

Workplace Relations Update for OTA Members

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Legislative changes now in effect

It is important for practice owners, sole traders and independent contractors to meet their obligations under workplace laws. The non-compliance penalties have never been higher and ignorance is no excuse.

Under the *Closing Loopholes Act 2024*, law changes that impact practice owners with less than 15 employees (permanent, part time and casual employees) include:

- **Increasing the maximum level of civil penalties** – Effective 27 February 2024, the maximum civil penalties available for non-compliance with a Compliance Notice have doubled for all employers of any size, to a total of \$18,780 per contravention for an individual and \$93,900 per contravention for a company. Also, what constitutes a serious contravention under the Fair Work Act has now changed to one done either knowingly or recklessly.
- **Employer's obligation to disprove sham contracting** – If your occupational therapy practice engages independent contractors, it is important to review the arrangements to ensure you are paying your workers their lawful entitlements. 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.
- **The right for independent contractors to challenge unfair contracts** - Effective no later than 26 August 2024, 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 if they think their services contract contains unfair terms. The contractor high income threshold is yet to be set.
- **Changes to the definition of casual employment and employment** - Effective 26 August 2024, there will be new clearer definitions of employee and employer under the Fair Work Act, and new pathways for casual employees to convert to permanent.

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Paying and classifying your staff correctly

Following its Annual Wage Review, the Fair Work Commission (FWC) has announced an increase to the National Minimum Wage and minimum award wages. The increase applies from the first pay period starting on or after 1 July 2024. Key details and considerations:

- The National Minimum Wage applies to employees who aren't covered by an award or registered agreement. From 1 July 2024, the National Minimum Wage will increase by 3.75%. The new National Minimum Wage will be \$915.90 per week or \$24.10 per hour.
- Minimum award wages will increase by 3.75% from 1 July 2024. Occupational therapists and allied health assistants (AHAs) in a private practice are covered by the Health Professionals

and Support Services (HPSS) Award (2020). You can choose to pay staff above the minimum award rate. Always refer to the newest pay guide and seek guidance from an experienced employment and industrial relations professional when interpreting an award. New pay guides will be released by the FWC from 1 July, 2024. To receive the new HPSS Award pay guide, please ensure you [subscribe to the WorkPlacePLUS newsletter](#) >

- 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.
- The minimum wage increase may apply to employees covered by a registered agreement. This is because the base pay rate in a registered agreement can't be less than the base pay rate in the relevant award.
- Make sure you always refer your employees to the most current version of the Fair Work Information Statement. An updated version of the Fair Work Information Statement will also be available from 1 July 2024.
- 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. From 1 July 2024 the superannuation guarantee rate will increase from 11% to 11.5%.
- Independent contractors are responsible for setting their own fees for the services they provide.

The end of financial year is an optimal time to review your HR systems and processes to ensure you are paying your staff correctly. This can include checking new pay rates and superannuation requirements, reviewing employment contracts and agreements, reviewing any independent contractor arrangements, and auditing your payroll transactions.

All OTA members receive special member benefits through WorkPlacePLUS for support with HR and IR issues. For more information, contact Anna on (03) 9492 0958 or visit WorkPlacePLUS.com.au.

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6 August 2024 – [Should I disclose my medical status at work?](#)

8 October 2024 – [Gathering the facts when addressing workplace conflict](#)

26 November 2024 – [Managing employee leave](#)

Past topics – OTA members can access recordings of past WorkPlacePLUS webinars [here](#).