**AMA (WA) GUIDANCE NOTE ON EMPLOYMENT CONTRACTS**

**\*Remove this cover page when finalising and issuing contracts utilising the below template\***

In WA, we have two separate Industrial Relations systems, each with their own legislation and awards (with potentially differing pay rates and entitlements).

Members should ensure that they check if their Practice is covered by the WA State Industrial Relations System or the Federal Industrial Relations System (Fair Work) and are utilising the correct set of Employment Contract templates that are available on our website for Members.

Where the employing entity is a sole-trader or partnership the Employer will be covered by the WA State Industrial Relations System, and where the employing entity is a Constitutional Corporation (e.g. a Pty Ltd Company) the Employer will be covered by the Federal Industrial Relations System. Where the employing entity is a trust, it is the nature of the trustee that matters (e.g. is the trustee a sole-trader, a partnership or a Company as per the above).

If a Member is unsure of the nature of their employing entity, this is likely something that can be confirmed by your Accountant. There is also the ABN Lookup that can be utilised as well: https://abr.business.gov.au/

Once you have identified the nature of the employing entity of the Practice, if you are still unsure as to whether you are covered by the WA State system or the Federal system, and/or are unsure of the correct award coverage for a particular employee, please contact the AMA (WA) Workplace Relations team for advice.

The Contract template below has sections highlighted in yellow that need to be amended accordingly, with any instructions to assist you in the necessary amendments outlined in red text.

We strongly recommend that Members provide at least one amended contract to the AMA (WA) Workplace Relations team for review, prior to issuing finalised contracts to staff, by email on industrial@amawa.com.au

*Note: The “Draft” watermark throughout the document can be removed after the contract has been reviewed and finalised and prior to issuing to employees – the “remove watermark” option is under the “Design” tab*

**Award Coverage Guide:**

**WA State System Employers:**

*Clerks – (Commercial, Social and Professional Services) Award 1972* – for medical receptionists/secretaries and administrative staff. Note: a Practice Manager may be covered by this Award dependent upon the scope of the role and duties performed or they may be “Award Free” – confirm with AMA (WA) Workplace Relations Team

*Nurses (Doctors Surgeries) Award 1977* – for Nurses

**Federal System Employers:**

*Health Professionals and Support Services Award 2020* – for medical reception/admin staff, Practice Managers, as well as Health Professionals such as Dietician, Psychologists, Osteopath, Medical Imaging Technologist

*Nurses Award 2020* – for Nurses

EMPLOYMENT CONTRACT

BETWEEN

COMPANY

and

FULL NAME

***Disclaimer****: This contract template is intended as a guide for the benefit of AMA (WA) members only and should not be replicated or distributed without the permission of the AMA (WA).  Employment contracts can be complex, and this template contract needs to be adjusted appropriately to suit the individual circumstances of the Employer and the employment relationship.  Members should seek further guidance from the AMA (WA) Workplace Relations team prior to finalising and issuing contracts to staff utilising this template.*

CONTRACT OF EMPLOYMENT

# Parties

### This Contract of Employment (**Contract**) will be binding upon:

#### {Insert full company name} (ABN XX XXX XXX XXX) (**Employer**); and

#### {insert full name}, also referred to as “**you**” or “**your**” (**Employee**).

# EMPLOYMENT

## Commencing Position

### You will be employed in the position specified in Schedule 1. However, you may be required to carry out any duties required by the Employer, provided that you are capable of performing them.

### The Employer will commence employing you on a part-time/full-time basis on the date specified in Schedule 1.

## Acknowledgment

### You acknowledge and agree that:

#### you have a lawful right to work in Australia and perform the duties and responsibilities of employment contemplated by this contract;

#### you will immediately notify the Employer of any circumstance that might prejudice this right at any time during your employment by the Employer; and

#### in order to enable the Employer to verify at any time that you have this right, you will provide to the Employer upon request sufficient evidence to establish this fact.

## Vaccination

### It is a requirement of your employment to comply with the *Primary Health Care Worker (Restrictions on Access) Directions* (or its replacement) as well as the *Booster Vaccination (Restrictions on Access) Directions* (or its replacement) (**Directions**).

### Pursuant to the Directions, you must:

#### ensure you are vaccinated against COVID-19 and provide evidence of your vaccination status; or

#### provide evidence of your status as an exempt person.

### For the avoidance of doubt, your offer of employment, and continued employment, is conditional upon you complying with these requirements.

### [It is also recommended by the Employer that you have an Influenza Vaccine each year. The cost of this Influenza vaccine will be borne by the Employer.] **[Optional sub-clause – remove if not required]**

## Hours

### You are specifically contracted to work {Insert No of Hours} hours per week and except in the case of absence by reason of ill health, incapacity, accident or approved leave, your roster for work will be as set out in Schedule 1. Reasonable additional hours may be required to be worked from time to time, [in which case any such hours will be taken as time in lieu, at a time convenient to the Employer]. **[NOTE: Include highlighted section if applicable otherwise prescribe how hours are to be paid – check-offsetting arrangement]**

### During your work hours you will devote the whole of your time, attention, and abilities exclusively to the Employer’s business during these hours, and such other hours as may be reasonable and necessary for you to perform your duties in a satisfactory manner.

### If you consider that you are being required to work unreasonable hours or a job that you are doing requires you to work hours that you consider are unreasonable you should raise this with your manager in the first instance.

### So as to ensure appropriate Reception and Secretarial/Nursing/Practice Management duties for the Employer there will be a requirement for you to work flexible hours as determined and be available at short notice to cover for absences and or annual leave of other Reception staff. You will be specifically required to cover for other employees whilst they are taking Annual leave. Where this occurs, you will be provided with at least 7 clear days’ notice of a change to your Roster.

## Location

### You will work at the Employer’s premises at {Insert Employer Address}.However, the Employer may direct you to perform work at other locations, provided that such a direction does not impose unreasonable hardship on you.

## Probationary Employment

### There is no requirement to undertake any period of probationary employment given that you are an existing employee.

### **[NOTE: for new employees the following wording should be used in lieu of the above]**

### You are initially to serve a 3-month period of probation from the commencement date of your employment with the Employer.

### The probationary period may be extended by a further 3 months period of probation.

### During the probationary period, either the Employer or you may terminate your employment with one week’s notice in writing.

## Duties and Responsibilities

### You will:

#### refer to manuals/handbooks for operational guidelines;

#### properly record and account for all transactions made by or on behalf of the Employer by maintenance of the appropriate records and accounts. Any false or misleading entries in such records or accounts will be subject to disciplinary proceedings;

#### exercise the powers and discretions, hold the responsibilities and perform the duties and tasks as are conferred, delegated or specified by the Employer from time to time;

#### perform those responsibilities and duties honestly and in a proper and efficient manner;

#### use your best endeavours to promote and enhance the interests, welfare, business, profitability, growth, and reputation of the Employer amongst its customers;

#### be professional, personable, and civil and show a positive attitude to clients with empathy at all times;

#### not intentionally do anything that is or may be harmful to the Employer;

#### report to the Employer promptly, or to such person as the Employer from time to time determines, at all reasonable times, all information and explanations as required in connection with matters relating to your employment or the business of the Employer;

#### comply with all lawful and reasonable directions given to you by the Employer; and

#### perform such other duties that are set out in the relevant Job Description, as varied from time to time.

## Presentation Standards

### You are required to dress and present in an appropriate, professional manner. Clothing that is worn, unclean or untidy is unacceptable. High standards of grooming and deportment should be adhered to at all times.

### **[Optional – remove/modify the below paragraph if no uniforms are required. Another option is to incorporate a uniform allowance into the rate of pay instead of the Employer paying 100% of the cost]**

### [A registered uniform is required to be worn by all staff. The Employer will pay for 100% of the cost. In addition to the uniform, closed shoes must be worn at all times (these are not supplied by the Employer).]

## Performance Review

### The Employer will regularly review your performance and conduct and will notify you of its opinion as to these matters and particularly any matter which the Employer requires to be rectified or improved.

### Appropriate performance management, training and development may be undertaken to address identified skill shortages that are of the employee.

### Disciplinary action, including termination of this contract, may occur should performance issues continue to exist.

## Professional Development ****[Optional – remove or modify as required]****

### All employees are encouraged to develop further skills that enhance the operations of the Employer.

### Courses and workshops deemed suitable for continuing up-skilling and educational development should be submitted to the Practice Manager for consideration.

### These submissions should be made a minimum of two (2) weeks prior to the scheduled commencement of the course or workshop.

### At the discretion of the Practice Principal any courses that are deemed appropriate may be approved.

## Employer Policies and Procedures

### You must be familiar with and observe the Employer’s policies and procedures as varied from time to time.

### Nothing in the Employer’s policies and procedures gives rise to a legal right or benefit enforceable by you.

## Smoke Free Environment

### In the interest of Health and to maintain a professional image appropriate to the Employer, the Employer’s premises are to be kept smoke free.

### Employees are not permitted to smoke on or around the Employer’s premises.

# REMUNERATION

## Amount

### The Employer will pay you a remuneration package that comprises:

#### Your hourly rate of pay, as set out in Schedule 1.

#### Superannuation contributions as required by law.

#### [The above remuneration is paid to you in satisfaction of any and all entitlements which you would otherwise receive pursuant to the provisions of the Applicable Legislation, including overtime, allowances, penalties, and loadings, and may be off-set against any claim for alleged underpayment.] **[Note: include this sub-clause only if remuneration is all-inclusive bearing in mind that an award-free employee does not have a minimum entitlement under a prescribed award to annual leave loading, overtime penalty rates, shift penalty rates or any other type of penalty rate/loading (other than casual loading for casual employees) and therefore specifically paying any penalties/loadings like this is by negotiated agreement – for an award-free employee it would be simpler administratively to have an all-inclusive pay rate/salary]**

## Method of Payment

### The Employer will pay salary and allowances into your nominated bank account(s) on a {Insert weekly or fortnightly} basis.

# ****EXPENSES [oPTIONAL CLAUSE – REMOVE OR MODIFY AS REQUIRED]****

## Employment Expenses

### The Employer will reimburse you in accordance with Employer policy for expenses you properly incur in the course of your employment on behalf of the Employer.

## Motor Vehicle Expenses

### Where you are required to use your own private motor vehicle for business related travel the Employer will reimburse you for the cost of that travel at the set rate per kilometre as determined by the Australian Taxation Office. **[NOTE: amend as appropriate]**

### You must advise the Practice Principal in writing of the distance of the business-related motor vehicle use incurred.

### Any business-related motor vehicle use and expense must be approved by the Practice Principal prior to it being incurred.

# EMPLOYER DEBTS

### If you owe money to the Employer, forfeit the right to monies already paid or you are paid more than you are entitled to be paid, the Employer may withhold (to the extent permissible by Industrial Laws) the amount forfeited, or the amount of the debt or overpayment, from any amounts otherwise payable to you, including salary, reimbursement of expenses or payments on termination.

# LEAVE

## Entitlement

### You will be entitled to paid and unpaid leave in accordance with the Applicable Legislation. A summary of these entitlements is set out below.

## Annual Leave

### You will be entitled to 4 weeks paid annual leave per year of service with the Employer.

### Annual leave accrues on a pro rata basis with respect to ordinary hours worked and is cumulative.

### Annual leave shall be paid at your ordinary rate of pay. [No additional leave loading is payable as this has been incorporated into your hourly rate of pay/salary.] **[NOTE: delete if not applicable]**

### Annual leave is to be taken at times agreed with the Employer.

### The Employer may require you to take a period of paid annual leave if reasonable. A requirement will be reasonable if you have accrued excessive annual leave.

### The Employer may choose to temporarily close e.g. during the Christmas/New Year period or at other nominated times. If the Employer so determines, you may be directed to take paid annual leave, during part or all of this period. Where you have insufficient accrued annual leave for this period, you may be required to take annual leave in advance.

### Upon the termination of your employment, you will be entitled to payment in lieu of any untaken annual leave.

## Public Holidays

### The following days, as gazetted, will be regarded as public holidays without deduction of pay, namely - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, WA Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a substitute public holiday by arrangement between the Practice Principal and yourself.

## ****Long Service Leave****

### You will be entitled to paid long service leave in accordance with the relevant legislation that applies in Western Australia.

## ****Sick/Carer’s Leave****

### You will be entitled to paid sick/carer’s leave of 10 days per annum which may be taken as:

#### sick leave for absences due to personal illness or injury; or

#### carer’s leave to provide care or support to a member of your immediate family or household, who requires support because of an illness or injury or because of an unexpected emergency.

### Sick/carer’s leave accrues on a pro-rata basis with respect to ordinary hours worked and is cumulative.

### The Employer may require you to provide a medical certificate from a registered health practitioner evidencing the reason for that sick/carer’s leave.

### You will be entitled to unpaid carer’s leave of up to 2 days on each occasion when a member of your immediate family or household requires support because of an illness or injury or because of an unexpected emergency. This entitlement only applies if you are not entitled to paid personal/carer’s leave.

## Compassionate Leave

### You will be entitled to paid compassionate leave of 2 days on the death of a member of your immediate family or household.

### Compassionate leave may be taken as a single period of 2 days or as 2 separate periods of one day each. You must provide any evidence of the illness, injury, or death that the Employer reasonably requires.

## Community Service Leave

### You will be entitled to take leave to undertake eligible community service activity, such as jury service or voluntary emergency management in accordance with the provisions of the *Emergency Management Act 2005*.

## Parental Leave

### You will be entitled to parental leave after 12 months’ continuous service, in accordance with the Applicable Legislation. Parental leave may be taken as:

#### unpaid parental leave in respect of a birth or expected birth or adoption of a child.

#### unpaid special maternity leave if you:

##### are pregnant and have a pregnancy related illness; or

##### have been pregnant and the pregnancy ended within 28 weeks of the expected date of birth other than by the birth of a living child.

### The maximum period of parental leave (including special maternity leave and ordinary maternity leave) is 52 weeks, inclusive of any other period of paid leave taken simultaneously (e.g. annual leave).

### You may request an extension of unpaid parental leave for up to 12 months. You may also request to work a flexible working arrangement until your child reaches school age. Conditions apply to these requests. The Employer may refuse such requests on reasonable business grounds.

### You are required to give no less than 10 weeks written notice of your intention to take parental leave, specifying the intended start and finish dates of your leave, and providing a medical certificate as to the expected date of birth or date of placement (in the case of adoption leave).

# CONFIDENTIALITY

## Confidential Information

### In the course of your employment, you will become privy to Confidential Information of the Employer or its patients, whether in written, computerised, or oral form.

## Obligations of Confidence

### You will, both during your employment and for so long as the Confidential Information remains confidential after the termination of your employment (unless it ceases to be confidential due to your breach of this clause):

#### not at any time, either directly or indirectly, disclose or communicate to any person any Confidential Information that may come to your knowledge during or in the course of the employment, unless expressly authorised by the Employer or required by law or order of a court;

#### use your best endeavours to prevent disclosure or publication of the Confidential Information where that disclosure or publication is not authorised by the Employer;

#### if required by law or by an order of a court to disclose any Confidential Information, advise the Employer of that fact and take all lawful steps to confine disclosure of the Confidential Information and preserve its confidentiality, including taking steps to allow the Employer or its agents to do so;

#### not use or attempt to use Confidential Information for your own purposes or for any purposes other than for the purposes of the Employer or in any manner which may injure or cause loss directly or indirectly to the Employer and/or its business; and

#### acknowledge and agree that, without prejudice to any other remedy that the Employer may have, the Employer will be entitled to injunctive and other equitable relief to prevent or cure any breach or threatened breach of this clause.

# INTELLECTUAL ****PROPERTY****

## Acknowledgments

### You acknowledge and agree that:

#### all intellectual and industrial property rights in Confidential Information, and any modifications and enhancements to Confidential Information, are owned by the Employer;

#### any Inventions or Works created during and in the course of your employment, and the entire copyright throughout the world in all Works, are owned by the Employer;

#### the Employer owns all Inventions and Works absolutely and without further payment by the Employer to you and to the extent necessary, you irrevocably assign to the Employer all your present and future rights, title and interests in and to all Inventions and Works; and

#### you must immediately disclose to the Employer (and to no other person) all the details of any Inventions or Works created by you during your employment.

## Consent

### You:

#### consent to the Works being changed, copied, edited, added to, taken from, adapted and or translated in any manner or context by the Employer, and any person authorised by the Employer to do so, for any purpose related to the Employer’s business, notwithstanding that such conduct may amount to derogatory treatment of the Works within the meaning of the *Copyright Act 1968*; and

#### acknowledge that the consent in clause 7.2(a) above is given genuinely and is not given because any person:

##### applied duress to you (or your representative) to give that consent; or

##### made a false and misleading statement to you in relation to the giving of that consent.

## General

### You must, both during your employment and thereafter:

#### do all such acts and things as the Employer may request reasonably to secure to the Employer ownership or registration rights in the InventionsorWorks, and you hereby grant to the Employer the right to use your name to obtain any protection of the Inventions or Works; and

#### not engage in any conduct that may damage the Employer’s intellectual property or industrial rights.

# OTHER BUSINESS INTERESTS

### During your employment you will not undertake or carry on, or be employed by, or be directly or indirectly concerned or interested in, any business other than the Employer’s business.

### You will not have any association or interest outside the Employer that is incompatible and/or inconsistent with the Employer’s interests.

# TERMINATION OF EMPLOYMENT

## Termination by the Employer

### Subject to clause 10.3, the Employer may terminate the employment by giving you notice, or payment in lieu of notice, in accordance with the following table:

|  |  |
| --- | --- |
| **Period of continuous employment** | **Period of notice** |
| Not more than 1 year | 1 week |
| More than 1 year, but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

An additional weeks’ notice is to be added if the employee is over 45 and has been employed for a continuous period of not less than 2 years.

## Resignation

### If you resign, your resignation must be in writing and provide for the same notice period as set out in the schedule of sub-clause 10.1 above.

### If you fail to give the required notice, or decline to serve part or all of the notice period without the agreement of the Employer, you will forfeit from any monies owing to you on termination an amount equal to up to one week’s pay for the period of notice not given or served.

## Summary termination

### The Employer may terminate your employment immediately by giving written notice to you, and without being required to provide any compensation or payment in lieu of notice if you, engage in serious or gross misconduct (which may include but not limited to the following):

#### being under the influence of drugs or alcohol

#### breach of Patient or Business confidentiality

####  breach a fundamental condition and/or commit a fundamental breach of the conditions of your employment;

#### commit an act of fraud or dishonesty;

#### engage in any conduct which, in the reasonable opinion of the Employer, may cause loss or injury to the reputation or business of the Employer;

#### fail or refuse to comply with any lawful direction given to you by the Employer through its authorised representative.

## During the notice period

### If either the Employer or you give notice of termination under this contract, the Employer may:

#### pay you an amount of base salary in lieu of part or all of that period not served by you; or

#### require you to serve part or all of that period without attending work and/or performing duties.

## Acts following termination

### Upon the termination of your employment you must immediately repay all outstanding debts and loans to the Employer and return to the Employer any of the following items in your possession:

#### any document, whether in computerised form or otherwise, relating to any matter within the scope of the business of the Employer, or to Confidential Information or any other aspect of your employment;

#### all keys and passes belonging to the Employer;

#### all software and associated materials belonging to or licensed to the Employer; and

#### all other property belonging to the Employer,

### and you will provide the Employer with a letter certifying that all such items have been returned.

# DISPUTE RESOLUTION

### Where you have a complaint or dispute (except for termination of employment) with the Employer regarding your employment, the matter must first be raised with the Practice Manager.

### Where the matter is not resolved at the workplace level, the parties may agree to refer the matter to private mediation with an independent mediator agreed between the parties. Each party will bear its own costs of the mediation.

### The parties agree that while attempting to resolve the matter they shall abide by the contract of employment, and they must co-operate to ensure the dispute resolution is carried out quickly as reasonably possible.

# ****GENERAL PROVISIONS****

## ****Entire agreement****

### This contract constitutes the entire agreement between you and the Employer regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between the parties, whether oral or in writing.

## Variation

### If your position, job location or remuneration package change during your employment, the other provisions of this contract will continue to apply to your employment unless varied by mutual agreement in writing.

## Severance

### If any clause or any part of any clause in this contract is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) of this contract, which will continue in full force and effect.

## Governing law and jurisdiction

### The laws applicable in Western Australia govern your employment and this contract.

### The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts competent to hear appeals from those courts.

# DEFINITIONS

### In this contract:

#### **Applicable Legislation** means the relevant state or federal legislation specified in Schedule 1, Item 7;

#### **Confidential Information** includes information about the following matters that is confidential to the Employer:

##### any Patient;

##### the number, nature or mix of products or services provided by the Employer;

##### any person who the Employer or you have approached or canvassed during the employment as a potential patient, including their names, addresses, requirements, and preferences concerning the products or services produced or that may reasonably be provided by or through the Employer;

##### marketing or business plans or strategies;

##### techniques, procedures or methods devised by the Employer or required to be used in the operation of its business, including the training of its personnel;

#### **Industrial Laws** mean any applicable industrial award, or industrial legislation;

#### **Inventions** mean all inventions, discoveries and novel designs;

#### **Patient** means any person who is or was a patient of the Employer with whom in the course of the last 12 months of your employment you have dealings;

#### **Works** means all works and other subject matter in which copyright exists.

# Execution

SIGNED for and on behalf of {Insert employer/practice name}

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{Insert name, position} Date

I acknowledge and declare that I have read and fully understand the terms and conditions contained in this agreement and accept that I will observe them fully during my employment:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Employee Date

# Schedule 1

|  |  |  |
| --- | --- | --- |
| **Item 1** | **Full Name of Employee****Contact Details** | NAMEADDRESSNUMBER |
| **Item 2** | **Commencement Date of Employment** | XXXXX |
| **Item 3** | **Probationary Period** | 3 months from date of commencement |
| **Item 4** | **Position Title** | {Insert Position Title} **[e.g. HR Manager, Practice Manager, Business Development Manager, General Practitioner** **NOTE: Members should seek advice from AMA Workplace Relations to check whether the scope of duties and responsibilities of roles such as Practice Manager, HR Manager etc fit within the higher classification levels of the *Clerks – (Commercial, Social and Professional Services) Award 1972* (refer to Clause 11) before determining that the position is award-free** |
| **Item 5** | **Annual Salary****or****Hourly Rate** | The [{annualised} all-inclusive] rate of pay will be $ {Insert Hourly Rate/Annual Salary} per hour/annum**[NOTE: delete [highlighted section] if not utilising an off-setting arrangement. If using an off-setting arrangement, ensure that the all-inclusive rate is sufficiently high enough to incorporate all the amounts otherwise payable under the Applicable Legislation]** |
| **Item 6** | **Ordinary Hours of Work** | 38 hours per week **[Amend accordingly for part-time arrangements]**The ordinary hours of work will be averaged over a 4-week cycle. **[Amend/remove as appropriate]**{Insert days/times of work} **[e.g. Monday, Tuesday, Wednesday 8.30 – 5.00]**{The hours in excess of 152 will be paid as overtime at the following agreed rates: Time and a Half}. **[NOTE: amend/remove as appropriate dependent upon off-setting arrangement, e.g. delete if agreed for time in lieu or if included in off-setting salary arrangement]**You will be permitted to take a meal break as rostered when you are rostered in excess of five (5) hours on each shift.Subject to business needs your roster may be amended from time to time. |
| **Item 7** | **Applicable Legislation** | *Minimum Conditions of Employment Act 1993* *The Fair Work Act 2009* (Cth)with respect to Parental Leave and Notice of Termination provisions. |