

# CONNECTIONS

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## Education, reflection, and support.



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Workplace Relations & Employment Hotspot:  
Minimum Entitlements & Working Arrangements

Occupational  
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# Workplace Relations & Employment Hotspot:

## Minimum Entitlements & Working Arrangements

### WorkPlacePLUS

When engaging staff in your occupational therapy practice, it is important to ensure you are paying employees their minimum entitlements. The penalties for underpaying employees have never been higher.

Effective 1 January 2025<sup>1</sup> under the Closing Loopholes Act, new maximum penalties will apply for certain contraventions associated with underpayments, and intentional underpayment of wages by employers will become a criminal offence.

This article provides occupational therapists with a broad overview of minimum employment entitlements, and alerts practice owners and sole traders to some recent legislative updates impacting their obligations.

### Minimum entitlements

The National Employment Standards (NES) make up the minimum entitlements for employees in Australia. Other workplace instruments such as an employment contract, enterprise agreement or awards can't provide less than the NES.

The minimum entitlements of the NES are:

- Maximum weekly hours
- Requests for flexible working arrangements
- Offers and requests to convert from casual to permanent employment
- Parental leave and related entitlements
- Annual leave
- Personal/carer's leave and compassionate leave
- Paid family and domestic violence leave

- Community service leave
- Long service leave
- Public holidays
- Superannuation contributions
- Notice of termination and redundancy pay
- Fair Work Information Statement (the FWIS) and Casual Employment Information Statement (the CEIS).

An employee's minimum pay rate can come from an award, registered agreement or the national minimum wage. Employees have the right to be paid for all the hours they work including time spent training, in meetings or doing a trial shift.

An award is a legal document that contains the minimum terms and conditions of employment and covers specific industries and occupations. An occupational therapist in a private practice is covered by the Health Professionals and Support Services (HPSS) Award (2020). Occupational therapists must be paid at least the pay rates and entitlements set forth in the HPSS Award.

### Working arrangements

"Working arrangements" refers to the approved or agreed upon employer-employee relationship, particularly around the patterns and design of work hours and how work is performed.

It's important to have a clear understanding of the working arrangements in your practice and to be able to clearly communicate (and in some cases negotiate) these with your staff. For example:

- Is this an employee or independent contractor arrangement?
- Is the position casual or permanent? Part-time or full-time?
- What leave and entitlements are provided?
- What flexible working arrangements are available?
- Who supplies tools and equipment?
- Who is responsible for insurance and matters of work, health and safety?

If your occupational therapy practice engages independent contractors, it is important to review the arrangements regularly to ensure you are paying your workers their lawful entitlements.

- An employee works in your business and is part of your business. An independent contractor effectively runs their own business and operates under their own business name
- Independent contractors are responsible for their own business compliance, do not receive paid leave

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and can be legally liable for the work performed under their contract.

To learn more, read *Contractor or Employee?*

The *Closing Loopholes Act 2024* has redefined employers' obligation to disprove sham contracting. Effective 27 February 2024, employers who have incorrectly classified an employee as an independent contractor may be penalised for sham contracting, unless they can show that they "reasonably believed" the contract of employment was a contract for services.

In addition, effective no later than 26 August 2024, independent contractors will have the right to challenge unfair contracts. There will be minimum standards for 'employee-like' workers, and independent contractors who earn less than the contractor high income threshold, including employee-like workers, will be able to apply to the Fair Work Commission (FWC) if they think their services contract contains unfair terms.

The *Closing Loopholes Act 2024* also impacts casual employment. Effective 26 August 2024, there will be new clearer definitions of employee and employer under the Fair Work Act. The new definition says an employee is a casual only if:

- there isn't a firm advance commitment to continuing and indefinite work, factoring in the real substance, practical reality and true nature of the employment relationship, and
- the employee is entitled to be paid a casual loading or a specific pay rate for casuals.

Under the NES, casual employees are entitled to:

- access to a "casual conversion" pathway to become a permanent employee

- 2 days unpaid carer's leave per occasion
- 2 days compassionate leave per occasion
- 10 days paid family and domestic violence leave per year
- unpaid community service leave
- request flexible working arrangements and take unpaid parental leave if they meet certain criteria.

Casual employees are also entitled to a minimum number of hours per shift.

### Important considerations:

- Minimum pay rates under awards are reviewed annually by the FWC. Update your payroll system and employment contracts at the beginning of each new financial year to reflect the increases in wages and superannuation announced by the FWC's annual wage review
- Always refer to the newest pay guide and seek guidance from an experienced employment and industrial relations professional when interpreting an award
- You must ensure you are classifying and paying staff correctly. When wages are increased, allowances may need to be increased accordingly. Failing to pay the correct allowances will effectively result in the unlawful underpaying of staff
- Rates in awards do not include superannuation. Private practice owners must ensure they are paying their staff the correct entitlements, including the correct superannuation contributions
- The HPSS Award covers both occupational therapists and allied health assistants (AHAs) and outlines the minimum pay requirement. You can choose to pay staff above the minimum Award rate
- If you are an employee, you should check to make sure you are receiving at least the minimum allowances and entitlements
- If you are an independent contractor, you are responsible for setting your own fees for the services you provide
- Some casual employees do not want

to convert to full time or part time, even if they meet the criteria. It is advisable to maintain written records of your conversion offer and the employee's choice to remain casual

- Under the *Secure Jobs, Better Pay Act 2022*, there are limits to the use of fixed-term contracts. If you are still using fixed term contracts, seek guidance from an experienced employment and industrial relations professional on whether these arrangements are lawful
- Employers must give every employee engaged under a new fixed term contract a copy of the newly introduced Fixed Term Contract Information Statement that became available in December 2023
- Employers must give every new employee a Fair Work Information Statement and if applicable, a Casual Employment Information Statement, before or as soon as possible after they start their new job. These documents have recently been updated with information about the recent changes to the *Fair Work Act*. To ensure you're using the latest version, download them directly from the Fair Work Ombudsman website or request a copy from WorkPlacePLUS.

### Your legal obligations

For more information on minimum entitlements and working arrangements, you can check the [Fair Work Ombudsman website](#) or seek advice from an HR consultancy that works closely with the allied health sector such as WorkPlacePLUS.

### OTA member benefits

As the national HR and IR partner of Occupational Therapy Australia, WorkPlacePLUS provides support to OTA members on employment matters affecting your practice. For more information, contact Anna Pannuzzo on (03) 9492 0958 or visit [www.WorkPlacePLUS.com.au](http://www.WorkPlacePLUS.com.au).