



## New Long Service Leave Act in Victoria takes effect on 1 November 2018

### KEY CHANGES

- Employees can now apply for long service leave (LSL) after **seven** years not ten years
- Employees can take LSL in smaller increments with a minimum period of one day
- Unpaid leave such as parental leave counts towards LSL and will not break continuity of employment
- There are increased penalties for employers who fail to keep records

Dear Member,

The new Long Service Leave Act 2018 (Vic) (2018 LSL Act) comes into effect **tomorrow (1 November 2018)**.

The 2018 LSL Act replaces the previous *Long Service Leave Act 1992* (Vic) (1992 Act). The 2018 LSL Act will be the key statute governing LSL entitlements in Victoria.

### Who does the Long Service Leave Act apply to?

The 2018 LSL Act will apply to Victorian casual, seasonal or fixed term (full time/part time) employees with 'continuous employment'.

### What is continuous employment?

Continuous employment means that an employee must not take more than 12 weeks off work between two periods of employment, unless the employee or employer agree.

There are other instances where an employee's employment is considered continuous even if they have taken more than 12 weeks off work for example, a casual employee who is employed on a regular and systematic basis and has a reasonable expectation of being re-engaged by their employer.

### What happens if an employee makes a request to take Long Service Leave?

If an employee makes a request to take LSL, the employer must grant the leave as soon as practicable unless the employer has **reasonable business grounds**.

**Reasonable business grounds** relate to the ability of an employer to accommodate a request for long service leave from an employee which may impact on the operations of the business. For example, a situation where it would not be practical for an employer to hire new employees to accommodate a request.

A full copy of the Act can be found [here](#).

## **What are the key changes?**

### **1. Changes to Long Service Leave entitlements**

The entitlement to LSL has not changed however employees may now take LSL after **seven years** of continuous service not ten years. This is calculated by dividing the period of employment (in years) by 60.

### **2. Changes to how employees can take leave**

Employees may now take LSL for a minimum period of **one day at a time** up to the maximum accrued amount.

### **3. Changes to treatment of absences from work, such as unpaid parental leave**

Under the new Act, periods of paid or unpaid parental leave will not break the continuity of employment, however only the first 52 weeks of leave will automatically count towards LSL.

However, it is different for casual or seasonal workers who may now take up to 104 weeks of parental leave without this affecting the continuity of their employment.

### **4. The meaning of 'one employer'**

LSL can only accrue when an employee works for 'one employer' however, the new Act extends the meaning of 'one employer' to include situations where an employer uses labour hire companies.

For a more detailed explanation see s. 12(5) of the Act or contact LPA.

### **5. Changes in the way hours and pay may be averaged in certain circumstances**

Where an employee's hours of work are not fixed (for example, casual employees), the employee's hours of work are averaged for the purpose of calculating LSL. There is now a third additional calculation used to work out ordinary pay and the employee will receive the greater amount out of the three calculations.

The additional calculation is the average of an employee's total period of continuous employment with the employer.

Please click [here](#) for a Fact sheet from Business Victoria for information on ordinary pay where averaging is required.

## **Increased penalties**

There are now new enforcement arrangements under the 2018 LSL Act. Under the new Act, authorised departmental officers now have the power to require an employer to produce records.

It is a criminal offence to refuse to produce records if required by an authorised officer, produce a false record or not keep records during an employment period and up to seven years after employment ends.

## **For further information**

There are a range of Fact Sheets on the 2018 LSL Act on Business Victoria's website, which may be accessed [here](#).

Please contact **Claire Seremetis**, Workplace Relations Advisor on **(03) 8614 2000** or via [email](#) for further enquiries.



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