

## Workplace Relations Update for OTA Members

*Issued by WorkPlacePLUS, October 2024*

### **Independent Contractor Agreements**

Working arrangements and independent contractor agreements are common HR hotspots for practice owners who are engaging staff.

It is important for practice owners to review all employee work arrangements and employment contracts to ensure these agreements are lawful, particularly if you engage independent contractors or you're considering engaging independent contractors.

**All independent contractor agreements must comply with the new *Closing Loopholes* changes which have now come into effect:**

**Changes to the definition of employment** – Effective 26 August 2024, under the *Closing Loopholes Act 2024*, a new definition has been added to the Fair Work Act to help determine the meaning of “employee” and “employer”. According to the new definition, “employment” is defined by the real substance, practical reality and true nature of the relationship between an individual who may be an employee and a person who may be an employer. The total relationship will be taken into consideration and how the contract is performed in practice.

It's important to review your employer-worker-contractor relationships regularly to ensure you are paying your workers their lawful entitlements. Regardless of what the written contract might say, if in practice the relationship looks and operates as one of employment then it will be considered an employment relationship.

**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, under the *Closing Loopholes Act 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 maximum penalty for sham contracting is \$18,780 for individuals and \$93,900 for corporations per contravention. You may also be liable for additional penalties if you breach your taxation and superannuation obligations by engaging in sham contracting.

**The right for independent contractors to challenge unfair contracts** – Effective 26 August 2024, under the *Closing Loopholes Act 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.

**Need More Info? Check out these resources:**

- [Register for OTA's October meeting for the National Private Practice Interest Group where Anna Pannuzzo from WorkPlacePLUS will be discussing common HR hotspots and practical tips for OTs in private practice](#)
- [Read about independent contractors on the Fair Work Ombudsman website](#)
- [Read about changes to definitions and protections for independent contractors under the \*Closing Loopholes Act 2024\*](#)
- [Check your workers' circumstances against the ATO's online decision tool](#)
- [Download WorkPlacePLUS's free compliance timeline for employers](#)
- [Seek advice from WorkPlacePLUS – Occupational Therapy Australia's HR/IR partner](#)

The experienced team of HR consultants at WorkPlacePLUS can assess your independent contractor arrangements and support you to meet your employer obligations.

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](http://WorkPlacePLUS.com.au).