



The Practice Managers' Guide to Employment & Dismissal

McMasters' Medical Practice Management



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Introduction

All medical practices employ staff; therefore appropriate management of these human resources is a vital process. Practices have legal obligations to fulfil, whilst building a positive and cooperative culture. The practice needs to ensure that human resources policies and procedures are kept current with changes to legislation. Practice managers and practice owners frequently require assistance in understanding legal requirements pertaining to employment and dismissal of staff.

In Australia there are a vast number of laws that affect employers and staff and this Guide will focus directly on the recruitment process. Some areas may have been covered in the earlier mandatory Guides, and where this is the case links to the appropriate sections will be provided.

Topics covered in this Guide include:

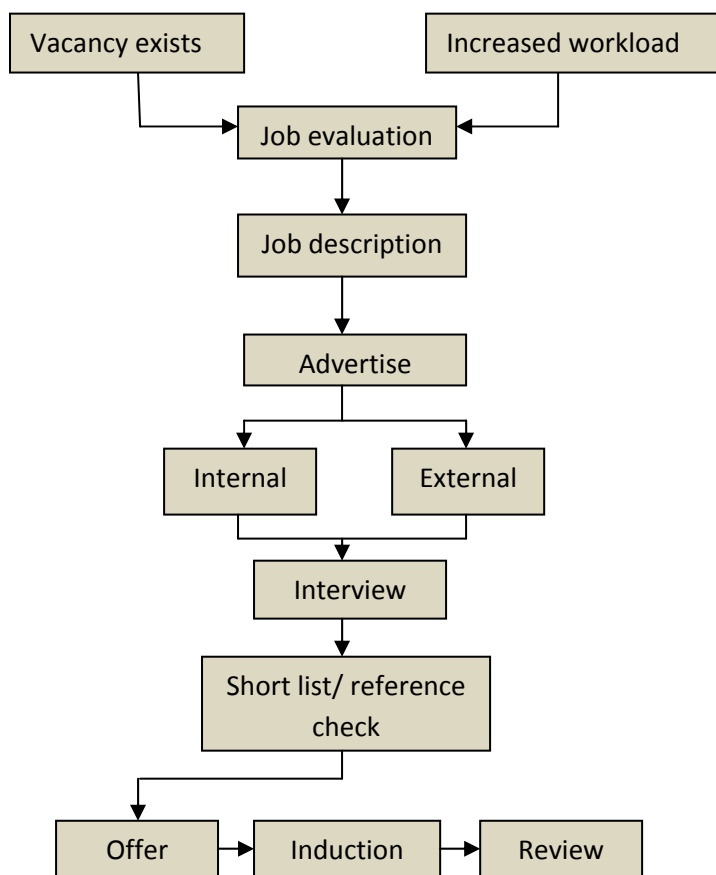
- recruitment and selection procedures;
- Australian Fair Work Act 2009;
- Paid parental leave scheme 2011;

- the Health Professionals and Support Services Award 2010;
- minimum wage rates;
- writing an employment contract
- termination procedures

Further reading is identified throughout the Guide.

11.1 RECRUITMENT AND SELECTION PROCEDURES

The practice’s relationship with its employees is shaped through the procedures it uses, and its compliance with legislation set down by federal and state governments. There are a number of steps the practice manager needs to undertake in order to recruit and select appropriate staff to fill positions in the practice. Firstly, the practice manager will identify the need for additional human resources, either resulting from a staff member leaving or through increased workloads. A process to establish practice guidelines for recruitment needs to be followed. These processes can be illustrated by a simple flow chart:



This stage of the recruitment process is covered in detail in **Diploma of Practice Management materials in Module 4 Part B**. The important aspect to remember is that practices must have a written procedure for the recruitment process. This procedure must include, but not be limited to the following criteria:

- recruitment and selection procedures;
- personnel records for each employee;
- employment contracts;
- induction procedures;

- general conditions of employment;
- employee leave entitlement;
- employee remuneration and other benefits;
- equal employment opportunity and harassment policies;
- training and continued education procedures;
- performance review procedures;
- internal grievance resolution procedures; and
- termination procedures.

Following successful recruitment, practices will need to create strategies to ensure employee retention. An effective employer/employee relationship does not relate to becoming friends, and being involved in social interactions. Rather, building relationships that foster mutual trust, respect and accountability for direct responsibilities will develop a workplace culture around job satisfaction. Where employees are happy in their role and their environment, they are more likely to remain with the practice.

The Australian workforce is ageing, and as this group of employees retires, the number of skilled and experienced workers available to fill the positions will decrease. Therefore, it is essential for practices to consider what workers expect from the employment relationship. Some of these expectations include:

- job satisfaction;
- work/life balance;
- flexible working conditions;
- open lines of communication;
- workplace culture;
- recognition;
- appropriate rewards; and
- consistent guidelines.

Greater employee retention strategies are essential for maintaining a competitive and sustainable practice, which in turn leads to enhanced employee satisfaction and motivation. As a result the practice will become more profitable.

Further reading:

Westacott C, 2010, CCH, Employment and Human Resources, Chapter 47, *Employee Retention*, Para 10 - 90

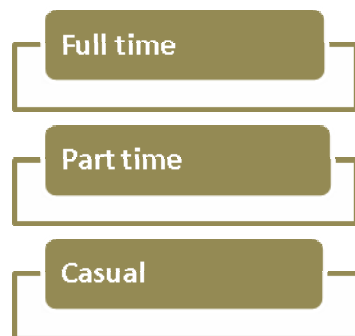
The Fair Work Act 2009

Employers and practice managers should familiarise themselves with recent amendments to industrial relations laws. The Fair Work Act 2009 was passed on 7 April 2009, as a part of the newly elected Labour government's election promise to abolish the Howard government's Work Choices Act. In summary, the new laws altered the awards system, and significantly changed unfair dismissal laws. However, there are a number of other areas covered in the Fair Work Act. These include:

- changes to unfair dismissal claims;
- changes to federal award systems;
- changes to the minimum wage;
- record keeping;
- discrimination;
- new allowances;
- restrictions on overtime payments;
- paid tea breaks every four hours; and
- restrictions on the number of hours a practice manager can work;

The government has established an information service for employers, regarding any queries or concerns they may have about the changes. Employers are able to access [Fair work online - employers](#) for further information, or contact the fair work ombudsman on 13 13 94. The significant areas for this Guide include those dealing with recruiting employees and dismissing employees.

When recruiting employees, practices should consider the three categories in which staff are able to be employed. This should be stipulated at the time of engagement, and confirmed in the employment contract. The categories are:



A full time employee is engaged in work for 38 hours per week, or an average of 38 hours per week over a fortnight or four week period. Part time employees are employed to work less than the average of a full time employee's 38 hours per week. The part time employee's hours of work should be reasonably predictable. The regular pattern of work for the part time employee will be agreed in writing before the employment is commenced. The contract will include the number of hours to be worked each week, and the days of the week that will be worked. It will also stipulate the starting and finishing times of each day, however, the contract may be varied by agreement and recorded in writing. Part time employees are entitled to the same terms of the award as full time employees on a pro rata basis. This means they accumulate sick leave and annual leave entitlements, and are subject to all other National Employment Standards.

Casual employees are engaged on an hourly basis, to work up to a maximum of 38 hours per week. The core of their employment is different to part time, full time or fixed term employees, and they will be paid at an hourly rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition a 25% loading of that rate will be paid instead of the full time annual leave entitlements. Casual employees have a minimum period of engagement of three hours, with the

exception of cleaners employed in private practices, who can be engaged for shorter periods, with a minimum of two hours.

Further Reading:

Pamela Wilson, Medical Observer, *Natural Selection: Choosing the right employees*, 7th May 2010

Joydeep Hor, 2010, CCH, *Employment and HR*, Overview of the Fair Work Act

Paid Parental Leave Scheme

The Australian government introduced its first national paid parental leave scheme on 1st January 2011. Under the scheme, eligible working parents are entitled to 18 weeks leave, paid at the national minimum wage rate, when having a child or adopting a child. At the time of introduction the national minimum wage was set at \$570 per week, before tax.

In order to be eligible for the scheme, the worker applying must be the primary carer of a newborn or recently adopted child. This can be either the mother or the father, but not both at the same time; however the 18 weeks can be split between both parents. The worker applying must be an Australian resident and be receiving an adjusted taxable income of \$150,000 or less in the financial year prior to the date of birth. Adjusted taxable income includes the following¹:

- taxable income;
- adjusted fringe benefits, i.e. reportable fringe benefits multiplied by 0.535
- tax-free pensions or benefits;
- target foreign income;
- reportable superannuation contributions; and
- total net investment losses;

less

- deductible child maintenance expenditure.

The worker must have been employed by the practice for a minimum of twelve months prior to the expected date of birth, and will continue to be classed as an employee whilst on paid parental leave. The worker must be on leave or not working from the time they become the primary carer.

Parents who wish to claim paid parental leave will need to register through the Family Assistance Office, providing evidence to demonstrate their eligibility. Parents then notify the employer and agree on leave arrangements. The practice registers with the Family Assistance office to ensure that all payments are received prior to the date payments to the employee are due. Paid parental leave can be taken in conjunction with, or in addition to employer provide leave such as annual leave.

Example

Joanne works full time as an assistant practice manager and is paid \$62,000 per year, while her husband, Rex, works as a mail deliverer on a part time basis, earning \$45,000 per year.

¹ Australian Government Family Assistance Office

Their first child is born on 2nd October 2011. Joanne has three weeks annual leave owing to her and takes this prior to the birth, she then decides to take 18 weeks paid parental leave, before returning to her role at the practice. However, 12 weeks after the baby is born, Joanne's boss rings her and informs her that the practice manager's position has become available, and asks her to accept the position. This means Joanne's income will increase to \$70,000 with the promotion.

Joanne and Rex discuss the opportunity and decide to accept the offer; however, the arrangements for child care they have put in place do not come into effect until the baby is 18 weeks old. Therefore, Rex decides to take the remaining six weeks paid parental leave while Joanne returns to work.

Joanne and Rex are able to split the 18 weeks paid parental leave between them and make the most of the opportunities for Joanne's career advancement.

The Practice Responsibility

The practice's role regarding paid parental leave is voluntary until 30 June 2011 – this means adjustments to the payroll system will not need to be made part way through the financial year, it also allows practices time to register for the scheme:

- Practices are responsible for providing paid parental leave from 1 July 2011 to eligible employees who are expecting to receive more than 8 weeks paid parental leave;
- Any employees who opt for less than 8 weeks parental leave will be paid directly by The Family Assistance Office, not the practice;
- To be eligible parents must be employed under the Fair Work Act, therefore reception, administration, nursing, cleaning staff etc will qualify, however, associate doctors will not qualify, because they employ the practice through the service fee they pay;
- The Family Assistance Office will advance the employer paid parental leave funding, there is no obligation to provide paid parental leave until the funds are received from the Family Assistance Office – therefore practices should encourage their eligible employees to register with the Family Assistance office early to ensure the funds are received before they are due to be paid to the employee. This will not cause cash flow issues within the practice - payments are transferred to the employer prior to the pay cycle;
- The practice is able to preregister with Family Assistance Office in order to simplify the process;
- Parental leave funds are classed as taxable income, and should be separately identified for annual financial statements; Generally the funds declared will be received in the same financial year as the claim for the deduction for payment for paid parental leave;
- Reasonable costs of complying with paid parental leave scheme are tax deductible; these include software expenses or necessary expenses incurred in carrying on a business;
- Leave entitlements do not accrue while the employee is on paid parental leave, and is not classed as ordinary time earnings therefore does not attract superannuation guarantee contributions. Paid parental leave is not subject to payroll tax, and will not attract additional workers compensation liabilities.

Further information can be sourced from: [Paid Parental Leave Scheme](#)

The Health Professionals and Support Services Award 2010

In April 2009 the Australian Industrial Relations Commission passed a new modern award, to come into effect on 1st January 2010. The award covers health professionals and health support employees in the health industry, excluding the aged care industry, and builds on national employment standards providing safety net rates and standards. The award covers the following topics:

- types of employment;
- termination of employment;
- redundancy;
- minimum wages;
- classifications of workers;
- national training wage;
- allowances;
- hours of work (including span, weekend work, breaks and overtime); and
- leave and public holidays

A full copy of the award can be accessed at: [Health professionals and support services award 2010](#).

Between April 2009 and 1st January 2010 when the award came into operation, there were a large number of submissions and objections lodged, however the outcome is that practices that do not fully comply with, or breach the standards in any way, may face a penalty of up to \$33,000 per breach. This means that if the practice employs ten staff, and is not fully complying with the standards, the penalty could be as high as \$330,000.

Although there have been a significant number of alterations to the award, it in no way overrides the National Employment Standards (NES) entitlements, and the new award contains the minimum conditions of employment. The NES apply to all employees covered by the national workplace relations system and comprise of ten minimum standards. Only certain entitlements apply to casual employees who are paid a 25% loading as compensation. The ten minimum standards and explanation of each are set out in the following table:

Entitlements	Brief explanation
1. Maximum weekly hours of work	38 hours per week, or an average of 38 hours over a fortnight or four week period, plus reasonable additional hours.
2. Requests for flexible working arrangements	This entitlement allows parents or carers of a child under school age, or of a child with a disability under the age of 18, to request alterations to working arrangements in order to assist with care for that child.
3. Parental leave and related entitlements	Maternity, paternity, and adoption leave of up to 12 months unpaid, with the option to extend for a further 12 months unpaid.
4. Annual leave entitlements	Four weeks paid leave per year worked, plus for certain

	shift workers, an additional one week paid leave.
5. Personal/carer's leave and compassionate leave	Ten days paid leave for personal illness or carer's leave, two days unpaid carer's leave as required, and two days compassionate leave as required, per year.
6. Community service leave	Unpaid leave for voluntary emergency activities and up to ten days paid leave, for jury service.
7. Long service leave	Long service leave, as outlined in the long service leave act.
8. Public holidays	Paid time off on public holidays, except where reasonably requested to work, and adequately compensated.
9. Notice of termination and redundancy payments	Depending on length of service, up to five weeks notice of termination, and up to 16 weeks severance pay, on redundancy.
10. Provision of Fair Work information statement	Employers must provide all new employees with information regarding NES, modern awards, agreement making, the right of freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

Fact sheets can be obtained from [Fair Work fact sheets](#)

Only certain NES entitlements apply to casual employees. These are:

- two days unpaid carers leave and two days compassionate leave, per occasion;
- maximum weekly hours;
- community service leave (except jury leave);
- the ability to reasonably seek a day off on a public holiday; and
- provision of Fair Work information sheet.

Due to changes in the award, practices will need to budget for higher wages costs. Therefore, when recruiting staff, practices should establish whether current staff are working productively and efficiently. This can be done at the job evaluation stage where careful analysis of staff rosters and roles are undertaken. A focus on better practice systems will determine whether a new staff member is actually required, or whether re-evaluation of existing positions would be a better option.

Further Reading:

Rosemary Milsom, Medical Observer, *Deciphering the New Employee Award*, 13 November 2009

11.2 EMPLOYMENT CONTRACTS

In order to absorb the new allowances and penalty rates in the Health Professionals and Support Services Award 2010, and to ensure all aspects of the Australian Fair Work Act have been considered, it is important to determine the correct award classification for each staff member. Job descriptions are important for clarification of these areas. Under the award, practices are able to pay above award rates, however, the contract must state what the higher rates are covering, and that the employee is better off overall than they would be if they were receiving all additional entitlements. The employment agreement must be signed by both parties; otherwise the additional entitlements will still apply.

It is a good idea for practice managers to provide individually signed and written business cases to staff, outlining how their over award payments and conditions make them better off overall. Staff must not be forced to sign these agreements, as signing under duress gives the practice no legal protection from an underpayment claim. It is critical to ensure that all employment agreements address the award obligations line by line. A general statement such as “this over award payment will cover all your penalty, allowance and overtime benefits” is not satisfactory. Details need to be spelt out in the employment agreement.

The employment contract should include the following details, as a minimum requirement:

- date, name and address of employee;
- offer of employment, statement asserting replacement contract;
- employment duties;
- hours of work;
- remuneration and benefits –
 - wages;
 - allowances;
 - superannuation;
 - business expenses;
- health and safety;
- leave entitlements –
 - public holidays;
 - annual leave;
 - personal carers leave;
 - compassionate leave;
 - long service leave;
 - community service leave;
- general conditions –
 - conflict of interest;
 - confidentiality;
 - intellectual property;
 - commissions;
 - internet/email/computer/mobile phone;
 - viruses;
 - unacceptable use;
 - security;
 - dress;

- policies;
- indemnity;
- jurisdiction;
- post employment obligations;
- code of conduct –
 - principles;
 - attendance;
 - performance of duties;
 - drugs and alcohol;
 - property;
 - vehicles;
 - safety procedures;
 - false declarations;
 - personal behaviour;
 - harassment;
 - gambling;
 - confidential information;
 - media statements;
 - smoke free environment;
 - outward goods.
- termination;
 - notice;
- redundancy;
- effective date; and
- agreement signatures;

Employing doctors

When employing doctors, there are a number of other forms that will need to be completed in addition to the employment contract. The practice manager needs to check the doctor has the relevant medical board registration and a provider number for the location. These are discussed in detail in [The Practice Managers' Guide to Starting a Practice](#). Other paperwork essential for doctors to complete prior to beginning employment include:

- Medicare Australia –
 - 90 day cheque scheme;
 - EFT for Medicare claims form;
 - on line banking details form;
 - childhood immunisation register;
 - registration as LMO for Veteran Affairs;
 - ABN and GST notification/changes or additions to existing ABN;
- Practice Incentives Program notification –
 - Part G – Notification of additional practitioner;
- Workcover Authority provider application;
- practice software licence –
 - downloading of results from pathology/radiology etc.

Doctors are normally not employees. They are also normally not “contractors”, in the sense that they are paid for their labour under a contract with the practice. For a long list of reasons doctors normally run their own practices and pay a management fee to the host practice for the work it does for them. This is discussed in detail in [The Practice Managers’ Guide to Engaging Doctors](#).

Further reading

Michalandos M, 2010, CCH, Employment and Human Resources, chapter 38, *Independent contractors*, Para 10 - 100

1.3 DISCIPLINE AND TERMINATION

Disciplinary action cannot be taken against an employee without justifiable reasons. Every practice should have effective policies and procedures in place to guide the process, with any required action using commercial commonsense with the utmost respect for the rights and feelings of the employee. The following chart identifies and explains some common disciplinary issues:

Issues	Further explanations
Attendance problems	<ul style="list-style-type: none"> • Unexcused absences • Excessive absenteeism • Unexcused/excessive tardiness • Leaving without permission
Dishonesty	<ul style="list-style-type: none"> • Theft • Falsifying employment application • Wilfully damaging practice property • Falsifying work records
Performance issues	<ul style="list-style-type: none"> • Failing to complete work assigned • Substandard work outputs • Failing to follow practice protocols • Failing to follow safety precautions
Behavioural problems	<ul style="list-style-type: none"> • Intoxication • Insubordination • Carelessness/horseplay • Fighting • Gambling • Failing to report incidents/injuries/incidents • Abusive or threatening behaviour • Possession of alcohol/narcotics/firearms • Sexual harassment/discrimination • Possession of internet pornography

The four basic steps for disciplinary action are: documentation, investigation, progressive discipline and termination.

Documentation

Document all actions and follow a procedure designed to prove to a court that the correct procedures were followed. A good rule is to simply assume everything that has occurred will be eventually put under scrutiny by a court. All interactions should be documented in writing, including file notes of discussions and specific examples of inappropriate behaviour. It is appropriate to have witnesses wherever possible. Witnesses need to sign and date the file notes. A template for recording disciplinary procedures can be viewed at [appendix 1](#) at the end of this Guide. Failure to accurately record disciplinary actions may result in the reversal of any action taken.

Investigation

In many cases, the investigation of an incident will be enough to prompt a change in the behaviour of the employee. In the case of an employee who is not performing well, but who is positive about improving their performance and is not engaging in serious misconduct, the following course of action should be followed:

- talk with the employee about their performance. Let the employee know exactly what is required of them and how they are falling short of this standard. Try to do this in a friendly and non-threatening way. An approach that is too strong may trigger a defensiveness, which may frustrate the whole process;
- the employee should be given an opportunity to respond to the concerns and to explain their point of view, how they perceive their work performance has been, and whether they think it can be improved, or whether there are any extenuating circumstances that need to be considered; and
- often this will be the end of the matter. Both the employer and the employee will have benefited from a full and frank discussion regarding the matter, and the situation will improve immediately (or at least improve over the following few weeks).

Progressive discipline

Progressive disciplinary procedures should be applied to minor indiscretions. A further meeting should be held, preferably a few days after the initial meeting, when the employee has had the opportunity to reflect on the issues unemotionally and perhaps talk with friends and family. At this next meeting, performance targets and goals should be set, including time limits. Documentation of these targets and goals is essential, and the agreement of the employee should be obtained and recorded in writing. It is often a good idea for more than one person to be present at each of these meetings. If the employee is a young female and the employer is a male, it may be appropriate for the third person to be an older independent female.

If this discussion does not end the matter, and after an appropriate period there is no improvement, then the above procedure should be repeated. Again, the concerns of the practice and the proposed course of action should be put in writing, and witnessed by an independent person.

Correction or dismissal

If the position still does not improve, then a third and final warning should be given. This warning should be very direct and to the point, and should refer to all previous discussions and correspondences. It should state unequivocally what the required standards of performance are, and that the consequence of the employee not reaching this standard by the specified date, will result in dismissal. If the third warning does not have the desired effect it is appropriate to consult a legal professional, or Fairwork online on 13 13 94.

It is important to bear in mind the position of the employee, and the possibility that they are preparing to move on by the time they receive the third warning. Favourable references and some common sense on the part of everyone concerned may assist the employee to consider other options.

Notice periods

The new Fair Work Act 2010 has altered the termination notice periods given to unsatisfactory employees. Upon termination of employment, an employer may have to comply with the federal notice periods that provide for mandatory minimum notice periods prior to ceasing employment. This gives an employee the chance to receive wages for this period, and secure other employment with a smaller “gap” in between jobs.

There are some exceptions to the notice periods. Most significantly, these notice periods do not apply to employees who are guilty of serious misconduct (discussed in further detail below). Other circumstances where the notice periods do not apply include:

- dismissal of casual employees;
- employees who earn above the threshold amount (currently \$108,300);
- temporary employees who operate under contract; and
- employees under a probation period, which is generally up to three months.

The table below sets out the notice periods compared to the period of service:

Period of service	Notice period required
Up to one year	One week
More than one year but less than or equal to three years	2 weeks
More than three years but less than or equal to five years	3 weeks

More than five years	4 weeks
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Further details on the notices periods, can be accessed at: [Fairwork, notice periods](#)

Serious misconduct

Employers do not have to accommodate serious misconduct. Serious misconduct is defined in the Industrial Relations Act as:

"...misconduct of a kind such that it would be unreasonable for the employer to continue the employment during the notice period and which must be taken as a repudiation of the employment contract by the employee".

Examples of serious misconduct are:

- dishonesty against the employer;
- conflict of interest (e.g. working for a competitor, or competing with the employer after hours: at least in some industries);
- referring work away from the employer; and
- committing a serious breach of the law (e.g. stealing).

When faced with serious misconduct on the part of an employee, such as a significant theft or other dishonesty, an employer should:

- investigate the matter fully, reasonably and impartially, and fully document the steps taken in this investigation. It can be a good idea to ask an independent third party, such as an accountant or a solicitor, to help with this investigation;
- specify exactly what the employee is alleged to have done. Document all the details, including times, dates, places, the names of any witnesses, or the details of any corroborating evidence;
- speak to the employee, put the allegations to them and allow them to respond. Consider any mitigating factors (for example, thirty years of happy service may mitigate a minor theft of stationery); and
- consider the other available options. Apart from dismissal, these could include a suspension, a demotion or a transfer. Generally though, if the misconduct is serious, the wisest solution is to dismiss the employee.

Each of the above steps should be documented, and preferably, should involve an independent person as a witness. Again, the witness should sign and date these documents. Any breach of criminal law should be reported promptly to the police. Let the law make up their own minds as to what action should be taken.

11.4 INDUSTRIAL RIGHTS

All employers have legal obligations to their staff, and medical practices are no different. Many of these obligations relate to pay and entitlements, however, there are other considerations such as health and safety, equal employment opportunities, working conditions and privacy issues that are of equal importance.

Employers and practice managers should familiarise themselves with recent amendments to industrial relations laws. The new laws replace the old Work Choices laws; they have altered the awards system and significantly changed unfair dismissal laws. The latter is particularly relevant to a medical practice, as dealing with underperforming employees became more difficult under the new system. The laws came into effect on 1st January 2010.

The AMA (NSW) provides a comprehensive overview of the Fair Work Act and has compiled a list of frequently asked questions; they can be viewed here: [AMA \(NSW\) FAQs](#)

Unfair dismissal

The following summary is provided as guidance to the new laws. As the laws are very fresh and have yet to be significantly tested in Australian Courts, it is recommended to always consult an industrial relations solicitor, prior to terminating any staff.

	Old Workchoices rulings	New Fairwork rulings
Unfair dismissal	Employees in businesses with up to 100 workers could be dismissed for any reason, without rights to challenge the dismissal.	This position is altered in the following aspects: <ul style="list-style-type: none"> • New definition of small business –fewer than 15 full time equivalent employees; this changes to 15 employees by head count on 1st January 2011; • New qualifying period.
Qualifying period	No qualifying periods.	A person employed in a small business must have worked there for 12 months to be able to apply for unfair dismissal. A person employed in a large business, must have worked there for 6 months to be able to apply for unfair dismissal.
Meaning of small business employer (section 23)	Businesses employing less than 100 workers.	The employer must pass the threshold test, and employ fewer than 15 employees, including the terminated employee, but excluding

		any casual staff, unless casual staff members are employed on a “regular and systematic basis”.
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For example;

If Sean is employed as a receptionist, and is rostered to work every week on Tuesdays, Wednesdays, and Thursdays, then he will be considered under the threshold test as being an employee, despite being employed on a “casual basis” under his employment contract.

Section 23 is further explained below:

Section 23

- (1) A national system employer is a **small business employer** at a particular time if the employer employs fewer than 15 employees at that time.
- (2) For the purpose of calculating the number of employees employed by the employer at a particular time:
 - (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
 - (b) a **casual employee** is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis.
- (3) For the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.
- (4) To avoid doubt, in determining whether a national system employer is a **small business employer** at a particular time in relation to the dismissal of an employee, or termination of an employee’s employment, the employees that are to be counted include (subject to paragraph (2)(b)):
 - (a) the employee who is being dismissed or whose employment is being terminated; and
 - (b) any other employee of the employer who is also being dismissed or whose employment is also being terminated.

The unfair dismissal procedures in the Fair Work Act apply more widely than those that were applied prior to 1st July 2009. It should be kept in mind that if the dismissal is harsh, unjust, or unreasonable, it remains an unfair dismissal. Regardless of size, all employers who are constitutional corporations will be subject to unfair dismissal claims. However, there are a number of important qualifications. A claim for unfair dismissal cannot be brought by employees:

- employed seasonally or for a specific task or specified period;
- fulfilling a 6 month qualifying period or 12 months for small businesses;
- employed on a casual basis (this means their hours are irregular and not expected to continue);
- not employed under an award and whose annual earnings exceed \$108,300; and

- terminated due to genuine redundancy and unable to be placed in another position within the organisation.

Small business employers must continue to undertake the fair dismissal code of practice, which gives employees the opportunity to improve or explain poor performance. This procedure has been in place for many years, and involves giving the employee three warnings, as described above.

There are strict time limits for unfair dismissal disputes; therefore, gaining prompt advice is advised.

Employees not covered by the Federal Fair Work laws, remained subject to the old South Australian system of unfair dismissal laws until 1st January 2010.

Further guidance and explanation of terms is provided in the following table:

<p>‘Operational reasons’</p>	<ul style="list-style-type: none"> • ‘Operational reasons’ was a term introduced by Workchoices, giving the employer breadth to dismiss employees for a variety of reasons which could fall under this category; • Operational reasons <u>has been removed</u> from the new act and is no longer a defence for dismissal; and • Employers are still able to dismiss for genuine redundancy or serious misconduct.
<p>The small business fair dismissal code</p>	<ul style="list-style-type: none"> • The act provides for a simple Small Business Fair Dismissal Code, which aims to ensure that dismissal is not found to be unfair. The code requires the employee receiving a warning, based on a reason that validly relates to the employee’s performance or capacity to do the job, and offers the employee reasonable opportunity to improve his or her performance. The code makes it clear the employer has the right to dismiss, without notice, an employee for serious misconduct. The code can be accessed here: The small business dismissal code.
<p>Awards, conditions and minimum pay</p>	<ul style="list-style-type: none"> • The act has significantly changed the Federal awards system and minimum wage; • Generally, the new minimum wage is \$14.31 per hour and \$543.78 per week. For further information regarding the minimum wage, please access Minimum wage; • To locate an award applicable to your business please access Find an award; • There are new conditions relating to medical practices that include various entitlements. The entitlements include nausea and damaged clothing payments, as well as shift allowances, restrictions on overtime payments for staff working after 5.30pm, 10 minute paid tea breaks every four hours, overtime for part time employees, and restrictions on the number of hours practice managers can work. Further information on the Health Professional and Support Services Award can be accessed at Health professional’s award.

The government has established an information service for employers, regarding any queries or concerns they may have about the changes. Employers may access [Fair work online - employers](#) for further information or contact the fair work ombudsman on 13 13 94.

Anti-discrimination legislations

Australia has a variety of anti discrimination laws, on both state and federal levels. The human rights and equal opportunity commissions oversee and administer the federal legislations, to ensure that no employees are unfairly discriminated against.

On a federal level the legislations include:

- racial Discrimination Act 1975;
- sex Discrimination Act 1984;
- disability Discrimination Act 1992; and
- human Rights and Equal Opportunity Commission Act 1986.

Defining discrimination

Discrimination involves treating a person unfavourably because of an attribute or a characteristic that distinguishes them from others. The characteristics could include (but are not limited to) any of the following:

- race;
- culture;
- origin;
- skin colour;
- gender;
- family status;
- family responsibilities;
- union membership;
- disability;
- health;
- physical features;
- political association;
- sexual orientation; and
- religion.

Discrimination does not have to be direct, and can be indirect. For example, promoting employee A because he voted for a particular political party in the last election, could mean that employee B is indirectly being discriminated against due to the political association, as the promotion was not offered based on his or her merits, and employee B was not given the same opportunity as employee A.

A further example could be a company policy that reads: "All staff members, without exceptions, are to wear work uniforms at all times, without any additional accessories whatsoever." This could be discriminating as some cultures and religious beliefs require that followers wear a head cover, very

modest clothing, or piercings. Therefore, a company policy should be flexible enough to accommodate these needs. More appropriate policy could therefore read: “Staff members are required to wear work uniforms at all times, without any additional accessories, unless:

- other agreements are entered into in writing with management; or
- the uniform requirements contravene your personal cultural or religious beliefs”.

Intention is irrelevant in anti discrimination laws. Therefore, it is not sufficient to claim lack of intention to discriminate.

The Victorian Equal Opportunity Amendment (Family Responsibilities) Act 2008

The changing attitudes of society towards parents and carers have been reflected in the Victorian amendment to the state’s *Equal Opportunity Amendment (Family Responsibilities) Act 2008*. Section 13A states:

“An employer must accommodate the responsibilities as parent or carer of persons offered employment”.

The act provides the following example:
 An employer may be able to accommodate a person's responsibilities as a parent or carer, by offering work on the basis that the person could work additional daily hours to provide for a shorter working week, or occasionally work from home.

The same notion applies under section 14A, where an *“employer must accommodate employee’s responsibilities as parent or carer”*. When determining what is reasonable, subsection 2 provides that all relevant circumstances should be considered, including, but not restricted to:

- (a) The employee's circumstances, including the nature of his or her responsibilities as a parent or carer; and
- (b) The nature of the employee's role; and
- (c) The nature of the arrangements required to accommodate those responsibilities; and
- (d) The financial circumstances of the employer; and
- (e) The size and nature of the workplace and the employer's business; and
- (f) The effect on the workplace, and the employer's business of accommodating those responsibilities, including—
 - (i) The financial impact of doing so;
 - (ii) The number of persons who would benefit from, or be disadvantaged by doing so;
 - (iii) The impact on efficiency and productivity and, if applicable, on customer service of doing so; and
- (g) The consequences for the employer of making such accommodation; and
- (h) The consequences for the employee of not making such accommodation.

To demonstrate just how serious the new act is, pertaining to commitment to family responsibilities, it even extends to the principal's commitment to accommodate a contract worker's responsibilities as a parent or carer under section 15A.

Although this is Victorian legislation, it is likely to be adopted by other jurisdictions across Australia and to ensure that practices are protected as employers. It is advised that managers treat parents or carers according to the provisions above. The significance of this amendment is that it also extends to prospective employees.

The following steps may assist in protecting practices from discrimination claims:

Potential employees
<ul style="list-style-type: none"> • take detailed notes of the interview; • do not ask direct questions about an employee's parental or carer responsibilities; • define the job requirements very well. If an employee has heavy commitments at home, he or she may be reluctant to apply for a position which requires overtime; and • be prepared to be flexible. The best candidate may be overlooked simply because they are parents. If managed well, it may be possible for employees' personal commitments to work well with the demands of the position.
Existing employees
<ul style="list-style-type: none"> • many employees will be parents or carers. Accommodating their obligations will equate to a higher staff retention rate, and hence save costs associated with constantly training new staff; • instances in which the employee's presence is mandatory need to be distinguished from situations in which the employee could be working from home. For instance, it is clear that reception staff must be present at the practice during the hours of the practice's operation, whilst a bookkeeper may be able to work from home under some circumstances. • if it is economically viable, consideration could be given to investing in a remote access computer system (as long as it complies with all medical record obligations, and other confidentiality issues). This may enable some staff to work over the weekend, and leave home early to pick up their children from school. • all requests for leave or for changing current working arrangements, due to parental/carer responsibilities, must be taken seriously. A file note of the employee's request must be written, and all steps taken to accommodate the request must be documented. • if a request to accommodate an employee's parental responsibilities is rejected, a detailed summary should be written on the grounds of the rejection. Communication of the outcome to the employee should be done as soon as possible, so he or she can organise for alternative arrangements. The reasons behind the rejection must be explained clearly. • remember the practice is only guilty of misconduct if the request is refused "unreasonably".

An example:

Assume that your receptionist, John Smith, is providing you with an hour's notice because he wishes to take his son to a football game, and no other staff members are available to replace him. It will not be unreasonable in such a case, not to accommodate his needs.

However, the above conclusion may vary, if for instance, John Smith is a single parent who calls an hour prior the commencement of his shift, to request leave as his son is ill, and Sue Jones is requested to work instead. In such circumstances, the employer will likely be required to accommodate John's needs. This may be the case even if Sue Jones is unavailable.

Whilst the new laws may pose difficulties for employers, it is supported by very strong public policy rationale, and should be approached positively. If practices adopt a family friendly culture, it is unlikely they will be liable for any legal action in this area.

Practices who have concerns about the implications of any of the newly introduced employment laws, should seek legal advice from a specialised employment solicitor. Unfortunately for employers, industrial relations are a common area for litigation, and it is important to be well informed regarding current legislation. Further Information is available from the Fairwork ombudsman and can be accessed here: [Unlawful workplace discrimination](#)

Industrial parties

For further details of the Fair work legislative changes, it is highly recommended to access the Fair Work Ombudsman's website on [Fair work Ombudsman](#). The Fair Work Ombudsman has provided the following fact sheets to assist employers and employees with regarding rights and responsibilities under new laws:

- [The ministers' second reading speech](#)
- <http://www.aheia.edu.au/sd-images/3300040> [Fair work Act 2009](#)
- [Fair Work Online](#)

Grievances

All practices will have procedures for dealing with conflict, and it is essential that employees must be given access to grievance procedures. All complaints or grievances from staff must be recorded, and a copy filed in the employee's personal file. A sample grievance record can be viewed at [appendix 2](#) at the end of this Guide. Understanding conflict will assist with dealing with grievances.

Differing opinions or ideas amongst team members can produce conflict; this may be caused through differing cultural beliefs and backgrounds, or from varying skills and experience. However, conflict is not always negative and can usually be resolved when dealt with appropriately. Unresolved conflict can result in frustration amongst the team members, which may develop into negative competitive behaviour, increased stress and lower morale. It can also cause resentment and ongoing anger, decreased efficiency and increase in staff turnover. Conversely, when handled correctly, differing opinions can be productive and encourage creative solutions, generate innovation and increase communication.

In order to manage conflict effectively, it is important to understand the five different strategies commonly used for resolving the issues that may arise within the practice:

Strategy	Description
Competing	Combining assertive and uncooperative behaviours in an effort to win at all costs. A lot of energy is exerted to prove a point, and power is often used to pull rank with little regard for the other party involved.
Accommodating	Combining unassertive and uncooperative behaviours in order to resolve the conflict. Where the needs and wants of the person trying to resolve the conflict are often not given consideration to the resolution process. The opposite to competitor.
Avoidance	Combining unassertive and uncooperative behaviours in order to escape confrontation. Avoiding interactions that may involve conflict.
Collaborating	Combining assertive and cooperative behaviours that all parties are comfortable with in order to implement a solution following investigation of the causes and issues. The opposite of avoidance.
Compromising	Intermediate between assertiveness and cooperativeness. Solutions are based on finding the middle ground and making allowances and concessions by both parties.

Conflicting ideas and opinions within the practice are inevitable, however, by understanding the different personalities amongst the team and using varying techniques for conflict management, resolution should become easier. Conflict should always be brought out into the open and addressed as soon as possible. It is important for all parties involved to display patience, and share the responsibility, focussing on the real issues or behaviours, rather than the personalities involved. When negotiating a grievance or conflict, it is important to remain impartial and encourage all parties to show respect, empathy and behave honestly when seeking a solution.

Following disputes, a written agreement of the solutions should be signed, as this reinforces the importance of compliance. Follow up meetings should be undertaken regularly, with all parties to determine the progress of the solutions, and decide whether further steps need to be implemented.

Compliance

Grievances will be reduced if practices ensure that workers' conditions comply with awards and practice requirements. All staff should have been issued a new contract of employment following the introduction of the Fair Work Act on 1st January 2010. This ensures compliance with the award recommendations. The new awards can be viewed at [Health services and support services award 2010](#), [Nurses Award 2010](#) and [Medical Practitioners Award 2010](#).

Obtaining professional external advice is essential if practice managers have any doubts at all, regarding industrial relations issues.

Appendix 1.1 Employee Disciplinary Record

Employee Counselling / Written Warning Record

Date: _____

Those present:

The purpose of this interview is:

Performance Counselling A First Warning A Second and Final Warning

Was an offer made to the employee to have a witness present?

Yes No Not applicable

SUPERVISOR: Outline by supervisor of areas of job performance, attitude or behaviour which are not up to standard (must be clear and specific).

Was evidence of low performance or incident presented to the employee?

Yes No Not applicable

Did the employee understand and acknowledge the above concerns and evidence?

Yes No

Has the employee been counselled or warned about this behaviour previously?

Yes

No

If YES, give details & dates:

EMPLOYEE: Response to supervisor's comments on employee performance or attitude.

SUPERVISOR AND EMPLOYEE: Outline of items agreed upon as a result of this interview and dates for their completion. (Prepare a written list of performance objectives which will satisfy the supervisor and which the employee agrees he/she can achieve and will be committed to achieving. Include dates for completion if applicable.)

Consequences if items agreed upon are not carried out, or employee performance objectives are not achieved within the agreed time frame:

The following assistance has been requested by the employee and agreed to by both parties:

Time frame set for future discussions:

Signed:

Employee

Supervisor

A copy must be given to the employee:

Tick to confirm

Appendix 1.2 Grievance record

Staff grievance record

Brief details of incident:

Reported by _____

Stage	Description	
Reporting of incident	Give details of how incident was discovered or reported:	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Date reported:</td> <td style="width: 50%;">Reported to:</td> </tr> </table>	Date reported:
Date reported:	Reported to:	
Investigation	Summary of investigations undertaken and evidence found:	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Evidence attached: Yes /No</td> <td style="width: 50%;">Investigated by:</td> </tr> </table>	Evidence attached: Yes /No
Evidence attached: Yes /No	Investigated by:	
Action taken	Brief record of actions taken, including counselling, conciliation, etc	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Documents attached: Yes /No</td> <td style="width: 50%;">Implemented by:</td> </tr> </table>	Documents attached: Yes /No
Documents attached: Yes /No	Implemented by:	
Follow Up	Satisfaction with resolution of complaint. Referral to external agency if required.	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Documents attached: Yes /No</td> <td style="width: 50%;">Conducted by:</td> </tr> </table>	Documents attached: Yes /No
Documents attached: Yes /No	Conducted by:	

When the process is completed, file a copy of this record in the Staff Records File of the employee who made the original complaint, the alleged harasser and the alleged victim.

