

FAQ: Workplace and HR questions from employee optometrists

Please [contact us](#) if you require assistance in understanding your workplace rights, reviewing or re-negotiating employment contracts, seeking change to your employment conditions or require other professional support. Our optometrist advisors regularly act as support persons for members engaging in HR meetings with their employer and are happy to do so for all members. We also have systems in place to support members where any conflict of interest is present.

You can also access our member-only HR legal advisors at [Industry Legal Group \(ILG\)](#) for confidential legal support.

No matter how big or small, and no matter who you work for or where you live, we are here to support and confidentially assist you.

OA Optometry Advisor Help Desk [webpage](#)

E: OAhelpdesk@optometry.org.au

P: (03) 9668 8500

Booking link [here](#). Send [enquiry form](#)

After-hours bookings by appointment

Q. I'm having difficulties at my workplace where I feel I'm getting no rest breaks and no time to write my letters. Is this lawful?

A: Whether the treatment you are experiencing is lawful depends on your specific circumstances. If you are facing difficulties with rest breaks or finding time to manage your work, we encourage you to reach out for assistance.

As an OA member, you are entitled to tailored support through ILG or via your OA optometrist advisors. Each case is treated with confidentiality, and we aim to offer practical solutions suited to your individual situation.

Break Entitlements

Your working hours and entitlement to breaks should be clearly outlined in your employment contract. In addition, minimum standards for rest and meal breaks are set out in industrial instruments such as the Health Professionals and Support Services Award 2020 (HPSS Award) or applicable enterprise agreements.

Under the HPSS Award, minimum break entitlements are as follows:

- For 4 to 5 hours of work: One 10-minute paid rest break.
- For more than 5 but less than 8 hours of work: One 10-minute paid rest break and one unpaid meal break of 30 to 60 minutes.
- For 8 or more hours of work: Two 10-minute paid rest breaks and one unpaid meal break of 30 to 60 minutes.
- There is some flexibility in the timing of meal breaks. Employers and employees can agree to:
 - Adjust the time when the meal break is taken;
 - Forgo the meal break if the employee works no more than six hours; or
 - Combine two rest breaks into one 20-minute break.

Health and Safety Obligations

Under Work Health and Safety (WHS) legislation, employers have a duty to provide a safe working environment, which includes managing psychosocial hazards like high job demands, long hours, and excessive workloads. Failing to implement appropriate control measures for these hazards may constitute a breach of this obligation.

Time for Administrative Tasks

Most optometrists are required to perform professional administrative duties, such as organising referrals, writing reports etc., as part of their role. Your employer should allocate sufficient paid time for you to complete this work. Failure to do so may indicate that your workload is unreasonable, or that your employer is not providing the necessary support to fulfil your duties effectively.

OA, with the assistance of our member-only HR advisory service, can provide you with the practical steps that you can take in asserting your workplace right to be allocated breaks and reasonable time in which to perform the duties of your job effectively.

Q. Is it legal to have a non-compete/restraint of trade clause in my contract? Are they enforceable? Can employers legally restrain us from working for local competitors?

A: This is one of the most common questions we receive from members.

The legality and enforceability of non-compete or restraint of trade clauses in contracts depend on several factors, including jurisdiction and the specific terms of the clause. Generally, these clauses are enforceable if they are reasonable in scope, duration, and geographic area, and if they protect a legitimate business interest.

Courts often scrutinise these clauses to ensure they are not overly restrictive. If a clause is deemed too broad or unreasonable, it may be unenforceable. To mitigate the risk of a restraint being unenforceable, many contracts include cascading clauses, which offer multiple levels of restraint (in terms of scope, duration or geographic area). If one level is deemed unreasonable, a court may enforce a lesser restraint that remains within the bounds of reasonableness.

Last year, the Treasurer announced a Competition Review. As part of that review, an issues paper was released on the use of non-compete and restraint of trade clauses in employment contracts. The issues paper highlighted concerns, including the negative impact on job mobility and wage growth. The Competition Review Taskforce sought public submissions on the issues paper which will inform potential reforms. It is currently unclear what these reforms might include. However, looking at international examples, it may include implementing bans, restricting their use, or requiring employers to compensate workers during the restraint period.

Via our one-on-one conversation, we can help you understand what in practical terms this means, as determining the enforceability is complex and comes down to individual factors. You can also directly contact ILG for confidential and complimentary advice.

Q. I'm not sure if my salary is on par with others. Who can I ask?

A: We can help you benchmark your salary. OA conducts a biannual member survey where this metric is monitored and maps de-identified data into state, metropolitan and regional areas from the many contract reviews we assist optometrists with each year. Our information complements data publicly available online from sources such as SEEK and previous graduate workforce surveys. We encourage all members to book in for a [one-on-one chat with an OA advisor before signing any employment contracts](#), or if you are already employed and re-negotiating a new contract. Some OA members have been successful in negotiating higher salaries before signing their contract, after speaking with advisors.

Q. Are optometrists covered under an Award?

A: Historically, it was generally understood in the industry that optometrists were not covered by an Award and that support staff were covered by the Retail Award. However, a few years ago, the Fair Work Ombudsman (FWO) expressed its position that optometrists and support staff were covered by the Health Professionals and Support Services Award (HPSS Award), because the list of health professionals in Schedule B of the Award was indicative, and optometrists were health professionals.

The Fair Work Commission (FWC) has stated:

[225] We will neither exclude these occupations [i.e., Optometrists] from the coverage of the HPSS Award nor include them on the List of Common Health Professionals in Schedule B of the Award.

In the circumstances we no longer consider that it is appropriate or accurate to say with any confidence that optometrists are not covered by the Award.

Until Award coverage for optometrists is considered further by the FWC, it is our position that optometrists and support staff **may** be covered by the HPSS Award.

In consultation with Optometry Australia and ILG, the FWO have updated their library to state the following position:

“Award coverage for Optometry businesses

Optometry businesses provide health related services by an optometrist and can also sell vision correction (and other) products.

Optometrists

Optometrists are not listed in the ‘common health professionals’ in the Health Award. However, they may still be covered because the list is indicative not exhaustive.

Support Staff

Support staff working in a non-retail environment can also be covered by the Health Award.

Support staff who work for an optometry business in a retail environment may be covered by the Retail Award”

Unfortunately, the FWO could not provide any guidance on how to distinguish a “non-retail environment” from a “retail environment”. However, it is not as simple as assuming the Retail Award applies simply because there is a retail component to the business. The retail example the FWO referred to during discussions was “Sunglass Hut”, which we believe can be distinguished from most optometry practices which offer allied health services.

Many optometry practices that we work with are adopting the HPSS Award as they identify being part of the health industry as opposed to the retail industry. A link to the HPSS Award can be found [here](#). There are also a range of optometry-specific resources available on the HPSS Award that can be accessed via the [OA member portal](#).

Q. I feel burnt out at work. How can OA support me in the immediate future?

A: There’s a whole host of things you can do *today*. Firstly, we encourage you to call or email us to chat through your individual circumstances. Burnout can be a result of many factors, including specific workplace-related issues. Often, we find that members are not fully aware of their

workplace rights to a healthy environment where they are given adequate time to perform their duties.

All OA members have access to the [Optometry Advisor Help Desk](#) to access confidential support and guidance. There are after-hours options available to book also – booking link [here](#). If you require immediate mental health support, as an OA member you can access the [3 confidential online appointments](#) with a clinical psychologist. Find more details on [our mental health support for optometrists on this webpage](#).

We are also aware of the need to address the systemic causes of burnout and support wellbeing across the profession. We have been working with members on this issue and continue to do so. With guidance from our [Early Career Optometrist \(ECO\) committee leaders](#) in 2023, we commissioned a report on wellbeing and burnout in early career members. The report led to OA hosting a symposium to showcase the report and other relevant research to sector stakeholders. The symposium designed and coordinated by ECO leaders in collaboration with OA specifically sought to raise awareness among optometry employer organisations of the need to act in response to findings. OA will be implementing outcomes from this symposium, alongside other initiatives and will continue to enhance awareness of this issue.

We have also commissioned further research on employee experiences, to provide a strong evidence-base to showcase relevant issues and their impact on well-being to stakeholders and to pursue change.

Q. My KPIs are linked to financial metrics. I think they jeopardise my patient care and overall job satisfaction. What should I do?

A: OA has recently released a [position statement](#) on the use of KPIs to assist employed optometrists. Ahpra's Shared [Code of Conduct](#) also provides important guidance on this issue. There are often some practical solutions to your specific situation we can workshop with you in confidence.

These conversations with employers can be difficult. Additional supportive resources are available on our [KPI page](#). Please read the position statement and contact the OA advisors as your first step.

Q. Can I lodge a complaint to Fair Work if I feel my redundancy was made on unfair grounds?

A: Yes, you can lodge an unfair dismissal application with the Fair Work Commission if you believe your redundancy was not genuine (see [unfair dismissal](#)). If the redundancy is found not to be genuine, the dismissal could be deemed unfair, and remedies such as reinstatement or compensation may be available. Alternatively, if you believe the reason for the redundancy breaks the general protections laws (see [general protections](#) and [adverse action](#)), you may be eligible to make a general protections dismissal application.

It's important to act promptly, as there are time limits for making such claims (i.e., within 21 days after the dismissal takes effect).

Q. I'd like to make an official complaint about my workplace conditions. But I'm not keen to jeopardise my employment. What can I do? What evidence do I need to document?

A: When making a complaint about workplace conditions, it's important to approach the situation carefully to protect your employment. Here are some steps you can take:

- Check your employer's policies on complaints, grievances, or workplace issues. Most employers outline a process for lodging complaints, which may include internal resolution steps before escalating matters externally.
- Document any evidence related to your complaint. Keep a detailed record of incidents, including dates, times, locations, and individuals involved. Collect any related evidence, such as emails, messages, or other communications that support your complaint.
- If your employer has a whistleblower policy, you may be able to make a confidential complaint. However, whistleblower protections only apply if specific criteria under the Corporations Act are met. These protections include confidentiality and protection from retaliation but may not apply if you do not meet the eligibility requirements. It's advisable to seek legal advice to ensure compliance with the specific requirements.
- Obtain legal advice. Members should contact OA's lawyers at ILG.

Q. My contract says I cannot have time off over Christmas and New Year to spend time with family. My leave application gets rejected. What can I do?

A: Provided below is general information. However, if you're unsure what to do next, we can work with you and our employment lawyers at ILG to understand how best to manage your personal situation.

The Fair Work Act provides that paid annual leave may be taken for a period agreed between an employee and employer. The act also specifies that the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

Some employers may enforce block-out periods for leave, especially during times of increased business demand such as Christmas, New Year, and Easter.

In a specific example (*Stevens v Horsley Park Supermarket Pty Ltd [2017]*), the employer had a leave block-out period around Easter due to increased business demands, which was a well-established practice. The Commission acknowledged that such practices might be reasonable under genuine business reasons. However, the employer's unreasonable delay in communicating the refusal of the leave request, which led to the employee incurring a financial loss, was deemed inappropriate. The employee had provided a 12-week notice for the leave request, and the employer's late response only 2½ weeks before the international travel was considered unreasonable.

So, while block-out periods may be justified based on business needs, employers must still consider and communicate their decisions reasonably, taking into account the circumstances of the employee and the business.

Q. I would love to have two consecutive days off in a row. Twice a week, I also work late night hours. What can I do?

A: This will depend on your employment contract and the hours you have agreed to work each week. If you have agreed to work these hours, you may need to approach your employer to renegotiate the terms of your contract. Depending on the circumstances, there may be other options. We encourage you to contact us for tailored advice.

Q. Can practice managers or other optometrists choose my Medicare item codes without my consent?

A: The short answer is No. [Medicare states:](#)

- *“Accurate billing of services under Medicare is the legal responsibility of the health practitioner who renders the service that is claimed.*
- *If an incorrect claim is made, the health practitioner may have to pay an administrative penalty. This is in addition to repaying the incorrect amount paid, regardless of employment, contractual or other financial arrangements.*
- *Any person, including non-clinical practice staff, who submits fraudulent claims may also be subject to penalties.”*

In addition, rejected Medicare claims should be reviewed by the treating optometrist, before the optometrist nominates an alternative billing number for resubmission. If someone else is choosing billing codes on your behalf, please contact us for confidential assistance. We are happy to workshop with you the best way to approach this discussion based on your individual

circumstances. OA may also be able to assist by contacting your employer to help them understand compliance aspects, if you wish. Read [10 strategies your practice should adopt, to minimise incorrect billing under Medicare](#). There is also an anonymous Health Provider tip-off helpline where anyone, patients, or practitioners, [can report](#) suspicious or fraudulent billing to Medicare.

Optometry Australia is a not-for-profit membership organisation

In 2023 we supported our members with over 1,300 + requests for one-to-one professional support. All members, wherever you live or work, can [contact us](#) at National or your State Division for confidential and complimentary advice.

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Some after-hours appointments are available.

OA members also have direct access to a HR lawyer via ILG. Your information shared with ILG is at arms-length to OA, so rest assured this additional confidential avenue is available to you.

HR legal advisors webpage

Industry Legal Group (ILG) OA member assist

HR helpline

Tel: 1300 101 391

E: oa@industrylegalgroup.com.au

This is a confidential service. ILG has tailored knowledge of the optometry profession.

Basic queries with ILG are complimentary as part of OA membership.



[Optometry Advisor Help Desk](#), [mental health](#) support and [ILG HR legal advisors](#) contacts are on our website.