



Guidelines for Employed Practitioners Taking a Leave of Absence from Legal Practice

Overview

The purpose of this Guide is to assist employed practitioners who are taking or considering taking a leave of absence from legal practice. It is not an exhaustive statement of all the professional obligations that might apply to specific circumstances. Practitioners who practise as law practice principals will have additional professional and fiduciary obligations in the event of a leave of absence which are not covered by this Guide. If you have any questions about this Guide, or about matters not covered in this Guide, please send an email to ethicsandpractice@lawsocietysa.asn.au

Guidelines

1. Talking to your employer before taking a leave of absence

- 1.1. It is important to speak to your employer before taking a leave of absence.
- 1.2. In these discussions you will need to clarify and agree the terms on which you are taking the leave, the arrangements with respect to return to work, what will happen in relation to your role and work while you are on leave, and what arrangements will apply in the event that your employer needs to contact you in relation to a client matter and also to what extent you can access work emails and systems.
- 1.3. If your practising certificate is scheduled to expire during the period of leave, you will also need to agree a process for its renewal at the relevant point in time. See below for more details about this.

2. Notification to the Society

- 2.1. Regulation 4(3) of the [Legal Practitioners Regulations 2014](#) requires practitioners to notify the Society in writing if they cease or commence/recommence practice.
- 2.2. Having information about an anticipated break in practice allows the Society to facilitate the provision to you of information about various regulatory requirements such as practising certificate renewal, supervised practice requirements and MCPD compliance.
- 2.3. To notify the Society about an anticipated leave from practice please complete and submit a [Form N - Notification of Change of Circumstances of Practice by Legal Practitioner](#). Please ensure that you provide a phone number and email address so that we can make direct contact with you if necessary and can ensure that information about regulatory matters is provided to you.
- 2.4. You can also update your Contact Details via your [Profile Page](#).

3. Professional Indemnity Insurance and Practising Certificates

- 3.1. Section 19 of the *Legal Practitioners Act 1981* requires practitioners applying for a practising certificate to participate in the SA Professional Indemnity Insurance Scheme (Scheme) unless they work in a context in which the Scheme doesn't apply or they have been granted exemption from it.

- 3.2. If you are an employee or principal of a law practice, your compliance with the above requirements is secured by the payment by your employer of the required contribution or, if your employer has been granted exemption from the Scheme, compliance by your employer with the terms on which the exemption was granted.
- 3.3. If you are an employee of an entity that is not a law practice, such as a corporate entity or government department, the Scheme does not apply to you and nothing more is required.
- 3.4. If your practising certificate is scheduled to expire while you are on leave you need to decide whether you will be renewing it immediately or just renewing it prior to your return to practice.
- 3.5. It is important to emphasize that it is your personal responsibility to ensure that you have a current practising certificate for any periods during which you are providing legal services. If you maintain your employment and there is a possibility that you may have to deal with legal matters during the period of leave, you will need to ensure that you maintain your practising certificate and arrange for its renewal on 1 July as usual.
- 3.6. If you will not be employed during the period of leave you may surrender your practising certificate when you commence the leave or just let it expire on 30 June. However, you will need to ensure that you renew your practising certificate prior to returning to practice.
- 3.7. If you decide to surrender your practising certificate or allow it to expire you will need to bear in mind the process for renewal when you return to practice. You can surrender your practising certificate by submitting a [Form L - Surrender a Practising Certificate](#).
- 3.8. If you apply for renewal of a practising certificate within 3 years of the cessation of your last practising certificate, you can apply for renewal directly to the Law Society by completing and submitting a [Form B - Apply for Practising Certificate Renewal](#). A practising certificate will usually be issued within 5 business days of the Society receiving payment of the applicable fee.
- 3.9. If you apply for renewal of a practising certificate 3 or more years after the cessation of your last practising certificate, your application for renewal will have to be referred to the Board of Examiners in accordance with Rule 15 of the 2018 LPEAC Rules. As this process can take 6 to 8 weeks, you will need to ensure that you commence it as soon as possible to ensure that you receive a practising certificate by the time you want to resume practice. Information about the Rule 15 process is provided in the [LPEAC Rule 15 Guide](#).

4. Mandatory Continuing Professional Development (MCPD) obligations

- 4.1. While you are on leave you will need to ensure that you comply with any applicable MCPD requirements.
- 4.2. Practitioners who held practising certificates during a CPD period, and who intend to renew their practising certificate during the following CPD period, must submit a Certificate of MCPD Compliance by 14 April of each year. If you will be on leave at that time, you will need to ensure that you comply with this requirement.
- 4.3. If you intend to maintain a practising certificate during your period of leave you will need to ensure that you either complete the prescribed amount of MCPD, or apply for a reduction in the amount of MCPD that you are required to complete during the leave.

- 4.4. Information about MCPD compliance and seeking reduction in prescribed MCPD while absent from practice is at our [MCPD webpage](#).

5. Supervised Practice

- 5.1. If you hold a Category C restricted practising certificate you will need to bear in mind that any periods of absence from practice, regardless of whether you maintained a practising certificate during that time, will need to be disregarded for the purpose of calculating the amount of supervised practice you have completed.
- 5.2. For detailed information about supervised practice requirements please visit our [Practising Certificates webpage](#) and view the information under the Supervised Practice Requirements dropdown.

6. Professional Standards Scheme

- 6.1. If you are a Participating Member of the Professional Standards Scheme and are taking, or considering taking, a leave of absence from legal practice, it is important to consider the following.
- 6.2. If you will not be providing any legal services during the period of absence, you can apply for exemption. Please visit our [Professional Standards Scheme](#) webpage and complete the “PSS Participation / Exemption Form” prior to the commencement of leave.
- 6.3. If you were granted an exemption but a situation has arisen which requires that you provide legal services unexpectedly, you will need to immediately contact the Society’s Professional Standards Scheme manager at pss@lawsociety.sa.asn.au for advice (in addition to addressing any practising certificate or professional indemnity insurance scheme issues that might apply).

7. Status of this Guide

- 7.1. It is important to stress that these Guidelines are not rules of conduct and do not have the force of law. They are for the purpose of highlighting issues and considerations relating to employed practitioners taking a leave of absence. A failure to comply with the recommendations in these Guidelines does not of itself constitute misconduct on the part of a legal practitioner.

8. Useful Links

- 8.1. [2018 LPEAC Rules](#)
- 8.2. [Legal Practitioner Regulations 2014](#)
- 8.3. [Legal Practitioners Act 1981](#)