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## CLIENT BULLETIN NO. 2018-04

### Changes to Victorian Long Services Leave Provisions

The Victorian Parliament has passed the *Long Service Leave Bill (2017)*, which will introduce changes to existing long service leave (LSL) entitlements for Victorian employees. The Bill is awaiting assent and will commence on or before 1 June 2018.

The new Act will introduce the following changes:

Provision in current Victorian LSL ACT	Provision in new Victorian LSL Act
An employee must wait until 10 years of continuous service (although if their employment is terminated on or after 7 years they are entitled to a pro rata payment).	An employee will be able to take pro rata long service leave after 7 years of continuous employment.
Parental leave, whether paid or unpaid, does not count as an employee's service when calculating LSL.	<p>Paid parental leave will be treated the same as other forms of paid leave, in that it <u>will</u> count as an employee's service when calculating LSL.</p> <p>Unpaid parental leave up to 52 weeks (and longer if agreed by the employer and employee) will count as an employee's service when calculating LSL.</p> <p>This will only apply to leave taken after the Act commences (being not later than 1 June 2018).</p>
Employee's employment taken to be continuous if employment is terminated at the initiative of employer and the employee is reemployed by the employer within 3 months of termination.	Employee's employment taken to be continuous if employment is terminated at the initiative of employer <u>and the employee</u> is re-employed by the employer within 3 months of termination.
If an employee performs duties in connection with any assets used in carrying out the employer's business, and those assets transfer to another employer who continues the employee's employment, the employment of the employee across both employers is treated as continuous. The current definition of assets only included land, plant and equipment.	The definition of assets is expanded to all tangible and intangible assets such as goodwill and intellectual property.
Authorised officers of the Victorian Department of Business & Employment (being the agency responsible for prosecution of LSL Act contraventions) can request but cannot require a person to produce relevant documents or provide relevant information.	Authorised officers can now issue a notice requiring the production of documents and information.

The majority of aged care facilities have an enterprise agreement apply to them so these changes do not apply to their staff. The EBA provisions mean that an employee cannot access pro rata LSL until they have worked for ten years or more. The LSL Act of Victoria will allow staff to take LSL after seven years, however, it is half the amount paid under the EBA.

However, some staff may be not covered by the agreement, such as senior executives and head office staff, may be. Also, in most agreements, casual Registered Nurses are covered by the LSL Act of Victoria as they are specifically exempted from the LSL provisions of the EBA. There is not likely to be many casual staff in this position.

The one issue which is not clear in all agreements, or the agreement is silent, is the matter of the time frame between an employee terminating employment but returning in less than three months. Where there no specific reference to this is an agreement, we would advise that if you do not want the employment to be continuous, ensure the gap between separate engagements is in excess of three months.

**Clare Dewan**