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| Long Service Leave in Victoria |
| Fact Sheet No. 7 Entitlement to take leave and ‘Ordinary Pay’ |



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.**

#### Entitlement to take leave after 7 years

Employees are entitled to take long service leave after a minimum of 7 years’ continuous employment. Previously an employee had to work at least 10 years to take this leave.

The amount of leave an employee is entitled to take is calculated on one-sixtieth of the period of employment, i.e. number of weeks employment divided by 60 equals the number of weeks entitlement. For example, if an employee has worked for 7 years, convert this to weeks, divide by 60, and this equals approximately 6.1 weeks. 6.1 weeks is the long service leave entitlement at that time. The actual entitlement has not changed.

#### Definition of ‘ordinary pay”

When an employee takes long service leave, they are to be paid according to their ‘ordinary pay’. ‘Ordinary pay’ is the actual pay received by an employee for working his or her normal weekly hours at the time the employee takes long service leave or ceases employment and has long service leave paid out.

The components that make up ordinary pay will depend on the ‘employment agreement’ of the employee. ‘Employment agreement’ is defined in the LSL Act to include the contract of employment (either oral or written) and statutory entitlements (such as those under awards or enterprise agreements).

Amounts not included in ‘ordinary pay’ are overtime and penalty rates (such as shift allowance or weekend penalties). Amounts that may be included are various components of a salary package, including commissions and amounts relating to personal use of a motor vehicle. Casual loading is also included when calculating a casual employee’s ordinary pay.

For information on rates of pay, please contact the Fair Work Ombudsman on **13 13 94**.

#### Where there has been a change in weekly hours or no fixed hours

If an employee changes their weekly hours in the last 104 weeks – immediately before the employee starts long service leave – or does not have fixed hours of work, as is the case for casual employees, the employee’s hours of work are averaged for the purposes of calculating long service leave. The employee is entitled to the greater of the following:

* the average weekly hours worked in the 52 weeks immediately before the employee starts long service leave; or
* the average weekly hours worked in the 260 weeks immediately before the employee starts long service leave.
* the average weekly hours worked during the employee's entire period of continuous employment with the employer.

The Act contains formulas to calculate ordinary pay where averaging is required.

The following process flowchart has been developed to explain the steps to follow to use the formulas when applying the averaging rules under the Act. You can use this flowchart to work out the normal weekly hours for workers who do not have fixed hours of work. The formulas are also set out in a separate table located below the flowchart.

Ordinary pay: Averaging weekly hours – calculating the greatest average

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| **52 WEEKS****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **260 WEEKS****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **ENTIRE PERIOD OF EMPLOYMENT****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

The average weekly hours is the greatest of these three calculations

Table of formulas for calculating normal weekly hours where hours vary or change

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| PERIOD OF CONTINUOUS EMPLOYMENT  | 52 WEEKS |  260 WEEKS | LAST PERIOD OF CONTINUOUS EMPLOYMENT |
| FORMULA |  (B + C)A= -------------- (52 – D) |  (B + C)A= ------------- (260 – D) |  (B + C)A= ---------------- (D – E) |
| KEY TO FORMULA  | A is the employee's average weekly number of hoursB is the number of hours the employee worked during the 52 weeks C is the number of hours in respect of which the employee took paid leave during the 52 weeksD is the number of weeks the employee took unpaid leave during the 52 weeks | A is the employee's average weekly number of hoursB is the number of hours the employee worked during the 260 weeksC is the number of hours in respect of which the employee took paid leave during the 260 weeksD is the number of weeks the Employee took unpaid leave during the 260 weeks | A is the employee's average weekly number of hoursB is the number of hours the employee worked during the last period of continuous employmentC is the number of hours in respect of which the employee took paid leave during the last period of continuous employmentD is the number of weeks of the employee's last period of continuous employmentE is the number of weeks the employee took unpaid leave during the last period of continuous employment. |

Once the average weekly hours are calculated, these are paid at the employee’s ordinary time rate of pay.

#### Averaging ordinary time rate of pay

If the employee does not have an ‘ordinary time rate’ of pay, perhaps due to being paid by commission or piece work rates, then averaging requirements apply. The ordinary time rate of pay for such employees will be the greatest of:

* the average weekly rate earned by the employee in the 52 weeks immediately before the employee starts long service leave;
* the average weekly rate earned by the employee in the 260 weeks immediately before the employee starts long service leave;
* the average weekly rate earned by the employee during the employee’s entire period of continuous employment with the employer immediately before the employee starts long service leave.

\*Note: A casual employee’s ordinary time rate of pay includes the casual loading

See the *Comprehensive Guide to Long Service Leave Act 2018* for more detailed explanations and case studies.

#### Cashing out prohibited

Long service leave cannot be cashed out. The only time it is paid out is at the end of employment, if accrued and not yet taken.

#### 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](https://business.vic.gov.au/longserviceleave) or call **1800 287 287** for a copy.

#### Wage Inspectorate contact details

Website [business.vic.gov.au/longserviceleave](https://business.vic.gov.au/longserviceleave)

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