|  |
| --- |
| Long Service Leave in Victoria |
| Fact Sheet No. 5 ‘One employer’ |



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.**

#### ‘One employer’

An entitlement to long service leave is dependent on continuous employment with ‘one employer’. One employer is defined in the Act and extends to a range of circumstances, which you may not have thought of, for example where a business is sold, or it outsources some of its activities.

#### Sale of business

The sale of a business is the most common situation for which this definition has impact. If a business is sold and the new owner continues the employment of an employee at that business, the new employer must recognise the employee’s period of employment with the old employer. If an employee performs work in relation to assets used in the carrying on of a business, and those assets are transferred, employment will be continuous if the new owner of the assets continues the employee’s employment. An asset can be tangible, or intangible (for example, goodwill).

#### Insourcing/Outsourcing

Similar provisions apply in relation to insourcing and outsourcing of work, such as through a labour-hire arrangement. The period of an employee’s employment carried out when performing the work must be recognised as continuous by both the service provider and host employer as many times as the employee’s employment relationship moves between the host-employer and service-provider in relation to the performance of that work.

#### Prevention of double-dipping

Where a business is sold, and the new owner decides to employ an employee who worked for the previous owner, the Act requires the new employer to recognise the employee’s prior continuous employment. The Act does ***not*** require the new employer to grant leave or make payment with respect to the same period of employment for which the employee has previously received a long service leave entitlement when employed by the previous employer.

#### Related body corporate or substantially the same directors or management

Where an employee is employed by a corporation and then a related body corporate of a corporation (as defined by the *Corporations Act*) or if the directors or management of the two employing corporations are substantially the same, the Act requires the new employer to recognise the employee’s prior continuous employment.

#### 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

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

Email [longserviceleave@dpc.vic.gov.au](mailto:longserviceleave@dpc.vic.gov.au)

Phone 1800 287 287

Facsimile 9651 9703

Wage Inspectorate Victoria

Department of Premier and Cabinet

GPO Box 2392

Melbourne VICTORIA 3001

*These documents are for information purposes only. The documents do not constitute legal advice and should not be relied upon as legal advice. Should you have any concerns or queries regarding the application of the material to your individual circumstances, you should seek your own independent legal advice.*

*The State of Victoria, as represented by the Department of Premier and Cabinet and its employees, endeavours to keep information accurate and up to date, however, does not guarantee the accuracy, reliability or currency of the material and disclaims all liability for any loss or damage caused directly or indirectly from or in connection with the use of or reliance upon the information contained within these documents.*