

## Implementation Guide for Schools

**Guidelines for changes relevant to Long Service  
Leave under the *Victorian Catholic Multi-Enterprise  
Agreement 2018***

**February 2019**

## 1. Background

The purpose of this guide is to outline the changes to long service leave under the *Victorian Catholic Education Multi-Enterprise Agreement 2018 (VCEMEA)*, as well as to provide additional guidance in relation to these changes.

The majority of the changes that have been made to long service leave provisions within the VCEMEA, have been made in light of new long service leave conditions introduced in the *Long Service Leave Act 2018 (Vic) (LSL Act)* which came into effect on 1 November 2018. The LSL Act replaced the *Long Service Leave Act 1992 (Vic)*.

Long service leave within Victorian Catholic schools is currently governed by the provisions in Appendix 3 of the VCEMEA, which came into effect on 29 January 2019.

## 2. VCEMEA - Key changes

Outlined below, in summary, are the key changes to long service leave as contained in the VCEMEA:

- (a) Any period of unpaid absence from work on account of illness or injury, irrespective of duration is continuous and accruable for the purposes of calculating long service entitlements.
- (b) Any other period of unpaid absence from work (including unpaid parental leave) up to a period of one year, taken with the Employer's consent, is continuous and accruable for the purposes of calculating long service leave entitlements.
- (c) Any other period of unpaid absence in excess of one year, taken with the employer's consent, will be continuous and accruable for the purposes of calculating long service leave entitlements, if the employer and employee agreed in writing before the leave was taken that such leave longer than one year will be accruable for the purposes of calculating long service leave entitlements.
- (d) An employee can request long service leave in periods of not less than one day at a time.
- (e) Mixed part-time and full time service has been simplified by removing the full-time and part-time "buckets" by creating an overall average FTE. Employees will be paid an average FTE rate during their long service leave.

It should be noted that changes (a) to (d) came into effect by law from 1 November 2018 (prior to the commencement of the VCEMEA), due to the commencement of the LSL Act 2018. These conditions are now also binding by virtue of the VCEMEA.

## 3. Accrual of LSL

### Key changes

Under the VCEMEA, there have been changes to the absences from work which will be treated as service for the purposes of long service leave accruals. These changes are as follows:

#### ***Absences on unpaid leave up to one year (e.g. personal leave)***

- Any unpaid absence from work (including unpaid parental leave) up to one year taken with the employer's consent, will be accruable for the purposes of calculating long service leave entitlements.

For example, in the case of an employee who works for 4 years, takes three years off (156 weeks) on unpaid parental leave and then returns to work for another 4 years, the employee will have accrued long service leave for 9 years of their continuous employment. This includes one year of service being treated as accruable for long service leave purposes during the period of 156 weeks of unpaid parental leave as provided for under the VCMEA.

#### ***Unpaid absences due to illness or injury***

- Any period of unpaid absence from work on account of illness or injury, irrespective of length, will be accruable for the purposes of calculating long service leave entitlements. It will mean that an employee on long term unpaid personal leave will be accruing service for the purposes of long service leave entitlements for the entire period, irrespective of the length of the absence.

#### ***Unpaid absences – agreement in writing***

- Any other period of unpaid absence from work in excess of one year and taken with the employer's consent, will be continuous and accruable for the purposes of calculating long service leave entitlements, if the employer and employee agree in writing before the leave is taken that such leave longer than one year will be accruable for long service leave purposes.

Note: System updates have occurred to ensure that changes to the way in which unpaid leave accrues long service leave will occur automatically. These changes will not require any further action at the school level, other than being aware that periods of unpaid leave will attract long service leave accruals, where previously they did not.

### **Transitional arrangements from 1 November 2018**

As outlined above, the LSL Act 2018 commenced on 1 November 2018. This means that the changes to long service leave accruals occurring whilst a person is on different forms of unpaid leave, came into effect from that date.

In light of these changes to service accrual, transitional arrangements were included in the LSL Act to deal with situations where an employee's leave started prior to the commencement of the LSL Act on 1 November 2018, and finished after that date.

In general terms, the transitional arrangements provide that where the LSL Act commenced during an employee's absence on unpaid parental leave (or other unpaid leave), only that part of the period of unpaid absence which occurred on and from 1 November 2018, will count as service for the purposes of long service leave accruals. Any part of the period of unpaid parental leave occurring before that date will not count.

For example, if an employee commenced 12 months of unpaid parental leave on 1 July 2018, the first four months of that leave would not be counted as service, but the final eight months of leave (that is, the period after 1 November 2018) will count as service for the purposes of long service leave accruals.

### 3. Periods of leave – Minimum of one day

#### Employee requests for long service leave

Under the VCEMEA (and based on changes in the new LSL Act), an employee may now make a request to their employer to take long service leave for a period **of not less than one day**.

This is a significant change from previous provisions as there is no longer a limit on an employee accessing long service leave in one, two or three separate periods.

This change will enable employees to access single days of long service leave during term time, where previously they may have been required to utilise unpaid leave if they had wanted to take a day off during term (where it did not constitute another form of leave – for example, personal leave).

#### Practical considerations / implications

Given that employees can now request single days of long service leave, there may be an increase in long service leave requests.

As a result of this change, outlined below are some practical matters that schools should consider going forward.

#### ***Review or introduce LSL Policy***

It is important that a school has a policy in place outlining its processes in relation to long service leave requests.

Whilst a policy will **not** enable a school to restrict an employee's right to make requests for long service leave, including for periods of one day, it can outline the school's protocols for considering requests, including preferred timeframes for applications. In specifying in a policy a preferred timeframe by which requests for long service leave are made, schools will need to be flexible in their approach, as there may be particular circumstances which will result in an Employee requesting a period of long service leave outside of the preferred timeframe. These applications will still need to be considered and should not be declined purely on the basis that the application was made outside of the preferred timeframe.

In developing a policy, schools should consider including reference to the following:

- The purpose of LSL;
- Requested timeframes for requests for LSL; and
- Factors that will be taken into account in considering requests for long service leave (see further below).

Many schools will currently have in place a long service leave policy, which will already deal with the above matters.

Schools that currently have a long service leave policy in place can continue to manage long service leave at their school through their policy and procedures. However, they should review their policy and consider whether any amendments are needed to take into account an employee's ability to request periods of long service leave one day at a time.

Note: Many schools will have a practice of seeking staffing intentions for the following year in Term 3 of each school year, which will include asking staff to advise of any intentions to take long service leave in the following year.

This is good practice and can be important for a school to provide the school with the best opportunity to prepare and plan for periods of leave and to assist schools managing requests of leave for one day at a time whilst best ensuring student needs are met.

### ***Consideration of requests***

In general terms, each request for long service leave should be separately considered and assessed. A school will need to consider requests individually having regards to balancing the needs of the school and staff.

When considering requests having regard to the needs of the school, some considerations may include:

- The timing of the leave in relation to the school's organisational priorities.
- In relation to classroom based employees, the time of the year and subjects taught (e.g. VCE teachers may have more restrictions on accessing long service leave during a year in which they are teaching VCE classes).
- The notice provided for the request. For example, in a primary school it may be difficult for an Employer to accept a request for long service leave from an administration support employee around the time of census, without reasonable prior notice of the request.
- Whether there is capacity to change the working arrangements of other employees to accommodate the employee taking long service leave at the requested time.
- Whether it is practical to recruit new employees to accommodate the employee taking long service leave at the requested time.

This is not an exhaustive list of considerations to be taken into account as there may be other operational factors that are taken into account when considering a request.

Where an Employer is unable to approve a request for long service leave, the Employer should inform the Employee of the reasons for the refusal. Importantly, an Employer should also discuss with the Employee any mutually acceptable alternatives to the original request.

### ***Balancing multiple requests***

When balancing multiple requests for long service leave over the same or similar timeframes (including requests for long service leave of one day on the same day), schools will need to apply a consistent approach. In many cases, this could include:

- prioritising in order of request; and
- taking into account previous periods of long service leave. For example, if an employee has taken a significant period of long service leave in the previous year, they may be less likely to have their

request accommodated in the following year, where there are other employees who have also made a request at the same time and who have not accessed long service leave in recent years.

Considering requests in order of submission and taking into account previous leave, may also assist schools in managing a number of requests from employees for the same day (for example, before a public holiday or after a public holiday).

#### ***Requests for single days of LSL on a regular basis***

Under the new LSL Act, it is possible for an employee to request one day of long service leave per week for an extended period of time. A school will need to consider these requests on an individual basis and take into account the school's operational needs in considering the request.

In many instances, considering this type of request will be similar to considering a request for part-time work.

As such, similar factors should be taken into account, such as the reasonableness of replacing the staff member for the day or days they will be on leave (for example, challenges replacing a teacher's classes one day a week), for the period of time in which the employee is seeking the leave arrangements.

There will be times when an Employer will be able to accept a request for a period of long service leave at one day a week for an extended period, however there may also be situations when an Employer will not be able to.

Again, where a request is made for this type of arrangement, and a decision is made that the school will not be able to accommodate that request, the Employer will need to inform the Employee the reasons for that decision and consider whether alternative arrangements can be accommodated. For example, can the arrangement be accommodated by taking another day off, or at another time of the year?

#### ***Transition to retirement***

Under the new LSL Act, it is possible for an employee to request one day of long service leave per week for an extended period, as part of a transition to retirement.

In this instance, the arrangement should be entered into in conjunction with the transition to retirement provisions of the VCEMEA, and agreement reached as to the end date of an employee's employment in accordance with Clause 41 of the VCEMEA.

Further advice about transition to retirement and resources can be obtained by contacting the Employee Relations Team.

## **4. Calculation of leave entitlements**

The way in which the ordinary rate of pay is determined when an employee has a mix of full-time and part-time service has been amended under the VCEMEA. If an employee has both part-time and full-time service, the ordinary rate of pay is now calculated as a weighted average FTE applying consistently over the period of long service leave. This will create an overall FTE instead of the current practice of two separate buckets of full-time and part-time long service leave. This change is intended to simplify the administrative framework that is currently burdensome and complex for both employees and employers.

## 5. Frequently Asked Questions

<p><b>How and when can an employee access long service leave?</b></p>	<p>An employee can make a request to take long service leave at any time after 7 years of continuous employment in Catholic education and may make a request to take a period of long service leave for any period of not less than 1 day at a time.</p>
<p><b>Can an employee request one day of LSL a week for an extended period?</b></p>	<p>Yes, an employee can request long service leave on the basis of one day per week, over an extended period.</p> <p>A school will need to consider each request individually and make a decision having regards to the needs of the school, and the reasonableness of replacing the staff member for the day or days they will be on leave (for example, challenges replacing a teacher's classes one day a week).</p> <p>Please refer to section 3 of this guide in relation to the factors that a school may take into account when considering a long service leave request, including when an employee seeks to access one day of long service leave a week for an extended period of time.</p>
<p><b>Can an employee seek to transition to retirement by taking a period of long service leave, including taking one day of long service leave a week for an extended period, instead of reducing their FTE?</b></p>	<p>Yes, an employee may request to take a period of long service leave one day at a time to enable a transition to retirement.</p> <p>Again, the school will need to consider the request and make a decision having regards to the needs of the school.</p> <p>In relation to the maintenance of FTE, schools should be aware that where a teacher requests one day off a week of long service leave over an extended period, a school may not be able to guarantee a 0.8 FTE for the other four days, depending on timetabling and scheduled classes available over a 4 day period. Therefore it may not be possible to avoid adjusting the employee's FTE.</p> <p>In this instance, the arrangement should be entered into in conjunction with the transition to retirement provisions of the VCMEA, and agreement reached as to the end date of an employee's employment in accordance with Clause 41 of the VCMEA.</p>

<p><b>Can an employee take only one day of long service leave at half pay?</b></p>	<p>No. An employee can only access a minimum of two days of long service leave at half pay.</p> <p>Under clause 8.3 of Appendix 3, long service leave must be taken in periods of not less than one day</p> <p>Further, clause 8.9 of Appendix 3 states that an employee may request their employer to grant an amount of long service leave:</p> <ul style="list-style-type: none"> <li>• Twice as long as the amount to which the employee would otherwise be entitled;</li> <li>• At a rate of pay equal to half the employee’s ordinary pay.</li> </ul> <p>Because an employee cannot access long service leave for less than a day, and half pay leave means that a person is taking an amount of leave, that is twice as long than they would otherwise be entitled, an employee cannot access long service leave for one day at half pay.</p>
<p><b>We have a long service leave policy in place that states that an employee can only take long service leave in longer periods of time, can we continue to rely upon this policy?</b></p>	<p>No, with the changes to the <i>Long Service Leave Act 2018</i> (Vic) and the VCEMEA, an employee is entitled to request long service leave one day at a time and a school will not be able to continue to rely upon a policy requiring employees to take long service leave in larger blocks of time.</p> <p>It is recommended that schools update current policies to ensure that they reflect the changes in the new VCEMEA.</p> <p>Whilst a school can continue to advocate for long service leave to be taken in longer periods to enable rest periods for recuperation, it will not be able to restrict employees from requesting long service leave one day at a time nor will they be able to reject requests from employees for leave one day at a time due to current wording in school long service leave policies.</p>



<p><b>What do we do if we receive multiple requests for long service leave for the same period of time, or multiple requests to take a period of long service leave for the same singular day?</b></p>	<p>To manage these situations, it is advisable for schools to outline in their long service leave policy, how multiple requests for the same period are treated.</p> <p>To ensure that applications are considered fairly, the policy may indicate that multiple applications for the same day will be considered in order of submission, as well as who has or hasn't taken long service leave in recent years.</p> <p>For example, if a school receives requests for a single day of long service leave from multiple employees for a day after a public holiday, the school would need to consider the impact on the school in accepting those requests and it may be appropriate to consider applications for leave based on order of application, and who has taken long service leave in recent years.</p>
<p><b>Can a school still request employees to provide 12 months' notice of any planned period of long service leave?</b></p>	<p>Yes, a school can request that employees provide a specified period of notice for planned long service leave.</p> <p>For example, it is recommended that the long service leave policy outline when the school will generally require applications to be made for the following year. The long service leave policy can also include a reference to the basis on which applications will be considered, such as giving priority to applications based on order of submission, therefore encouraging employees to submit their long service leave request as far in advance as possible.</p> <p>Schools will still need to be flexible in its approach, as there may be particular unforeseen circumstances which will result in an employee requesting a period of long service leave at short notice. These applications will still need to be considered and should not be declined purely on the basis that the application was made outside of the preferred timeframe.</p>

## 6. Contact and Enquiries

For queries regarding entitlements under the VCMEA please contact the Employee Relations Unit on (03) 9267 0431 or via email on [ceoir@cem.edu.au](mailto:ceoir@cem.edu.au).

For advice regarding the processing and payment of LSL reimbursements and terminations please contact the Long Service Leave Officer on (03) 9267 0328 or via email on [lslofficer@cem.edu.au](mailto:lslofficer@cem.edu.au).