

SPEAKOUT

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TEMPORARY WORKPLACE SHUTDOWNS

Important changes to the Health Professionals and Support Services Award

Effective 1 May 2023, private practice owners will need to change the way they implement temporary workplace shutdowns.

As part of the Commission's 4 yearly review of modern awards, **the Fair Work Commission (FWC) has varied 78 modern awards** by replacing existing shutdown clauses with a new model term. Some of the 78 modern awards impacted include:

- *Health Professionals and Support Services Award 2020* (clause 26.5)
- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* (clause 22.3)
- *Nurses Award 2020* (clause 22.7)
- *Clerks—Private Sector Award 2020* (clause 32.5)
- *Professional Employees Award 2020* (clause 18.4)
- *Cleaning Services Award 2020* (clause 21.4).

Shutdown clauses relate to an employer's ability to direct employees to take a period of annual leave where the employer shuts down all or part of its enterprise. For example, some private practice owners will routinely close over the school holidays or the Christmas period.

The new model term varies and updates existing shutdown clauses in a number of ways. In summary, from 1 May 2023:

- Employers must now provide at least 28 days' written notice of any temporary shutdown period. The written notice could be a shorter period as agreed between the parties, or a longer period if the term preserves an existing longer notice period.
- Employers may direct employees in writing to take a period of paid annual leave if the employee has an accrued annual leave entitlement, providing the direction is reasonable.
- Employees can no longer be directed to take leave without pay if they do not have sufficient annual leave or leave in advance to cover the whole period of the shutdown.
- Once an employee's paid annual leave has been exhausted, by written agreement the employee may take unpaid leave or annual leave in advance during the temporary shutdown.

Practice owners are required to provide notice and consultation to affected employees before implementing temporary workplace shutdowns.

KEY CONSIDERATIONS FOR PRACTICE OWNERS:

- Practice owners should review the Health Professionals and Support Services Award 2020 and any other applicable awards to apply the new temporary shutdown provisions.
- Practice owners should review their policies, processes, documentation, payroll systems and employee management systems regarding accessing annual leave entitlements, temporary workplace shutdowns and directing an employee to take leave.
- Practice owners may need to review their approval process for annual leave requests that fall before planned shutdown periods.
- Employees who do not have sufficient accrued annual leave to cover the shutdown period may in some circumstances be entitled to wages during the shutdown period if they do not agree to take pay without leave or leave in advance.
- When calculating the amount of paid annual leave accrued by an employee, practice owners must consider any leave taken in advance pursuant to the 'annual leave in advance' clause.
- Practice owners should note that periods of annual leave taken for the purposes of a temporary shutdown do not apply for the purposes of the existing excessive leave provisions contained in modern awards.
- Practice owners should provide communications and training to HR and payroll managers and impacted employees regarding the changes to shutdown clauses in applicable awards. This includes accounting for the updated notice periods and requirements to take paid leave.

It is important for practice owners to keep up to date with changes to Australian workplace laws and regulations, including any changes to the awards that apply to their employees. Employers must ensure they are meeting their obligations under these instruments.

In particular, practice owners are required to provide notice and consultation to affected employees before implementing temporary workplace shutdowns. The specific requirements, which depend on the size of the practice and the number of employees affected, must also be included in the employment contract.

If you are unsure about how to correctly interpret and apply changes to the Health Professionals and Support Services Award 2020, you can **contact the Fair Work Ombudsman** or seek advice from an HR consultancy that works closely with the allied health sector such as **WorkPlacePLUS**.

As the preferred national HR and IR provider for Speech Pathology Australia, WorkPlacePLUS provides support to SPA members on employment matters affecting your practice. For more information, contact Anna Pannuzzo on (03) 9492 0958 or visit www.WorkPlacePLUS.com.au.

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