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| Long Service Leave in Victoria |
| Fact Sheet No. 6Accrual of Long Service Leave – Impact of Leave, Absences and Interruptions |



The new Long Service Leave Act 2018 (LSL Act 2018) commenced operation on 1 November 2018. It replaces the Long Service Leave Act 1992, following a legislative review, and broad industry and community consultation. The LSL Act 2018 brings long service leave into line with community standards, is easier to understand, and is fairer and more flexible.

The LSL Act 2018 covers most Victorian employees. However, the LSL Act 2018 will not apply to certain employees who are covered by federal enterprise agreements or pre-reform awards, or by other Victorian legislation that includes long service leave entitlements, e.g. the Construction Industry Long Service Leave Act 1997 administered by CoINVEST for workers in the construction industry.

**This fact sheet is a summary only and must be read in conjunction with more detailed information including the Comprehensive Guide to the Long Service Leave Act 2018 and the LSL Act 2018 to establish whether it applies to your individual circumstances.**

#### Impact of leave, absences and interruptions on long service leave entitlements

There are certain interruptions, leave and/or absences that occur in employment which impact both the continuity of employment on the one hand, and what counts towards the accrual of long service leave on the other. Certain absences do not break continuous service under the Act, while others do. Similarly, certain absences count towards the period of employment for long service leave purposes, while others do not.

There are therefore two key questions which can usefully guide an assessment of a person’s entitlement to long service leave under the Act:

* 1. Has an employee taken any leave or absences of a type that might break continuous employment?
	2. Do the types of leave, or absence, taken by an employee during their employment count towards the period of employment for the purposes of accruing long service leave?

Under the 1992 Act, there were different rules for which absences from work would break continuous employment, and which absences would count towards the period of employment. These rules are retained by transitional provisions in the LSL 2018 Act where the absence in question occurred whilst the 1992 Act was in operation. In short, this means that certain absences and events that occurred, and were treated a certain way, under the 1992 Act, will continue to be treated that way even after the new LSL Act 2018 commences. For more information about the impact of transitional provisions in the LSL Act 2018 on continuous employment, and what counts as service, contact the Wage Inspectorate on **1800 287 287**.

For an employee to become entitled to long service leave, their employment with the employer must be continuous. This does not prevent the employee taking certain paid or unpaid breaks from work. Also, some other, specified interruptions will also be deemed to not break continuous employment for long service leave purposes.

#### Continuous employment is interrupted when….

For long service leave purposes, continuous employment will be broken where an employee’s employment ends. (There is an exception where the employee is subsequently re-employed within 12 weeks of that date, and in this instance continuous employment is not broken.)

Continuous employment will also generally be broken where a casual employee takes paid or unpaid parental leave exceeding 104 weeks (unless any longer period of leave is provided for under an oral or written employment agreement, or if the longer absence is in accordance with other exceptions applying to casual and seasonal employees under the Act).

Other forms of paid or unpaid leave including paid or unpaid illness or injury leave (which includes a WorkCover absence), annual leave, paid or unpaid parental leave for full time or part time employees (or up to 104 weeks paid or unpaid parental leave for seasonal or casual employees), or long service leave itself, will not break continuity of employment.

#### What counts towards the period of employment?

All forms of paid leave count towards the period of continuous employment for long service leave accrual. Examples include: annual leave, carer’s leave, and long service leave.

However, unpaid leave exceeding 52 weeks will not count unless:

* The period of absence is taken to be a period of employment in accordance with the relevant written or oral employment agreement
* The employee and employer agree in writing before the leave is taken that the leave is taken to be a period of employment
* The leave taken is because of illness or injury or is any other form of leave provided for in the relevant written or oral employment agreement.

#### For more information, see our Comprehensive Guide

The Victorian Government has published a Comprehensive Guide to the Victorian Long Service Leave Act 2018. This replaces the 1992 version and will make it easy for employers and employees to understand their rights and obligations.

The 2018 Comprehensive Guide is available to download at business.vic.gov.au/longserviceleave or call 1800 287 287 for a copy.

#### Wage Inspectorate contact details

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