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| Long Service Leave in Victoria |
| Fact Sheet No. 9Penalties and enforcement |



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.**

#### Failure to pay long service leave entitlements

The LSL Act 2018 creates an offence under section 9(2) for an employer to fail to pay an employee their long service leave entitlement on the day employment ends.

An authorised departmental officer may prosecute for a breach of the LSL Act 2018. The penalty for this offence is 12 penalty units for a natural person, and 60 penalty units for a body corporate. These penalties can apply for each day during which the offence continues. If an employer is found guilty of this offence, a criminal conviction may also be recorded.

An employee or their personal representative may seek to recover unpaid entitlements through a civil claim in the Industrial Division of the Magistrates’ Court.

#### Falsifying records

It is an offence for an employer to fail to maintain correct records. It is also an offence to make a false or misleading statement in a record.

#### Authorised officers

Authorised officers are appointed under the LSL Act 2018. A request by an Authorised Officer to produce records must be complied with. Subject to certain rules, it is a criminal offence to not provide information or documents sought by an authorised officer in accordance with the LSL Act 2018. It is also a criminal offence to produce a false document.

Authorised officers will generally use a ‘Notice to produce’ to make such a request and it will contain details of the records required and instructions on how to comply with the notice. It is an offence for an employer to fail to comply with a notice and could lead to criminal penalties.

#### Adverse action

It is also an offence for an employer to treat their employee less favourably, simply because the employee seeks to exercise a right under the Act, such as applying for long service leave. Adverse action includes dismissing an employee, or changing their employment conditions, or demoting them, or treating them differently to other employees.

#### 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](file:///%5C%5Cinternal.vic.gov.au%5CDPC%5CHomeDirs1%5Cviche8a%5CDesktop%5CLSL%20Factsheets%5Cbusiness.vic.gov.au%5Clongserviceleave) or call 1800 287 287 for a copy.

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