
CIRCULAR: 065.NAT.065.18
DATE: 1 June 2018
SUBJECT: *Long Service Leave Act 2018 (Vic)*
ATTENTION: Chief Executive Officer

The Victorian Government has recently introduced the *Long Service Leave Act 2018 (Vic)* (**the 2018 Act**), which seeks to clarify a number of issues regarding interpretation and introduce reforms to allow easier and more accessible long service leave (**LSL**) for employees.

The 2018 Act will commence operation on 1 November 2018, unless proclaimed earlier by the Victorian Government. The 2018 Act will repeal and replace the current *Long Service Leave Act 1992 (Vic)* (**the 1992 Act**).

The key effects of the 2018 Act will impact the following areas:

- accrual of LSL;
- when and how leave can be taken – more flexibility regarding the taking of LSL;
- parental leave to have less effect on the taking of LSL; and
- a broader window for averaging hours of work.

These key effects are summarised in the below table.

Importantly, the rate / amount of accrual and the pay rate of the leave period are unchanged under the 2018 Act.

	1992 Act Current	2018 Act After 1 Nov 2018 (or as proclaimed)
The entitlement to receive LSL?	Employee can take leave at 10 years' continuous service. There is a pro-rata entitlement at 7 years' continuous service.	Employees will be able to take leave at 7 years' continuous service.
How much?	Accrued at the rate of 0.8667 wks per year (8.667 wks in 10 years).	Same.
How LSL is taken?	Can only be taken in 2 or 3 blocks.	Minimum leave period of 1-day duration.
Parental leave - What counts as service?	Paid / unpaid parental leave up to 52 weeks does not count as service and a period beyond 52 weeks could break continuity of service.	Paid / unpaid parental leave up to 52 weeks does count as service and a period beyond 52 weeks will not break continuity of service.
Changing hours?	If hours fluctuate in the last 12 months then the employee will be paid their LSL on: - average hours over past 12 months; or - average hours over past 5 years; whichever is greater.	If hours fluctuate in the last <u>104 weeks</u> then the employee will be paid their LSL on: - average hours over past 12 months; or - average hours over past 5 years; or - <u>average hours since the last period of continuous service</u> ; whichever is greater. Further, the equation for calculating the average hours makes it clear that any period of unpaid leave is to be excluded .
Pay in lieu?	No.	No, unless permitted by a relevant Fair Work instrument (ie an enterprise agreement).

Other updates

Wider application of continuity where there is a transfer of business assets

If an employee performs duties in connection with any assets used in a business, and those assets are transferred to another employer, the employee will accrue long service leave as if they did not have separate employers.

Prior to the reform, transfer of business without physical assets could have resulted in employees losing LSL entitlements from the first employer. With the new Act, employee's service under a transfer of business is taken to be continuous service. This occurs through expanding the definition of assets to include intangible as well as tangible assets.

Continuity of employment post-termination of employment

Under the 1992 Act, if an employee is dismissed and re-engaged within 3 months, continuity of service must be recognised. However, if an employee resigns continuity of service is immediately broken.

Under the 2018 Act, an employee that is dismissed or resigns and who is re-engaged within 12 weeks will have their continuity of service recognised (that is there will not be a break). Therefore, resignation will no longer be an automatic break of continuity of service.

Investigations / enforcement power

The 2018 Act also includes enhanced capacity for authorised investigations where there are suspected or alleged breaches of LSL under the 2018 Act. There are also increased penalties (threefold increase up to \$9,500) for a breach of the provisions.

These provisions will be backed by enhanced powers for authorised officers to demand and receive relevant records pertaining to LSL.

The 2018 Act also introduces the concept of 'adverse action', providing that an employer must not take adverse action against an employee because of specified 'protected reasons' to do with the employee's LSL entitlements under the 2018 Act. Similar to the FW Act, the 2018 Act puts the onus of proving the reasons for any adverse action on the employer.

What does this mean for the employer?

- Employers should review and update any policies / procedures and payroll systems to reflect the new LSL entitlements.
- Ensure records are created and maintained around LSL entitlement (records are required to be kept for at least 7 years).

There are a number of other amendments in the 2018 Act, however the above is a summary of the key changes. 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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