

PART-TIME EMPLOYEES AND OVERTIME

We regularly receive enquiries about the obligation to pay overtime to employees under the HPSSA. Here is one common example:

Q We employ a number of part-time receptionists under the Health Professionals and Support Services Award (HPSSA) to work a regular pattern of work each week. From time to time we require our receptionists to work extra hours to fill in for other receptionists who are on leave. This may be planned leave (e.g. annual leave) or unplanned leave (e.g. personal/carer's leave). We also require our receptionists to stay late on occasion if one of the doctors is running behind schedule. Are we required to pay our receptionists ordinary rates or overtime rates for these extra hours worked?

A Each Modern Award is different, but the HPSSA requires that before commencing employment you and your part-time employee must agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work, and the starting and finishing times each day. This agreement can be recorded in the contract of employment, and we have drafted the AMA (NSW) template part-time contract to reflect this.

The HPSSA provides that your part-time employee's hours of work may be varied by agreement and recorded in writing. This variation must be voluntarily agreed to by both parties and can't simply be because you require it.

The HPSSA then provides that where agreement has been reached on hours of work (whether agreed before commencing employment or varied during the employment), a part-time employee who is required by you to work in excess of those agreed hours must be paid overtime.

In practical terms, this means that whether you are required to pay your part-time receptionists overtime under the HPSSA for extra hours worked will depend on a number of factors, including:

- whether the extra hours were part of a variation to the employee's hours of work that was agreed and recorded in writing; and
- whether you required your receptionists to work the extra hours.

It is important to note that you can't attempt to avoid or unlawfully "contract out" of overtime or any other obligation under the HPSSA. It is also worthwhile to note that the above response is specific to the question asked. Overtime under the HPSSA may also be payable in other circumstances, for example where an employee works more than the maximum number of ordinary hours of work (per day or per week) or outside the spread of ordinary hours.

If you have any questions, please contact our Professional Services team on 9439 8822 or professionalservices@amansw.com.au. 

PS.



Professional Services offers training and education to doctors on a range of relevant topics. These education sessions are free for members* and \$300 for non-members.

EMPLOYER ESSENTIALS

- 17 May 2019 - St Leonards
- 9 August 2019 - Penrith
- 13 September 2019 - Sutherland
- 18 October 2019 - St Leonards

- ✓ Key risks for practice principals under the Fair Work Act, including personal liability
- ✓ Key strategies for managing those risks, including identifying the key compliance obligations under the Fair Work Act;
- ✓ Compliance with the two key Modern Awards that apply to employed practice staff; and
- ✓ AMA (NSW)'s suite of contracts for private practice employees

CASUAL EMPLOYMENT

- 14 June 2019 - St Leonards
- ✓ Casual employees under the Fair Work Act
- ✓ Casual employment under Modern Awards, including casual conversion
- ✓ The risks of employing long-term casuals, including the decision in *Workpac v Skene*
- ✓ AMA (NSW) casual contract

**Due to significant demand, we ask members to pay a \$50 refundable booking fee to secure their spot at education events. However, this fee is fully refundable provided the member attends the session or cancels within the required notice period.*