

BULLETIN

Industrial Relations Department



IMPORTANT CHANGES TO VICTORIAN LONG SERVICE LEAVE ENTITLEMENTS Date issued: 15/05/2018

Changes to the Victorian Long Service Leave Act

Members were advised in the November 2017 VACC Update that a Bill was introduced to the Victorian Parliament that would change how long service leave operates for some Victorian Businesses.

The Victorian Parliament has now passed the *Long Service Leave Bill (2018)*, which will introduce changes to existing long service leave (LSL) entitlements for Victorian employees. The Bill is awaiting royal assent and will commence on **1 November 2018**.

The changes will not apply to employees covered under the Vehicle Manufacturing, Repair, Services and Retail Award 2010 if their employer has been a continuous member of VACC prior to 27 March 2006.

The change will however affect employers who employ clerical and administration staff covered by the Clerks Private Sector Award 2010, (irrespective of the date a member joined VACC) and award free employees and managers.

The new Act will introduce the following changes:

Provision in current Victorian LSL ACT	Provision in new Victorian LSL Act
<p><u>Taking long service leave after 7 years:</u></p> <p>An employee must wait until 10 years of continuous service before they can take LSL, (although if their employment is terminated on or after 7 years they are entitled to a pro rata payment on termination).</p>	<p>An employee will be able to take pro rata long service leave after 7 years of continuous employment, (whilst still in employment).</p>
<p><u>Changes to continuity of service and accrual of long service leave:</u></p> <p>Parental leave, whether paid or unpaid, does not count as an employee's service when calculating LSL.</p>	<p>Paid parental leave will be treated the same as other forms of paid leave, in that it <u>will</u> count as an employee's service when calculating LSL.</p> <p>Unpaid parental leave up to 52 weeks (and a longer period if agreed by the employer and employee) will count as an employee's service when calculating LSL.</p> <p>This will only apply to parental leave taken after the Act commences (i.e. not later than 1 November 2018).</p>
<p><u>Changes to the request to take long Service Leave:</u></p> <p>Under the 1992 LSL Act, employees are only allowed to take LSL in longer blocks, up to 3 separate periods after an employee has accrued 15 years' service and thereafter in 2 separate periods after the accrual of 5 years long service leave.</p>	<p>Employees will be allowed to take LSL one day at a time once they have accrued 7 years' service.</p> <p>An employee may make a request to the employer to take long service leave for a period of not less than 1 day.</p>

	<p>An employer must grant an employee's request to take long service leave as soon as practicable after receiving the request unless the employer has reasonable business grounds for refusing the request.</p>
<p><u>Changes to the method of calculating accrued Long Service leave:</u></p> <p>The LSL Act currently provides that if an employee's hours have changed in the 12 months prior to taking long service leave, the weekly hours are calculated using the average over the previous 12 months, or five years (whichever is the greater).</p>	<p>If an employee's ordinary hours of employment fluctuate in the 2 years before they take long service leave, the hours they will be paid their long service leave is the greater of the average hours they have worked over the past 12 months, the past 5 years or over the entire period of their employment with the employer.</p>
<p><u>Termination and re-engagement:</u></p> <p>An employee's employment is taken to be continuous if employment is terminated at the initiative of the employer and the employee is re-employed by the employer within 3 months of termination.</p>	<p>An employee's employment is taken to be continuous if employment is terminated at the initiative either of the employer <u>and the employee</u>, and the employee is re-employed by the employer within 3 months of termination.</p>
<p><u>Transmission of leave entitlements upon sale of business:</u></p> <p>If an employee performs duties in connection with any assets used in carrying out the employer's business, and those assets transfer to another employer who continues the employee's employment, the employment of the employee across both employers is treated as continuous. The current definition of assets only include land, plant and equipment.</p>	<p>The definition of assets is expanded to all tangible and intangible assets such as goodwill and intellectual property.</p>
<p><u>Enforcement provisions strengthened:</u></p> <p>Under the LSL Act 1992, authorised officers of the Victorian Department of Business & Employment (the agency responsible for prosecution of LSL Act contraventions) can request but cannot require a person to produce relevant documents or provide relevant information.</p>	<p>Authorised officers can now issue a notice requiring the production of documents and information.</p>
<p><u>Penalties increased:</u></p> <p>Currently penalties under the LSL 1992 Act are:</p> <p>Penalties for a body corporate for failure to pay long service leave are a maximum of 20 penalty units (\$3,171.40).</p>	<p>Penalties for a body corporate for failure to pay long service leave are increased to 60 penalty units (\$9514.20) under the 2018 Bill.</p> <p>Criminal rather than civil penalties will now apply to employers who take adverse action against an employee because they are entitled to long service leave and for failing to disclose that an employment agreement would modify or remove an employee's long service leave entitlements.</p>

BILL CHESTERMAN
Industrial Relations Manager

Level 7 | 464 St Kilda Road | Melbourne Vic 3004
P: 03 9829 1123 | E: ir@vacc.com.au | W: vacc.com.au