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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/ 062/NAT/062/18
DATE: 16 April 2018
SUBJECT: Long Service Benefits Portability Bill 2018 (Vic) – Community Service Workers and others
ATTENTION: Chief Executive Officer

The Victorian Government has recently introduced the *Long Service Benefits Portability Bill 2018* (the **Bill**), which seeks to change the way in which community services workers become entitled to a benefit in respect to long service.

In short, under the Bill, community services workers will be entitled to long service leave after seven years of service, irrespective of the number of employers they work for during that period. This will be funded by a periodic levy charged to employers of community service workers.

Background

Generally, upon the sale of a business, the *Long Service Leave Act 1992* (Vic) recognises that the service of an employee transfers from the old employer to the new employer. However, this is not usually applicable to community service workers (along with security guards and cleaners) due to an absence of a 'transfer of business' (as legally defined). Instead, these employees have their contracts with their old employer terminated and subsequently enter into a new contract, providing the same service, to a new employer.

Accordingly, the Bill seeks to recognise these employees for long service to the industry, rather than 'one employer'.

What is community services work?

The Bill will cover 'community services work'. This is a broad category of work and includes, but is not limited to:

Personal and support services such as:

- Domestic violence counselling;
- Family violence support;
- Housing and homelessness support;
- Social work; and
- Youth services.

Disability services such as:

- Targeted services and residential accommodation support;
- Respite care; and
- Training and employment support for persons with disabilities and disability enterprises.

Community and home care services such as:

- Provision of community transport;
- Domestic assistance
- Home maintenance;
- Food service;
- Respite care; and
- Personal care.

Other included areas are youth justice support services, financial and material assistance, community housing and housing support, accommodation and support, community legal services, Aboriginal support services and service and community development and support. The definition of community service work does not include health services.

The Bill also proposes to cover the contract cleaning and security industry.

In regards to the definition of 'employee', casual workers are included however independent contract workers are not. This differs to the cleaning and contract cleaning industries, for which independent contract workers are included.

Impact on industries with community services workers

The Bill establishes the Portable Long Service Benefits Authority (the **Authority**) which will include representatives from relevant employer and employee associations, as well as an independent Chairperson and Deputy Chairperson. The Bill requires employers in the community services industry to register both themselves and their employees with the Authority. Financial penalties will be incurred if employers do not register as required.

Registration must occur either:

- a) three months after the commencement of the Bill if the employer is in a covered industry; or
- b) three months after the employer's industry becomes covered by the Bill.

Further to this requirement, employers in covered industries must provide a quarterly return which includes required information. The required information includes:

- a) the name of each of the employees who performed work for the employer during the quarter
- b) the total ordinary pay by the employer to the employee for the quarter
- c) the number of days or part of days during the quarter to which pay relates; and
- d) any other prescribed information

The return must be given to the Authority no later than one month after the end of the quarter. Failing to adhere to this submission could result in a penalty of \$19,000 for each day during which the offence continues.

In regards to the calculation of ordinary pay, shift allowances will not be included for community service workers.

There is some question as to how this scheme will interact with long service leave entitlements that exist in pre-reform awards and enterprise agreements. This does not appear to be resolved.

We will provide a further update when the Bill progresses through Parliament. However, it would be prudent for employers who may be captured by this Bill to consider the potential impact on their business.

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



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