party may be able to commence a breach of contract claim seeking damages for the loss the party has suffered, for example having to employ someone else to do the work).</li> <li>• maximum term (i.e. your employment agreement will automatically end on the specified end date – but either party can terminate with notice before that date).</li> </ul> <p>If your employment agreement is a fixed term or maximum term agreement, it is important that the commencement date and end date are clearly stated.</p>

Clause	Employment Agreement
Probationary period	<p>A probationary period is no longer necessary.</p> <p>Under the <i>Fair Work Act 2009</i> (Cth), you cannot make an unfair dismissal claim during the 'minimum employment period' (which is six months if your employer has 15 or more employees and 12 months if your employer has less than 15 employees).</p>
Remuneration	<p>Your employment agreement should set out:</p> <ul style="list-style-type: none"> <li>• how much you will be paid (e.g. an hourly rate, an annual salary or, if you are a practitioner, a percentage of billings)</li> <li>• how you will be paid (e.g. by EFT into your bank account)</li> <li>• when you will be paid (e.g. fortnightly).</li> </ul> <p>Your agreement should also set out, in sufficient detail, your entitlement to additional remuneration such as bonuses and superannuation.</p> <p>If you are a practitioner,</p> <ul style="list-style-type: none"> <li>• many practices will pay on the basis of 'receipted billings' (i.e. money that is actually received by the practice from Medicare and other sources) rather than amounts that are billed. You may wish to clarify with your practice how it calculates billings.</li> <li>• It is helpful for your employment agreement to specify whether you are entitled to a share of incentive payments paid to the practice (for example SIPs and PIPs).</li> </ul>
Medicare	<p>Practitioners with a provider number are personally responsible for all amounts billed against their Medicare provider number. You should ensure that invoicing is done correctly even if you are paid an annual salary and not a percentage of billings.</p> <p>It is common for an employment agreement to require you to assign all Medicare payments to your employer and for those Medicare payments to be deposited into the practice's bank account.</p> <p>If you are a practitioner, your employer will distribute payments to you in accordance with the remuneration requirements in your agreement.</p> <p>Your practice should provide billing sheets on a daily basis (or within another agreed timeframe) so you can assess whether your billings are correct. The practice may do this by giving you a hard copy of the information or by giving you access to the information on the system.</p> <p>We recommend that you carefully review your daily billing sheets as you are ultimately responsible for their accuracy.</p>
Taxation	<p>Your employer is obliged to withhold income tax from all payments made to you. No GST is payable.</p>
Invoicing	<p>You are not required to provide an invoice for the work that you have performed.</p> <p>Your employer is required to provide a pay slip to you setting out your pay and other entitlements (such as leave balances).</p>
Policies and procedures	<p>Your employment agreement will generally require you to comply with practice policies and procedures and other documents (such as the Medical Board's <i>Good Medical Practice: A code of conduct for doctors in Australia</i>).</p> <p>You should ensure that you have read and understand those policies and procedures. You can ask your employer to provide a copy of the policies, procedures and other documents to you.</p> <p>You should keep up to date with the policies as they may be amended from time to time.</p>
Room allocation	<p>You do not have a right to an allocated room or location in the hospital/practice unless your employment agreement provides for it.</p>
Restrictions on your ability to practise	<p>It is sensible to disclose any restrictions on your ability to practise upfront so that suitable arrangements can be made.</p> <p>Restrictions may include such things as:</p> <ul style="list-style-type: none"> <li>• competency levels</li> <li>• conditions on your Ahpra registration</li> <li>• supervision requirements</li> <li>• medical issues</li> <li>• personal belief restrictions such as refusal to write scripts for the contraceptive pill or referrals for pregnancy terminations.</li> </ul>
Termination	<p>If your employment agreement is for a fixed term or maximum term, your employment will automatically come to an end at the end of the term. You can only resign in accordance with the terms of the agreement.</p> <p>If your employment is ongoing, the minimum notice that your employer can give to dismiss you is set out in the <i>Fair Work Act 2009</i> (Cth). The period of notice depends on your length of service and age.</p> <p>An agreement will typically set out the period of notice and grounds on which the agreement can be terminated. This should specifically include where either you or your employer are the party proposing to terminate the agreement. Your employer can dismiss you without notice if you have engaged in serious misconduct.</p> <p>The <i>Fair Work Act 2009</i> (Cth) does not specify a minimum period of notice for you to give on resignation.</p>
Return of property	<p>Your employment agreement will generally require you to return property belonging to your employer at the end of your employment and when required during your employment.</p>

Clause	Employment Agreement
Confidential information	<p>Your employment agreement will prevent you from using or disclosing confidential information for purposes that are not related to your employment.</p> <p>Confidential information will generally include patient contact information and patient medical records. Patient information is owned by the practice and you will not be able to use it after you leave the practice.</p>
Intellectual property	<p>The law about intellectual property is complex.</p> <p>Your employer will generally own any intellectual property that you create using your employer's time and resources. This may include intellectual property that you create in your private life if there is a connection to your employment.</p> <p>If you create intellectual property in your private life, you should seek specific advice about your right to retain ownership of the intellectual property.</p> <p>In some cases, you might have conflicting intellectual property obligations (for example, to a university that employs you as an academic and an employer that engages you to undertake clinical work). You need to carefully manage any potential conflict.</p>
Moral rights	<p>There is legislation which protects your 'moral rights' in work that you have created. Your moral rights are your rights to ensure that:</p> <ul style="list-style-type: none"> <li>• no-one can alter your work in a derogatory way;</li> <li>• your name is associated with your work; and</li> <li>• no-one else's name is associated with your work.</li> </ul> <p>Your employment agreement may require you to agree to the 'infringement' of your moral rights. This means that you cannot assert the rights set out above, and is common in employment relationships.</p>
Restraint of trade	Please see our Restraint of Trade fact sheet.
Medical records	<p>Your employment agreement will typically say that your employer owns the medical records.</p> <p>If your employer owns the medical records, you should ask for your employment agreement to include a right for you to obtain a complete copy of any patient records if a complaint, claim or disciplinary or other process is commenced against you to assist you in responding to such claim, complaint or process.</p>
Insurance	If you are a practitioner, your employment agreement will typically require you to hold medical indemnity insurance. You can contact Avant member services on 1800 128 268 to discuss your policy coverage.
Indemnity	<p>Your employer will generally be vicariously liable for your conduct as an employee. Accordingly, your employment agreement should not include an indemnity clause.</p> <p>Please see out Indemnity Clauses factsheet.</p>
Entire agreement	<p>Your employment agreement may include a clause that says that the words contained in the written agreement are the entire agreement between the parties.</p> <p>You will not be able to rely on any verbal representations that have been made to you unless they are included in the written agreement.</p>
Variation	Your employment agreement may include a clause that says that the agreement can only be varied in writing.