

# Long Service Leave

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## Authority and Application

Clause 62 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement) applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 62 of the Agreement sets out a full-time Employee's entitlement to Long Service Leave. Part-time and casual Employees are entitled to Long Service Leave on a pro rata basis.

In accordance with clause 62.2 of the Agreement, Employees are entitled to access their Long Service Leave entitlement on a pro-rata basis, after an initial seven years of paid continuous employment.

Long Service Leave must be taken at a time convenient to both the needs of the Employer and Employee. The Employer may determine the time for granting Long Service Leave so that the Employer's operations will not be unduly affected. The Employer should also take into account the Employee's needs when determining the time for granting Long Service Leave.

The entitlements contained in the VPS Agreement wholly detail an Employee's entitlement to Long Service Leave and unless expressly provided for, operate to the exclusion of Victorian Long Service Leave legislation.

## **Relevant provisions of the VPS Agreement**

### **Clause 62 Long Service Leave**

## **Supplementary Guidance Information**

### **1. Calculation of Long Service Leave entitlement**

- 1.1. Part-time and casual Employees accrue Long Service Leave on a pro-rata basis calculated on the number of ordinary hours worked.
- 1.2. Payment to an Employee on Long Service Leave is in accordance with clause 62.4(b) of the Agreement.
- 1.3. Subject to clause 62.4 of the Agreement where there is no fixed ordinary rate of pay, pay will be computed in the same manner as if the Employee had remained on duty during that period.
- 1.4. Payment for Long Service Leave will be made at the same time as the Employee would have received the pay if the Employee were still at work or in any other way as agreed between the Employer and Employee, including leave at half pay.
- 1.5. When calculating Long Service Leave and pay in lieu entitlements, the following details will be recorded and deducted:
  - 1.5.1. Leave without pay;
  - 1.5.2. Long Service Leave which has been previously granted;
  - 1.5.3. Periods for which payment in lieu of leave were made; and
  - 1.5.4. Any gaps in service which do not count as service, but which do not break continuity.
- 1.6. Further, consistent with clause 62.8 of the Agreement, the Employer is not required to pay the Employee for any period for which the Employee:
  - 1.6.1. was entitled to receive payment from another Employer not covered by the Agreement; or
  - 1.6.2. has already received payment from the Employer (either in the form of paid leave or payment in lieu).

1.7. Despite this, subject to the recognition of service requirements outlined in clause 62.9 of the Agreement, these periods may be counted towards the Employee's period of Continuous Employment for the purpose of future accruals.

## **2. Accrual of Long Service Leave during periods where an Employee is in receipt of Workers Compensation Payments**

2.1. The accrual of Long Service Leave during a compensation period is limited to the first 12 months of a compensation period (see clause 62.5(c) and clause 62.6(a)(iii) of the Agreement).

2.2. Subject to this and the other requirements of clause 62, Employees on WorkCover related absences may take and will accrue Long Service Leave for the duration of their WorkCover absence.

## **3. Accrual of Long Service Leave during periods of unpaid parental leave**

3.1. Clause 62.5(b) of the Agreement provides that, from 1 January 2019, Long Service Leave will accrue during unpaid parental leave, which in combination with any period of paid parental leave, totals 52 weeks or less.

3.2. Any unpaid parental leave which, in combination with any period of paid parental leave, extends beyond the first 52 weeks will not count as service for Long Service Leave purposes but will not break continuity.

3.3. Where an Employee is on unpaid parental leave for a period which includes or extends beyond 1 January 2019, Long Service Leave will only accrue in respect of the component of the unpaid parental leave falling on and after 1 January 2019.

## **4. Continuous Employment**

4.1. An Employee is entitled to take long service leave on a pro-rata basis after seven years of Continuous Employment. The period of continuous employment is calculated from start date with the Employer or the start date of other recognised service under clause 62.8 and clause 62.9 of the Agreement.

4.2. Continuous Employment for casual and seasonal Employees, is considered as service within the coverage of the VPS Agreement where there is no more than a 3 month break between each engagement.

4.3. The calculations of the proportionate leave entitlement owing to a casual Employee is based on days worked. Consistent with clause 62.6(a)(i), gaps in eligible service of less than 3 months do not break continuity but do not count as service.

## **5. Taking Long Service Leave**

5.1. Employees should make written application for approval of Long Service Leave prior to the requested leave date. An Employee should provide as much notice as possible of their request to take Long Service Leave.

5.2. It is recommended the application include details of any request to take the leave at a different fraction to that currently worked, payment in advance of the leave, leave at half pay and/or an election to replace any unpaid parental leave with Long Service Leave. Employees should refer to their Department or Agencies intranet for specific application arrangements.

5.3. Consistent with clause 55.19 of the Agreement, an Employee may in lieu or in conjunction with parental leave, access any Long Service Leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under clause 55.23(b) of the Agreement.

- 5.4. The Employer may refuse a leave request for operational reasons. In this case alternative acceptable dates should be negotiated between the Employer and Employee.
- 5.5. Neither the *Fair Work Act 2009* or the Agreement allow for Long Service Leave to be cashed out.
- 5.6. An Employee will only be paid in lieu of any accrued Long Service Leave entitlement on cessation of employment within the VPS.

**6. Other forms of leave during periods of Long Service Leave**

- 6.1. Where an Employee is on a period of paid Long Service Leave and an entitlement to Personal/Carer's Leave (clause 51) or Compassionate Leave (clause 54), or Cultural and Ceremonial Leave (clause 60) arises, the Employee may request that they be granted that other form of leave and re-credited their Long Service Leave.
- 6.2. An application to substitute leave must include documentary evidence as required by the Agreement.
- 6.3. If the application is granted, the applicable Long Service Leave amount will be re-credited, and the Employee will access applicable leave (as set out in 6.1) on that day(s).
- 6.4. A Public Holiday falling within a period of approved long service leave is not regarded as part of the long service leave. An Employee is entitled to take and be paid for a public holiday falling within a period of long service leave.

**7. Communication with Employees whilst on Long Service Leave**

- 7.1. Reasonable steps are to be taken to provide information to an Employee on Long Service Leave about significant industrial matters and workplace change that occur while the Employee is on Long Service Leave.

**8. Long Service Leave entitlements on movement within or out of the coverage of the Agreement**

- 8.1. Employees who have established a Long Service Leave entitlement and who move within or outside of the coverage of the Agreement will have their accrued Long Service Leave entitlement treated as follows:

For Employee Initiated Changes	
Description of service history	Description of entitlement
An Employee of one Victorian Public Service (VPS) Agreement covered Department or Agency moves to another VPS Agreement covered Department or Agency	<p>All service and Long Service Leave balances/accruals will transfer to the new VPS Department or Agency (through usual transfer of personnel arrangements) provided that service remains continuous</p> <p>The Employee must notify their current Department or Agency in order for appropriate arrangements to be made to transfer the Employee's service and accrued entitlements in their new Department or Agency.</p> <p>No cashing out of accrued Long Service Leave entitlements is to be made to the Employee.</p>

For Employee Initiated Changes	
Description of service history	Description of entitlement
An Employee of a VPS Department or Agency takes up employment with a broader Public Sector or private sector Employer	As the Employee will cease to be covered by the Agreement, any accrued entitlements owing to the Employee under the Agreement are paid out on cessation (unless otherwise agreed between the current and new organisation that the equivalent money and leave entitlement is to be transferred to the new organisation). Future accruals and recognition of prior service arrangements will be determined by the employment arrangements covering the new Employer.
An Employee of a VPS Agreement covered Department or Agency ceases employment and future Employer is unknown	Any accrued entitlements owing to the Employee are paid out by the VPS Department or Agency on cessation.  If the Employee recommences with a VPS Department or Agency within the allowable break in recognised service of 12 months provided by the Agreement (see clause 62.8), the Employee's prior service may be recognised for the purposes of determining their period of continuous employment and accrued Long Service Leave. Any previous entitlements to Long Service Leave paid out are counted towards a person's period of continuous employment for the purposes of future accruals but any accruals paid out on the earlier cessation of employment are not reinstated.
An Employee of a Victorian public entity, Commonwealth Public-Sector or Victorian Local Government Employer or recognisable entity under clause 62.9 of the VPS Agreement takes up employment with a VPS Agreement covered Department or Agency	Service with a recognised entity under clause 62.9 is treated as if the service was performed in the VPS for the purposes of calculating future accruals under the VPS Agreement.  Any entitlement owing to the person from their previous employment is cashed out on cessation by the previous Employer (unless otherwise agreed between the current and new organisation that the equivalent money and leave entitlement is to be transferred to the new organisation).  On commencement with the VPS, the Employee can commence accruing Long Service Leave as if recognised prior service was performed in VPS.

**\*Note:** The table assumes all continuous employment requirements have been met.

**8.2.** An Employee transferring to another Department or Agency covered by the Agreement will have their accrued Long Service Leave entitlements transferred to their new Department or Agency through the Transfer of Personnel (TOP) process unless there is a break in service. An Employee appointed to a role with a new Department or Agency covered by the Agreement must advise the Employer prior to ceasing with their current Department and Agency so appropriate arrangements can be made to transfer the Employee's service and accrued leave entitlement to their new Department or Agency. Unless advised, any accrued Long Service Leave entitlements owing to the Employee will be paid to them on cessation.

## 9. Prior recognised service

**9.1.** An Employee may have prior service recognised in accordance with clause 62.8 and 62.9 of the Agreement. An application for the recognition of prior service should be made within six months of an Employees' starting date in the VPS. The Employer will take reasonable steps within this period to ascertain from the Employee whether the Employee has prior service.

- 9.2.** The Employee should provide all relevant details of their previous Employers to allow their new Employer to verify the service recognisable, under clause 62.9 of the Agreement. This should include any leave affecting service (such as unpaid parental leave, leave without pay) and changes to employment type (i.e. full-time, part-time, casual) with the previous Employer. It is recommended that Employers seek details of prior employment from new Employees as part of their onboarding processes, to ensure eligible service can be recognised on commencement (or re-commencement) in the VPS.
- 9.3.** In accordance with clause 62.5, 62.6, 62.7, 62.8 and 62.9, in calculating an Employee's eligible prior service, Employers should be mindful that from 1 January 2019 the first 52 weeks of an Employee's (other than a casual Employee) unpaid parental leave, which in combination with any period of paid parental leave totals 52 weeks or less, is recognised as service. Employers should ensure any details provided by Employee's regarding recognisable service include details of periods of paid and unpaid parental taken by the Employee in their previous recognisable employment.
- 9.4.** Clauses 62.8 and 62.9 of the Agreement set out the requirements for recognition of prior service. These requirements determine whether an Employee's service is recognisable for the purposes of Long Service Leave and apply regardless of whether that service was or was not recognised by the Employee's previous Employer. The transfer of monies between different Employers, including between Employers covered by the Agreement, is not a determining factor as to whether an Employee's service is recognisable under the Agreement.
- 9.5.** A casual Employee who obtains either a fixed-term or ongoing position will have their prior service recognised provided continuity of service is maintained. Once a casual Employee commences in a fixed-term or ongoing position, their Long Service Leave entitlements will accrue as per the rules applying to fixed-term or ongoing Employees.
- 9.6.** Service previously worked as an external contractor will not be recognised as prior service should that Employee be successful in obtaining fixed-term or an ongoing position within the VPS.
- 9.7.** The Agreement does not provide for prior service to be recognised with non-government or private sector Employers, even where they are fully funded by a government organisation.
- 9.8.** Employers covered by the Agreement may enter into arrangements with each other or with other Employers not covered by the Agreement about how monies will transfer in the event that an Employee's Long Service Leave is recognised. However, these arrangements do not affect whether the Employee has an entitlement to have their prior service recognised under the Agreement or not.
- 9.9.** For breaks of service greater than one year and less than two years, the following factors may be considered when deciding to approve or reject a request:
- 9.9.1.** The reason for any resignation from a period of recognisable service;
  - 9.9.2.** The activity undertaken during the break; and
  - 9.9.3.** Any other factors pertinent to ascertaining special circumstances.
- 9.10.** Under clause 62.8(b)(ii), the Employer has discretion to approve an Employee's application for recognition of prior service where the absence of two years or less is due to special circumstances. Special circumstances must be due to:
- 9.10.1.** A pressing personal or domestic emergency; or

**9.10.2.** Strain or stress deserving of compassionate considerations.

**9.11.** A request made under 9.9 or 9.10 above must be supported by documentary evidence to the satisfaction of the Employer to establish or corroborate the reason(s) for the break in service.

## **10. Prior recognised service – Military Service & Defence Reservists**

**10.1.** Whether defence force reserve service is recognisable service under clause 62.9 of the Agreement, will be dependent on the nature of the relationship between the Employer, the Employee and the Defence Force (including the Defence Reserves), and particularly whether the arrangements could be considered as an employment relationship.

**10.2.** Where a period of Defence Reserve Service is performed during past employment in another organisation which is capable of being recognised under clause 62 of the Agreement, then, assuming the continuity of service requirements of clause 62 are met, service with that Employer would be recognised as a whole and there would be no need for separate recognition of Defence Reserve Service.

**10.3.** Where the individual was employed by another organisation which is not capable of being recognised under clause 62 of the Agreement participates in Defence Reserve Service (for example, being on leave from that Employer to participate in Defence Reserve Service), then Defence Reserve Service would not be recognised under clause 62.9 unless an employment relationship with the Australian Defence Force can be established covering the period(s) of Defence Reserve Service only.

**10.4.** Employees who undertake continuous full time service while in the Defence Reserves or performs full-time military service may be able to seek recognition of prior service provided the service is an employment arrangement which meets the continuity of service requirements set out in clause 62 of the Agreement.

**10.5.** Where an Employee has a combination of full-time military service and Defence Reserve Service then each period of service will be treated on its merits in accordance with the guidance outlined above.

### **Making decisions under this policy**

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

### **Dispute resolution**

An Employee who is directly affected by a decision made or action taken pursuant to clause 62 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

## **Further Information**

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Annual Leave
- Compassionate Leave
- Parental Leave
- Personal/Carers Leave

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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