

Does your professional indemnity insurance put you in breach of your employment contract?



GP practices and salaried GPs are advised to check the terms of their employment contracts if employed clinical staff are considering taking out “claims made” insurance, such as that recently offered by the MDU.

In a previous blog, we looked at the broader implications of claims-made insurance policies ([Will you or your practice be impacted by the MDU policy changes?](#)). However, another potential consequence, which we’ll be focusing on here, is how claims-made policies may inadvertently put salaried GPs in breach of their employment contract. So, what exactly is the issue and what action should you take?

Current employment contracts

The ‘BMA Model Employment Contract’ states that “The practitioner will maintain full registration with the General Medical Council and membership on an *occurrence based* basis with a recognised medical defence organisation commensurate with your responsibilities”. ([What-is-the-BMA-model-contract-and-does-it-apply-to-me?](#))

This point is regarded as so important, that it is repeated in both the BMA model contract and in the BMA model offer letter. It is clear that the BMA negotiators assumed that all salaried GPs would be insured on an *occurrence based* basis – i.e. a policy that offers protection for any incident which occurs during the policy period, even if the claim is filed after the policy has ended.

Since all GMS practices, and many PMS practices, are required by their provider contracts to engage their salaried GPs on employment contracts that are ‘no less favourable’ than BMA model terms, it is likely that most salaried GP contracts will include a similar clause.

As a consequence, if a salaried GP moves to a claims-made indemnity policy, they may be unwittingly breaching the terms of their employment contract.

Our recommendations

As a first step, we would advise all practices and salaried GPs to look at their employment contracts and Staff Handbook, to see whether there is a requirement for employees to have an occurrence based indemnity policy.

If the requirement is included, practices need to have procedures to ensure compliance. The BMA model contract states that salaried GPs should provide “written proof and evidence of such membership”, so practices would be free to request this.

If there is currently no written requirement, practices should consider whether they are content to allow salaried staff to move to a claims-made contract or not, and employees should consider whether they wish to make the move. This is a question of understanding the risks involved, such as whether the employing practice is exposing itself to more risk by permitting claims made policies. All parties would be well advised to speak to a specialist IFA to fully understand this.

Practices which do not currently require occurrence based policies but wish to do so going forward will need to consider making changes to their employment contracts. We recommend that you always seek appropriate legal guidance before doing this.

If you are at all unsure about any of the issues we have covered here and how they might affect your practice, then please do not hesitate to get in touch.

For more information, please contact Daphne Robertson on **01483 511555** or email **d.robertson@drsolicitors.com**

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