

Employment Contracts



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AGENDA



- Legal Framework
- Employee Entitlements
- Types of Employment Contracts
- Key Terms in Employment Contracts
- Other Agreements – What is not an Employment Agreement?



Legal Framework

Employee Entitlements



Fair Work Act 2009 (Cth)
NES

Modern Award
Enterprise Agreement

Employment Contracts

Employee Entitlements - NES

- Annual leave
- Personal/Carers leave
- Long Service Leave
- Compassionate leave
- Payment for absence on a public holiday
- National minimum rates of pay
- Flexible working requests
- Unpaid parental leave
- Notice of termination (except casuals)
- Family and domestic violence leave



The Health Professionals & Support Services Award 2010

- This modern awards applies to all national system employers across Australia
- ...with the exception of unincorporated employers (e.g. sole traders & partnerships) in Western Australia who remain under their State industrial relations system & state awards.
- HPSS Award covers support staff
- Dentist classified as "award free"
- As a result, the employment contract is vital for employee dentists!



What is an 'Award'?

An award (along with the NES) is a legal document that sets out minimum wages and conditions for an industry or occupation covering entitlements such as:

- hours of work
- pay rates
- loading/penalty rates
- allowances
- leave entitlements
- transitional provisions
- fulltime, part-time or casual work provisions
- employment protection provisions

Modern awards cover all national system employees



Modern Engagement Structures

1. Employment

- Permanent (Full-time & Part-time)
- Casual
- Fixed Term or Maximum Term.

2. Contract for Services

- Independent Contractors
- Services and Facilities Agreement (SFA)

Full-time and Part-time Employment

Full-time

- Average of 38 hours per week (plus reasonable additional overtime)
- 4 weeks of annual leave
- 10 days of personal/carers leave
- Notice of termination in accordance with NES

Part-time

- Less than 38 hours a week on a regular and predictable basis
- Annual leave and personal/carers leave on a **pro-rata basis**
- Notice of termination in accordance with NES



Casual

- Engaged on an ad-hoc basis → flexibility
- Hours of work will vary from week to week.
- No guarantee of work/shifts
- Do not receive any paid leave, notice of termination and do not have access to redundancy pay set out under the Fair Work Act.
- Paid a **25% casual loading** in lieu of not receiving these benefits.



Fixed Term and Maximum Term

- Engagement for a set period of time (e.g. 12 month contract)
- Employment relationship naturally ends at the end of the term/period.
- **Fixed term** - Does not allow either party to terminate the contract before the term expires.
- **Maximum term** – early termination clause.





Key Terms in Employment Contracts

Probationary Period



- Period of time that allows a practice to review the employee's performance
- Typically 3 or 6 months.
- A probationary period in a contract of employment does not alter an employee's Minimum Employment Period for the purposes of bringing an unfair dismissal claim.
- Employees in probation still accrue paid leave entitlements (e.g. annual leave)
- Entitled to notice of termination (at least 1 week under NES)

Remuneration Clause



- Sets out what employees will be getting paid for the work performed at the practice.
- Whether the employee is paid an hourly rate of pay, a salary, or a base salary and commission structure.
- Entitlements and penalties must be set out.
- For casuals - 25% casual loading.

Commission Only Structures



Under this arrangement an employee is typically paid a retainer (such as a base hourly rate) plus commission payments based on the amount generated, less lab fees and GST.

Commission percentages can range – may depend on level of experience or patient demand

Commission only? – Remember entitlements under the NES still apply!



Notice of Termination



- Only applicable to permanent employment contracts
- Often reflects the statutory minimum requirements under the Act.
- Under the Act the amount of notice depends on an employees length of continuous service. E.g. less than a year → 1 week
- The notice period under the contract will not be enforceable where it is less that the time prescribed by the Act.
- Contract may specify a period of notice higher than the NES, e.g. 4 weeks outside of probation

Post-Employment Restraints

Non-poaching – Prohibits an employee from enticing other employees or contractors of the practice to move away from the practice after the employees.

Non-solicitation – Prohibits an employee from soliciting patients away from the practice after their employment has ended.

Non-competition – Seeks to restrain employees from working for a competitor for a specified time within a specified area after their employment has ended.

Other terms in Employment Contracts

- Requirement to follow the practices policies and procedures
- Your hours of work
- Confidential Information
- Workplace Surveillance (video, tracking, computer and IT systems)

Need assistance with interpreting an Employment Contract?

ADA HR Advisory Service – Contract Review!

If you want advice or assistance on understanding a particular term of a contract you can the **HR Advisory Service**, or send a copy of your contract and your specific questions to hrhotline@ada.org.au.





What is not an
employment
contract?

Employee v
Contractor

Independent Contractors

Person who runs their own business and provides services to a practice.

No employment relationship

=

No leave entitlements, no notice of termination, or public holidays.



Employee v Contractor?



- Written terms of a contract are not determinative.
- Totality of the relationship will be reviewed
- Multi-factor test
- Ultimate question – whether the contractor carries on a business on his/her own behalf.
- The right to exercise control – e.g. over the manner of work, hours and days, and absences

Sham contracting - When an employer wrongfully disguises an employment relationship as an independent contracting arrangement. Offence under the Fair Work Act.

Services and Facilities Agreements



- Engagement of a dentist under a Services and Facilities Agreement (SFA).
- The practice is the 'Facilities Provider' and the dentist is using their facilities for a fee.
- Viewed as an separate business entity by the ATO.



Questions?



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Thank
you