
VPS Enterprise Agreement Common Policies

LEAVE WITHOUT PAY

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Authority and Application

Clause 63 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement) applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Employees may apply for Leave Without Pay for any purpose. LWOP is not an automatic right but requests for LWOP will be assessed on a case by case basis and will be considered having regard to both the needs of the Employee including their personal and family responsibilities and the reasonable business needs of the Employer.

Relevant provisions of the VPS Enterprise Agreement

Clause 63. Leave Without Pay

63.1 An Employee may be granted leave without pay by the Employer for any purpose.

63.2 Unless otherwise provided for in this Agreement, leave without pay shall not break the Employee's continuity of employment but leave without pay will not count as service for leave accrual or other purposes.

Supplementary Guidance Information

1. Requests for LWOP

- 1.1. Requests for LWOP must be made, as soon as reasonably practicable prior to the proposed commencement of the LWOP.
- 1.2. Employees should note that clause 63 of the Agreement does not relate to requests to take leave without pay in connection with a period of parental leave. Employees seeking to take unpaid leave in connection with a period of parental leave resulting from the birth or adoption of a child should refer to clause 51 of the Agreement and its associated guidance for further information.
- 1.3. LWOP must be approved prior to leave being taken. However, in exceptional circumstances, the Employer may grant LWOP where it has not been approved in advance (for example, in the case of an emergency or other unforeseeable circumstance).

- 1.4. An Employee requesting LWOP should exhaust all paid leave and time in lieu credits prior to the proposed commencement of the LWOP.
- 1.5. Employees may request LWOP for a period of any duration. However, approval for leave requests in excess of 12 months will be given in exceptional circumstances only. LWOP arrangements must be agreed and approved at least every 12 months. There is no automatic entitlement to have further LWOP requests approved.
- 1.6. Employees applying for LWOP for the purpose of undertaking outside employment must refer to their Employer for further guidance.

2. Considering whether to grant a request for LWOP

- 2.1. LWOP is not an automatic right. In considering a request for LWOP, the Employer, in consultation with the Employee, should consider whether another form of leave for example, unpaid personal/carer's leave, extended family leave or any other leave outlined in the Agreement more appropriately suits the circumstances of the request.
- 2.2. The Employer should consider LWOP requests promptly and in a balanced way, having regard to both the needs of the Employee (including their personal and family responsibilities) and the reasonable business needs of the Employer.
- 2.3. Whilst LWOP is not an entitlement where the Employer refuses a request for LWOP, the Employer should endeavour to discuss the reasons for the refusal with the Employee as soon as reasonably practicable.
- 2.4. Where an Employer and Employee agree on an extended LWOP arrangement, the Employer may grant LWOP for an extended basis conditional on the Employee accepting they may be unattached from their substantive position and that the Employer may reallocate the Employee to a position or duties other than the Employee's pre-leave position or duties for which the Employee is qualified for and is capable for performing upon their return to work. If no suitable duties can be allocated when the Employee is due to return, the Employee may be declared surplus to requirements and the redeployment process commenced on their return to work. This condition may be applied regardless of whether the extended absence was approved upfront or occurred as a result of a series of approved absences.
- 2.5. Where an Employer and Employee agree on an extended LWOP arrangement, which is conditional on the Employee accepting they may be unattached from their substantive position and that the Employer may reallocate the Employee to a position or duties other than the Employee's pre-leave duties for which the Employee is qualified for and is capable of performing upon their return to work, it is recommended that this agreement be recorded in writing.
- 2.6. It is recommended the Employee also be required to acknowledge they are aware that in the event there are no suitable duties to which the Employee can be re-allocated to upon their return to work, the Employee may be

declared surplus to requirements and the redeployment process outlined in the Redeployment Policy be applied to their employment.

3. Effect of LWOP on an Employee's service

- 3.1. LWOP shall not break the Employee's continuity of service but will not count as service for the purpose of accrual of leave including annual leave, personal leave, long service leave etc.

4. Communications during a period of LWOP

- 4.1. The Employer will take reasonable steps to make information available to an Employee on LWOP in relation to a decision to introduce major change likely to have a significant effect on the Employee.

5. Returning to work after a period of LWOP

- 5.1. An Employee granted a period of LWOP may request to return to work earlier than the agreed date. The Employer is not obliged to grant a request for early return, however should facilitate a request where reasonably practicable. Where not reasonably practicable, the Employer may consider other options, such as the Employee returning to a different role, if a suitable position is available, on a temporary basis until the end of the approved LWOP period.

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 63 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 12 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
- Parental Leave
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>