

BLP BRIEF

Commencement of the new Long Service Leave Act 2018 (Vic)

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By Tyson Brennan

On 1 November 2018, the new *Long Service Leave Act 2018* (Vic) (**LSL Act**) came into operation in Victoria. The new act replaces the *Long Service Leave Act 1992* (Vic) and significantly impacts on the entitlements of employees and obligations of employers in relation to long service leave. The new act brings with it greater rights for all employees and greatly benefits parents and carers throughout Victoria.

As a Principal and an employer, you need to be aware of the significant changes that the new LSL Act brings as the obligations on employers are now greater and the penalties for noncompliance are far more significant.

Summary of Changes

Whilst the accrual rate for an employee's long service leave entitlements will not change (1/60th of the total period of continuous employment), many other changes to the long service leave entitlements have been enacted.

Under the new LSL Act:

- Employees will be entitled to long service leave after 7 years of continuous service (on a pro rata basis);
- Employees will be entitled to take long service leave of at least 1 day at a time;
- If an employee receives paid parental leave this will not break their continuity of service;
- Employees can take up to 12 months unpaid leave without breaking their continuity of service;
- New methods of calculating an employee's long service leave entitlements exist where that employee's hours are not fixed or change over the period of their employment;
- Authorised departmental officers can now request that employers hand over records when investigating breaches.

	LSL Act 1992	LSL Act 2018
Entitlement to LSL	Employees entitled to LSL after 10 years continuous employment with one employer.	Employees entitled to LSL after 7 years continuous employment with one employer.
Flexibility of LSL periods	LSL must be taken in one period, except as agreed between employee and employer. If an agreement is reached, first 13 weeks of LSL must be taken in 2 or 3 separate periods and subsequent periods must be taken in 2 separate periods.	LSL can be taken for a period of not less than 1 days. An employer must approve a request for LSL as soon as practicable unless there are 'reasonable business grounds' to refuse the request.
Continuity of employment	Any period of unpaid parental leave will not count towards calculating continuing service.	Any period of unpaid parental leave up to 52 weeks will count as service. Any period beyond 52 weeks will not count as service but will not break continuity of employment.
Change of hours	If an employee's hours have changed during the 12 months immediately before taking LSL, the employee's normal weekly number of hours is the greater of the average weekly hours worked over the past 12 months of 5 years.	If an employee's hours have changed during the last 104 weeks immediately before taking LSL, the employee's normal weekly number of hours is the greater of the average weekly hours worked over the past 52 weeks, 5 years or last period of continuous employment.
Powers of authorised officers	No specific power for a departmental officer to request information or documents.	An authorised officer (appointed by the Secretary) may have the power to request information or documents from employers.
Penalties	Civil penalties may apply for removing an employee's entitlements or terminating an employee's employment for exercising their LSL rights.	Civil penalties have been abolished – breaches of the LSL Act will now attract criminal penalties.

‘Reasonable Business Grounds’

As can be seen from the table above, an employer may only refuse an employee’s request for long service leave where there are ‘reasonable business grounds’ to do so.

‘Reasonable business grounds’ is defined in the LSL Act to include where:

- (a) *There is no capacity to change the working arrangements of other employees to accommodate the employee taking long service leave at the requested time;*
- (b) *It is impractical to change the working arrangements of other employees, or recruit new employees to accommodate the employee taking long service leave at the requested time;*
- (c) *The long service leave requested by the employee is likely to result in a significant loss in efficiency or productivity;*
- (d) *The long service leave requested by the employee is likely to have a significant negative impact on customer service.*

There is little guidance on what each of the above guidelines means in practical effect, so

employers must tread carefully when refusing an application for long service leave by an employee. Indeed, the new LSL Act aims to greatly increase an employee’s rights to long service leave so in the event of a dispute, the above grounds will likely be interpreted narrowly to ensure that employees rights are not unreasonably restricted or eroded.

How can Brennan Law Partners assist?

All Principals should make themselves aware of the changes to the *Long Service Leave Act 2018* (Vic) to ensure that they are compliant and avoid criminal penalties.

If you have any queries regarding the application of the new LSL Act on your school, or have any questions regarding any information in this BLP Brief, we welcome you to contact us at any time.

This is meant as a guide only and should not be taken as legal advice.



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