

Employment agreement

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

The purpose of this factsheet is to help you understand the terms and conditions of your employment agreement and will give you a brief explanation of the key terms and conditions, that may be included in your agreement. It will also provide you some guidance on clauses that may be missing from your agreement.

Clause	Employment agreement
Terms of agreement	<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).</p>
Parties to the agreement	<p>There are two parties to an employment agreement:</p> <ul style="list-style-type: none"> ▶ the employer ▶ the employee (who must be an individual).
Understanding the agreement	<p>You should read your proposed agreement carefully and ensure that you understand its terms.</p> <p>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.</p>
Employer / principal 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 business name or a practice name is not a legal entity and cannot be a party to an agreement.</p> <p>For example, if you work for the City Medical Practice which is owned by Smith Pty Ltd, your agreement would be with Smith Pty Ltd not City Medical Practice.</p> <p>Your employment agreement should state the ABN of your employer.</p>
Employee / contractor 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>The agreement should state the position in which you are employed.</p>
Location	<p>The agreement should state the location from which you will perform your 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>It should be clear about where you may be asked to work and ensure that you are comfortable working at all the locations that may be contemplated by the agreement. This could include locations that do not exist yet.</p>
Reporting arrangements	<p>Your agreement should state the person or position that you will report to.</p>
Your obligations	<p>Your 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>

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Services to be provided to you	Your employment agreement will not generally set out the services that your employer will provide to you.
Commencement date	Your agreement should state the date on which it will commence. This should be after the date you sign the agreement. Your agreement may say that it will commence when a certain event occurs such as, obtaining a Medicare provider number.
Hours of work	Your agreement will state the hours that you are expected to work. 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 agreement may require you to work such extended hours in the future.
Leave / entitlement to be absent from work	An employee (other than a casual employee) is entitled to paid annual leave, personal / carer's leave and other forms of leave in accordance with the <i>Fair Work Act 2009 (Cth)</i> . An employee is entitled to long service leave in accordance with relevant state or territory legislation. A part-time employee is entitled to leave on a pro-rata basis.
Type of employment	Your agreement should state whether you are employed as a full-time, part-time or casual employee.
Period of engagement	The term of your engagement may be: <ul style="list-style-type: none"> ▶ ongoing (i.e. your agreement will end if it is terminated by one of the parties) ▶ fixed term (i.e. until your engagement will end on the specified end date – it cannot be terminated by either party before this date. If it 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) ▶ maximum term (i.e. your engagement will end on the specified end date – but either party can terminate before that date). <p>If your agreement is a fixed term or maximum term agreement, it is important that the commencement date and end date are clearly stated.</p> <p>If you would like to be able to terminate the agreement during its term, you should ensure that you can terminate by giving notice during the term.</p>
Probationary period	A probationary period allows both parties to assess whether they wish to continue in the employment relationship. Generally, you can resign or your employer can dismiss you on less notice during a probationary period. A probationary period is generally three or six months. Under the <i>Fair Work Act 2009 (Cth)</i> , you cannot make an unfair dismissal claim during the 'minimum employment period'. This is six months for employers with more than 15 employees and 12 months for employers with less than 15 employees.
Remuneration	Your agreement should set out: <ul style="list-style-type: none"> ▶ how much you will be paid (e.g. an hourly rate, an annual salary or a percentage of billings) ▶ how you will be paid (e.g. by EFT into your bank account) ▶ when you will be paid (e.g. fortnightly). <p>Your agreement should also set out, in sufficient detail, your entitlement to additional remuneration such as bonuses and superannuation.</p> <p>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.</p> <p>It is helpful for the agreement to specify whether you are entitled to a share of incentive payments paid to the practice.</p>
Medicare	You are personally responsible for all amounts billed against your Medicare provider number. You should ensure that invoicing is done correctly. You are personally entitled to receive all payments from Medicare for services rendered under your provider number. However, 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. If you are a doctor, your employer will distribute payments to you in accordance with the remuneration requirements in your agreement. Your practice should provide to you your daily billing sheets on a daily basis (or within another agreed timeframe) so you can assess whether Medicare has been billed correctly. 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. We recommend that you carefully review your daily sheets as you are ultimately responsible for their accuracy.

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Taxation	Your employer is obliged to withhold tax from all payments made to you. No GST is payable.
Invoicing arrangements	You are not required to provide an invoice for the work that you have performed. Your employer is required to provide a pay slip to you setting out your pay and other entitlements (such as leave balances).
Policies, procedures and other documents	Your agreement will generally require you to comply with practice policies and procedures and other documents (such as <i>Good Medical Practice: A code of conduct for doctors in Australia</i>). 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. You should also keep up to date with the policies.
Room allocation	You do not have a right to an allocated room or location in the practice unless your agreement provides for it.
Restrictions on your ability to practise	It is sensible to disclose any restrictions on your ability to practise upfront so that suitable arrangements can be made. Restrictions may include such things as: <ul style="list-style-type: none"> ▶ conditions on your AHPRA registration ▶ supervision requirements ▶ medical issues ▶ personal belief restrictions such as refusal to write scripts for the contraceptive pill or referrals for pregnancy terminations.
Termination (private sector only)	If your 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. 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 (Cth)</i> . The period of notice depends on your length of service. Your employer can dismiss you without notice if you have engaged in serious misconduct. The <i>Fair Work Act 2009 (Cth)</i> does not specify a minimum period of notice for you to give on resignation. An agreement will typically set out the period of notice and grounds on which the agreement can be terminated. The period of notice must not be less than that set out in the <i>Fair Work Act 2009 (Cth)</i> .
Extension of the term	Your agreement may provide for an extension of its term and may set out the conditions for the grant of such an extension.
Return of property	Your agreement will generally require you to return property belonging to your employer at the end of your employment and when required during your employment.
Confidential information	This clause will prevent you from using or disclosing confidential information for purposes that are not related to your employment. Confidential information will generally include patient contact information and patient medical records. Generally, this information will be owned by the practice and you will not be able to use it after you leave the practice. See 'Medical Records' below for further information.
Intellectual property	The law about intellectual property is complex. If you may create intellectual property while you are employed by the employer (including in another job or at your home), you should seek specific advice about your right to retain ownership of the intellectual property. Your employer will generally own any intellectual property that you create, and this may include intellectual property that you create in your private life if there is a connection to your employment. In some cases, you might have conflicting intellectual property obligations (for example, to an university who employs you as an academic and an employer who engages you to undertake clinical work). You need to carefully manage any potential conflict.
Moral rights	There is legislation which protects your 'moral rights' in work that you have created. Your moral rights are your rights to ensure that: <ul style="list-style-type: none"> ▶ no-one can alter your work in a derogatory way; ▶ your name is associated with your work; and ▶ no-one else's name is associated with your work. Your agreement may require you to agree to the 'infringement' of your moral rights. This means that you cannot assert the rights set out above.

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Non-competition (restraint of trade)	<p>A non-competition clause seeks to prevent you from working or providing defined services within a defined area during your employment and for a defined period after your employment ends.</p> <p>A court would generally considers a non-competition clause to be invalid unless it is reasonably necessary to protect the legitimate business interests of your employer. Courts have found that a medical practice does have a legitimate business interest to protect and that non-competition clauses valid if they are reasonable.</p> <p>In considering whether a clause is reasonable, the courts will consider:</p> <ul style="list-style-type: none"> ▶ the geographical restriction ▶ the time restriction ▶ the restraint scope (i.e. the work that is restrained). <p>Even if a clause is not enforceable, an employer may take steps to enforce it if you work in contravention of it.</p> <p>You should be prepared to comply with the clause.</p> <p>You should seek specific advice about the enforceability of the clause if you think there is a possibility that you will not be able to comply with it.</p>
Non-solicitation	<p>A non-solicitation clause seeks to prevent you from activities which might include:</p> <ul style="list-style-type: none"> ▶ soliciting employees of the employer ▶ soliciting suppliers to the employer ▶ soliciting patients of the employer. <p>You should read the non-solicitation clause carefully and ensure that you understand what is being restrained. For example, some clauses will prevent you from approaching patients or encouraging them to move to a new employer with you while other clauses will prevent you from treating patients, even if they have moved independently.</p> <p>You should seek specific advice about the enforceability of the clause if you think there is a possibility that you will not be able to comply with it.</p>
Medical records	<p>An employment agreement will typically say whether you or your employer own the medical records. If it does not, then you should clarify the position with your employer.</p> <p>If your employer owns the medical records, you should ask for the agreement to say that, if there is a complaint, claim or disciplinary or other process against you, you have a right to obtain a complete copy of any patient records from the employer to assist you in responding to such claim, complaint or process.</p>
Insurance – medical indemnity	<p>An agreement will typically require you to hold medical indemnity insurance to a certain value.</p> <p>You can contact Avant member services on 1800 128 268 to discuss your policy coverage.</p>
Indemnity	<p>Your employer will generally be vicariously liable for your conduct as an employee. Accordingly, your agreement should not include an indemnity clause.</p>
Entire agreement	<p>Your agreement may include a clause that says that the words contained in the written agreement are the entire agreement between the parties.</p> <p>If you are relying on any verbal representations that have been made to you, you should ensure that they are included in the written agreement.</p>
Law of the contract	<p>The agreement will specify which laws apply to the agreement. This will generally be the laws of the state in which you work and also federal laws.</p>

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