

Mutual Indemnification Clauses in Employment Contracts – Beware!

Since the decision of the Supreme Court concerning the “vicarious liability” of medical practitioners under section 72 of the Health and Disability Commissioner Act (HDCA), NZMII has been receiving an increased number of enquiries concerning “mutual indemnity” clauses in employment contracts.

Before you sign a new employment contract, ensure that you read through it carefully to make sure you are not signing up for more than you bargained for. This is especially relevant if you see there are **2 or 3** clauses under the indemnity insurance section. You might be asked to sign a contract which contains what is known as a ‘mutual indemnity clause’ in favour of the practice/employer (see Clause 1 in the example in the highlighted red box). In short, this means that if something goes wrong and it arises out of something that you have done, that you will personally reimburse the practice for all sorts of costs, expenses, damages, legal fees and the like.

You are not required as a matter of law to agree to such an indemnity clause. Even more importantly, a clause of this type is excluded under your professional indemnity policy with NZMII.

The simple advice is that you should not agree to such a provision being in the agreement, and you have a reasonable basis for saying that to your employer, namely that you have in place your own professional indemnity policy and the indemnity they seek is unnecessary. The practice or employer should have their own indemnity policy for this purpose. Make sure this type of clause as highlighted in Clause 1 is not in the contract you end up signing.

Clause 1

You accept liability, and will reimburse us, for any loss, expense, damages or compensation which we incur or are required to pay (including without limitation any legal fees or amount paid by way of settlement) in relation to any claim, which is threatened, notified or commenced against us and which:

- (a) arises directly or indirectly out of any act or omission by you in the course of your employment; and
- (b) alleges a breach of any duty owed by us or you in contract or tort.

Clause 2

You will maintain either:

- (a) professional liability insurance cover of at least \$1 million; or
- (b) membership of medical indemnity society or an alternative approved by us, to cover all professional liability claims arising out of any action or omission by you in the course of your employment.

Clause 3

This indemnity will continue to apply after termination of our employment relationship and regardless of any dispute.

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Cover for clauses 2 and 3 in the example provided are included in your NZMII policy and are perfectly reasonable.

Your NZMII policy covers vicarious liability under clause A.3 below but only so far as it relates to you, it doesn't indemnify the practice. The practice should have its own indemnity policy for this purpose and not expect you to carry the liability for it.

A.3 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured for any liability or costs of defence for which coverage is provided under Section A hereof, arising out of section 72 of the Health and Disability Commissioner Act 1994 (or any statutory amendment or re-enactment of the section or Act).

Your personal indemnity insurance policy looks after you specifically i.e. the A.3 clause extends protection to you on an individual basis should a section 72 vicarious liability case arise and not the practice for whom you work.

For more information about Vicarious Liability please see our handy [fact sheet here](#) or contact NZMII at general@nzmii.co.nz or 0800 802 220.

Contact Us

NZMII are here to help!

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