

# Fair Work | Fact Sheet

## Long Service Leave

The information in this sheet only concerns national system employers and Victorian employers. However the Federal Government is committed to getting agreement of the States and territories to developing a national long service leave scheme that will impose one set of long service leave rules for all employers and employees.

The provisions will commence operation on 1 July 2009.

When modern awards commence on 1 January 2010, they will not include terms dealing with long service leave. Modern awards will replace pre-modernised awards on 1 January 2010.

Pre-modernised awards are awards that exist before being replaced by modern awards on or after 1 January 2010.

Even though pre-modernised awards will be replaced by modern awards on 1 January 2010, long service leave provisions in pre-modernised awards will apply to employees after that date in the following circumstances:

- the employee would have been entitled to the long service leave provision in the award if employed in his/her current circumstances as at 30 June 2009
- the employee's employment is not subject to an AWA or workplace agreement made under Work Choices (regardless of whether it contains an long service leave provision), or
- the employee's employment is not subject to any other enterprise agreement dealing with long service leave.

During 2009 workplace agreements made under the Workplace Relations Act 1996 (Cth) (WR Act) and enterprise agreements made under the Fair Work Act 2009 (Cth) (FW Act) after 1 July 2009 can undercut State and territory long service leave laws. So long as these agreements remain in operation, they will prevail over State and territory long service leave laws to the extent of any inconsistency.

However, long service leave provisions contained in enterprise agreements made on or after 1 January 2010 will apply subject to State and territory long service leave laws.

For example, if you employ people in more than one State and have a workplace agreement covering those employees which contains long service leave provisions, those provisions will prevail over State and territory long service leave legislation after 1 January 2010 if the agreement is a collective agreement (i.e. not an AWA or ITEA) made under the WR Act, or an enterprise agreement made before 1 January 2010 under the FW Act.



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However, you need to apply to Fair Work Australia (FWA) for an order that this scheme operates in lieu of State and territory long service leave legislation. To obtain this order you need to satisfy FWA that:

- no pre-modernised award containing long service leave terms applies to the employees covered by the workplace agreement, and
- the scheme in the workplace/enterprise agreement, when considered on an overall basis, is no less beneficial to the employees than the long service leave entitlement they would have under State and territory long service leave laws (this test is a global test, not a line by line test i.e. you compare the quantum of entitlements, rather than look at differences in the specific rules about such matters as when long service leave is taken or cashed out).



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