

Employment Models

Healthy Practices

APNA has produced a suite of resources to help general practices employ nurses and optimise their role in the general practice setting. Fulfilling these aims will help build Healthy Practices that deliver positive outcomes for their communities through nursing skills and expertise.

Who employs the general practice nurse?

General practices in Australia operate under different structures and often have separate legal entities that employ individual practice staff. For instance, a large practice with several independent general practitioners may have a number of general practice nurses employed by different legal entities. An employer can be a single GP, a partnership, a company or a service trust. In the case of partnerships, each partner is considered as an employer of the nurse. If a trust has employed the nurse, then the employer is considered to be the trustee of the trust.

Engaging general practice nurses

Nurses in general practice are usually engaged for work as independent contractors or employees. In Australia, however, most nurses working in general practice are employees.

Independent contractors

Independent contractors agree to work under a contract for services. Nurses working in general practice as independent contractors accept they will be paid for fulfilling the conditions of their contract.

Superannuation, tax and insurance

The contractor, not the practice, is required to comply with particular industrial/employment laws and employment-related taxation laws, such as:

- the contractor's PAYG or payroll tax contributions
- the contractor's superannuation guarantees contributions
- some insurance premiums.

Usually, the terms of the contract will specify that the contractor must have workers compensation insurance,

professional indemnity insurance and public liability insurance. Some workers compensation schemes, however, have a very broad definition of 'employee' that could cover independent contractors.

If you engage a contractor, it is your responsibility to find out whether your state workers compensation scheme would consider your contractors as workers. You should also inform your insurer to ensure the practice complies with its own insurance policy terms and disclosure obligations to the insurer.

Engaging an independent contractor does not eliminate your practice's legal exposure for the conduct of the nurse. The practice should ensure that its own insurance cover extends to that exposure.

The contract

It is essential to document an independent contractor arrangement in a clearly written contract. With such a contract in place, there should be no major problems.

The Independent Contractors Act 2006 (Cth) is the main legislation regulating independent contractors. Among other things, the Act prohibits an employer from terminating an employee and then rehiring them as an independent contractor, on the grounds that such a contract would be unfair. A contract is 'unfair' if it is harsh or unconscionable, unjust or against the public interest, or if it avoids the provisions of the Fair Work Act 2009, a state or territory law, or an award or agreement made under either the Fair Work Act or a state or territory law. If a court finds a contract unfair, the court can set aside the contract, declare all or part of the contract to be void or unenforceable, or vary or amend part of the contract.

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The contract should place responsibility for employment-related costs on the contractor and include an appropriate indemnity of the practice by the contractor. Regardless of what is stated in the contract, how the nurse has been engaged for work will be relevant if a claim is made by the nurse or against the practice relating to the nurse's conduct, or in the event of a regulatory body investigation. Simply describing the nurse as an independent contractor or as an employee in the contract will not be sufficient. Courts and tribunals will look at all the circumstances of the employment relationship, including what work is performed and how that work is performed.

Employees

Nurses working in general practice are usually employed under a contract of service as employees. As the employer, the practice is vicariously liable for the actions of the nurse and is responsible for paying the nurse's:

- PAYG income tax and payroll tax
- superannuation guarantees contributions
- workers compensation insurance
- employee entitlements, such as sick pay, annual leave, holiday pay, parental leave and redundancy pay.

Nurses can be employed on a casual, permanent part-time or full-time basis or for a fixed term.

Casual employees

Casual employees work when required and are usually engaged for short-term, temporary or seasonal work. The practice is not required to guarantee the nurse a minimum number of hours per week, and the nurse is usually paid by the hour or day. However, depending on the terms of the applicable award or industrial agreement, the employer may have to pay for a minimum number of hours for a shift.

Casuals are not entitled to permanent employment conditions, such as sick leave or annual leave, so their wages usually include compensatory loads (usually 15–20% on top of their hourly rate, depending on the award). However, if a nurse has an employment history of regular hours, over even a short period, they would be classified as a part-time employee and have additional entitlements.

Part-time employees

Part-time employees work less than the standard full-time 38-hour week, but are engaged on a regular basis. A part-time general practice nurse usually works a set number of hours per week, which the employer is required to offer.

Part-time employees generally receive the same award conditions as full-time employees, such as annual leave, sick leave and other employee entitlements, on a pro rata basis.

Full-time employees

Full-time employees enjoy the full range of employee entitlements and protections. A full-time general practice nurse can expect continuing employment for 38 hours per week, plus reasonable additional hours.

Fixed-term employees

Fixed-term employees are employed on a fixed contract for a specified period and no longer. Once a fixed-term contract expires at the end of the specified period, there is no need for the employer to give the employee notice of termination.

Fair Work Act 2009

The Fair Work Act 2009 has replaced the Workplace Relations Act 1996. The new laws commenced in part on 1 July 2009 and in full on 1 January 2010 with the National Employment Standards and award system, which introduced 'modern' awards.

The Fair Work Act has six main objectives:

1. Ensuring a guaranteed minimum safety net of fair, comprehensive and enforceable wages and conditions.
2. Protections from unfair dismissal for all employees.
3. Protection for the low-paid.
4. Assisting in balancing work and family responsibilities.
5. The right to be represented at work, including the prevention of discrimination, freedom of association, and protection against unfair treatment.
6. A system that has bargaining in good faith at the enterprise level at its heart.

In broad terms, the Fair Work Act is a comprehensive reworking of the Workplace Relations Act and contains significant changes that affects general practices. The new Act replaced the Industrial Relations Commission with Fair Work Commission, which provides a 'one-stop shop' for information, advice and assistance on workplace issues. The Fair Work Commission Inspectorate assumed the functions of the Workplace Ombudsman, and members of Fair Work Commission have the power to review and vary awards, deal with unfair dismissal claims and make orders against industrial action.

The Fair Work Act applies to 'national system employers' in the federal workplace relations system. Most Australian general

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practices are subject to the Act because the employing entity falls within the definition of a national system employer – that is, the practice is usually a trading corporation for the purposes of Australian law. The definition is the key factor.

As mentioned, it is possible for nurses working in the same practice to have different employers. This could happen where legally separate practices conduct their business from the same premises but do not use the same entity to employ staff. Although the Fair Work Act cannot apply to a trust or a partnership under the corporations' power of the Australian Constitution, it is likely the employment of a nurse by a service trust or partnership will be subject to the Act in some situations:

- most service trusts used to employ staff have a company as trustee, and that company is the employer of staff
- a nurse employed by a partnership has the partners as their employer. In many cases a GP's practice company, rather than the GP as an individual, is a partner.

It is the practice's responsibility to determine whether the Fair Work Act applies to the employer and the employment contract. You may need specialist legal advice on this issue.

Awards and enterprise agreements

In general terms, nurses working in general practice can be employed under an enterprise agreement, the Nurses Award 2010, or an individual contract. Awards or enterprise agreements are legally binding instruments, with the force of legislation, and regulate the terms and conditions under which specific types of workers may be employed. They cover entitlements such as minimum hours of work, rates of pay, job classification levels, annual leave, holiday pay, allowances, overtime and time in lieu, personal/carer's leave, and representation and dispute settlement. Awards are made by industrial tribunals established under either federal or state law.

Employees cannot be offered or paid entitlements less generous than provided for in a binding award or agreement. However, a contract can provide for more generous conditions (for example, a higher wage rate) than those provided in the applicable award.

National Employment Standards

The Fair Work Act replaces earlier standards and other minimum terms and conditions of employment with the National Employment Standards. All employers are required to comply with 10 minimum standards:

1. Maximum weekly hours of work – 38 hours, plus reasonable additional hours
2. Requests for flexible working arrangements – for employees with children who are under school age or who are under 18 and have a disability
3. Parental leave: unpaid birth-related and adoption-related leave
4. Annual leave
5. Personal/carer's leave and compassionate leave
6. Community service leave, including for jury service
7. Long service leave
8. Public holidays
9. Notice of termination and redundancy pay
10. The Fair Work Information Statement

www.apna.asn.au www.healthypractices.apna.asn.au

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APNA acknowledges and thanks the Australian Medicare Local Alliance for use of this material.

This resource is funded by the Australian Government Department of Health.