



Double whammy

CHANGES? What changes? That's the response many general practice owners and managers give when asked how they will respond to the two sets of workplace changes that most will be required to work under from 1 January 2012.

On that day, new laws for occupational health and safety are due to commence in most states and territories, requiring changes to how practices prevent injury and ensure wellbeing in the workplace.

At the same time, practices will still be in the middle of implementing the new system of federal awards that govern the pay rates and entitlements of employees. It started on 1 January last year and will be completed on 1 July 2014.

However, with the confusion of two different workplace laws coming into effect, many practice owners and managers have a low level or no awareness of all these changes, says Sarah Dahlenburg, AMA NSW director of medicolegal relations.

Revised laws for occupational health and safety are on the way, hot on the heels of the changes to federal pay awards. JOHN KRON explores the implications for general practice.

"Of the practices I speak with who have heard something new is happening on January 1 2012, many mistakenly think it is about workers' compensation, not about providing a safe workplace environment," she says.

If the experience of the revised federal award system is anything to go by, there's a strong possibility many practices won't be ready for the new OH&S laws by the new year.

Each week in Victoria, practice owners and managers make up to 100 calls to the state AMA about the federal award system — even though it's almost two years since it started, says Geoff O'Kearney, AMA Victoria director of workplace and advocacy.

He says the main concern with the revised federal awards is that practices are making errors at a frequent and constant rate. Most of these errors appear to be accidental, where practices want to do the right thing by their employees and pay them above the award, but are inadvertently making mistakes (see box, page 49).

Nevertheless, even accidental errors require paying back owed wages and can have a negative impact on relations with employees. In the worst-case scenario, the Fair Work Ombudsman office can impose mediation or, if there's a prosecution, issue penalties of up to \$6600 per breach for each owner.

For example, a typical inquiry for

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assistance to the AMA NSW might concern a female employee who started working five years earlier as a receptionist on a wage 10% above the then state award. Since then, the employee has been given additional duties, but her wage rate hasn't been adjusted accordingly.

"The practice had assumed they were still paying her 10% above award rates. However, when we compared her wage rate to the basic rate, we found that it was perilously close and the practice needed to increase it in order to pay her correctly," Ms Dahlenburg says.

The new federal award system followed a simplification process, or "modernisation" as the government called it, which started in 2008.

This led to the reduction of more than 1500 state and territory awards governing pay and conditions down to 122 national awards. So now, for example, all nurses working anywhere in Australia in any workplace, be it in a hospital or medical practice, come under the

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Changes in workplace laws

Federal pay awards

Change: New federal awards system governing pay rates and entitlements of employees

Dates: Started on 1 January 2010, due to be completed by 1 July 2014

What does it mean for you?

This is a change to the awards governing pay for nurses and health professionals and support services staff. During this transition period, pay rates and entitlements will gradually “modernise”.

Where can you get help and more information?

To make an accurate calculation of wages and obtain more information, check with your local AMA if you are a member, or contact the Fair Work Ombudsman at www.fairwork.gov.au or on 131394. The Fair Work Ombudsman website has a pay rates calculator, or you can call the national office for help calculating your rates.

Occupational health and safety laws

Change: New national laws will replace state and territory laws governing safety in the workplace.

Dates: Comes into effect in NSW, Queensland and the ACT on 1 January 2012. In SA, Tasmania and the NT, there is a commitment to that date, but they are awaiting the appropriate laws to be passed. In Victoria and, most likely, WA, the start has been deferred to 1 January 2013.

What does it mean for you?

A new system of national health and safety laws will be introduced in order to “harmonise” the different state and territory laws.

Where can you get help and more information?

To obtain accurate information on requirements and starting dates, contact your local AMA branch if you are a member, or check with the following federal, state and territory authorities:

- **SafeWork Australia**
www.safeworkaustralia.gov.au, 02 6121 5317
- **WorkSafe Victoria**
www.worksafe.vic.gov.au, 03 9641 1444
- **SafeWork SA**
www.safework.sa.gov.au, 1300 365 255
- **WorkSafe ACT**
www.worksafe.act.gov.au, 02 6207 3000
- **WorkSafe WA**
www.worksafe.wa.gov.au, 1300 307 877
- **WorkSafe NT**
www.worksafe.nt.gov.au, 1800 019 115
- **WorkCover NSW**
www.workcover.nsw.gov.au, 131050
- **WorkPlace Health and Safety Queensland**
www.worksafe.qld.gov.au, 1300 369 915
- **WorkSafe Tasmania**
www.worksafe.tas.gov.au, 1300 366 322

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same award — the Nurses Award.

For general practices in particular, this modernisation means all non-doctor employees fall under two awards: the Nurses Award and the Health Professionals and Support Services Award, which covers everyone else — from acupuncturists through to receptionists.

Simplification

There is little argument that a simple system is better than a complex one. However, the way wages are calculated is itself complicated, particularly during this transition period through to full implementation on 1 July 2014. For example, a pay rate rise from an old state award in 2010 to the new federal award in 2014 occurs in incremental steps — 20% of the increase each year.

That seems simple enough, but the actual wage paid is determined by additional entitlements, which may go up or down.

In Victoria, for example, the pay rate for receptionists will increase, but by 2014 the shift allowance for working from 6pm-9 pm will be abolished. However, because there was a shift allowance that applied to the old award, it will still be paid during the transition period until 2014.

Keeping up with the nuances and changes will be difficult.

“The new federal award system may look and feel similar to the old awards, but this is misleading,” Mr O’Kearney says. “The old award system was a process of evolution, changing gradually from award to award.”

“The new awards are a fresh start. They simplify things, which make for less

reading, but they also provide less details and require more interpretation,” he says.

Another example is the new award for nurses. Under this award, part-time nurses are entitled to overtime, but the interpretation of overtime is up in the air until a court makes a ruling.

If a nurse is rostered for four hours, overtime could be interpreted as more than four hours, more than 7.6 hours (a traditional full day’s work) or more than 10 hours, because according to a section entitled Ordinary Hours in the new award: “The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.”

Little wonder then that practice managers or owners expressed confusion about the forthcoming changes.

OH&S laws

The new national OH&S laws are also meant to simplify the various state and territory laws — a process the government calls “harmonisation”.

The aim is consistency and to reduce the compliance and regulatory burden for businesses that operate across borders, as well as ensuring a consistently high level of protection for all Australians.

Somewhat ironically then, the amount of change will vary from state to state, as will the start date for implementation.

In Victoria, for example, where the laws in the state were the model for the new standards, the changes should be minimal.

For other states, the changes may be more noticeable.

Regardless, the new laws are a great opportunity for practices to get up to date

with OH&S, says Hanya Oversby, director of Specialist Consulting medical practice management consultancy.

“OH&S isn’t just preventing tripping over an electric cord,” she says.

It’s also about psychological health and better behavioural practices, such as ensuring that an employee’s skills and abilities are adequate for that job description so there aren’t unrealistic expectations leading to stress.

Preventing bullying is another feature of psychological health and better behavioural practices.

There is no law against bullying so any court decision is up to the judge. However, the new OH&S laws strengthen the law against bullying in a subtle manner.

In the past, while it was accepted that courts could make judgements against employers regarding bullying, there was no actual law against bullying; it was under the discretion of the court in each case.

While the new OH&S laws don’t introduce a law against bullying, they do provide for a Code of Practice, entitled *Preventing and Responding to Workplace Bullying* (currently in draft form) that is admissible as evidence in a court case of whether the new OH&S laws have been complied with.

The new OH&S laws particularly require that practices demonstrate an ongoing commitment to OH&S, not merely one done every three years to fulfil accreditation, Ms Oversby says.

“The ongoing OH&S process ideally includes features such as using a computerised OH&S program, having a person designated to manage [health and safety] and holding regular meetings,” she says.

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General practice disputes

ONE practice in Victoria found itself in hot water last year regarding the new federal award system.

The practice manager became involved in an argument over pay entitlements with a part-time receptionist. She told the receptionist she was able to reward her employees as she liked because the practice had fewer than 15 employees and small businesses had flexibility over pay rates and entitlements. The practice manager offered the receptionist a new employment contract that included paying higher rates only for every third public holiday worked, and suggested that as a casual employee, the receptionist would only be paid an additional 25 cents per hour, rather than 25% — the standard base rate for working public holidays.

When the receptionist was fired after questioning the contract, she took a complaint to the Fair Work Ombudsman. Instead of taking the GP owner and the

practice manager to court, the ombudsman imposed an “enforceable undertaking”, which required the practice manager and owner to apologise to the receptionist and ensure that workplace agreements were correct for the remaining employees.

Another case involved a GP from overseas who moved to Australia to work in a Queensland general practice. It is claimed by the office of the Fair Work Ombudsman, which is prosecuting the practice’s owners in the courts, that the GP’s pay was withheld and that a senior GP at the practice threatened him last year.

The alleged threats included that unless the GP retracted a complaint to the ombudsman, he would not be paid and that if he quit, unspecified alleged patient complaints against him would be sent to the medical board and proceedings for breach of contract would be taken against him. The GP has since left Australia and is awaiting the outcome of the court case.

This is designed to ensure health and safety policies are up-to-date and taken seriously.

Another key feature of the new OH&S laws will be changes to the definition of employer and employee.

The term “employer” has been broadened to Persons Conducting a Business or Undertaking (PCBU), defined as sole traders, principal contractors, unincorporated associations, partnerships and franchisees.

“Employee” has been broadened to “worker”, defined as a person carrying out work in any capacity for a PCBU. It covers employees, contractors, sub-contractors (and their employees), labour

hire employees (hired to work for a client via a hiring agency), outworkers, apprentices, trainees, work experience students and volunteers.

It is also now up to practice owners and managers to think beyond the confines of the practice. For example, says AMA Victoria director of workplace and advocacy Geoff O’Kearney, “if you own the building that has a pharmacy at the front, you have to consult with the pharmacist” regarding health and safety issues. He cites an example of a robbery at a pharmacy.

“You may identify, for example, that the only exits after a robbery are the street or through the practice,

where employee safety can be put at risk. Appropriate action may be to put up a wall closing that exit or ensuring there is a corridor that avoids employees and provides a clear exit from the pharmacy out of the practice,” he says.

The bottom line

The impact on the bottom line is never far from the minds of most practice managers. The good news about the award system changes is that their impact can be kept financially neutral.

“By 2014 the federal awards will be a zero sum game where there will be gains and losses,” Mr O’Kearney says. “For exam-

ple, under the old awards, nurses received 21 days’ sick leave whereas under the new award it is only 10 days — but they gain an additional week of annual leave a year.”

As for the new OH&S laws, “they can require some investment, however, it shouldn’t be substantial and one needs to think of it as an investment in good medical practice,” he says.

Certainly, however, what can’t be avoided is the investment of time required for practice owners and managers to become aware of the ongoing and upcoming changes, in order to make sure that, come 1 January, 2012, they are fully compliant with this double hit. ●