

Long Service Leave Answering Your Questions

NSW Industrial Relations



Agenda

**16 Top
Questions**



**ALL
YOUR
QUESTIONS
ANSWERED**

Answering Your Questions

1. What is Long Service Leave?



- Long Service Leave is a period of paid leave for a worker after a qualifying period of service with the same employer
- Entitlements to Long Service Leave vary in each state or territory

Answering Your Questions

2. What Legislation do I go to for Long Service Leave?



- National Employment Standards (NES) - award-derived Long Service Leave entitlement
- Federal Awards and agreements which have a LSL entitlement before 2010
- If no award or enterprise agreement (EA) LSL - Long Service Leave Act 1955

Answering Your Questions

3. What is the Long Service Leave Provision in NSW?



- The Long Service Leave *Act 1955* (the Act) applies to most employees within NSW, regardless if they are classified as full time, part time or **casual**
- At 10 years of continuous service the entitlement is 2 months or 8.67 weeks
- Casuals have had an entitlement since 9 May 1985

Answering Your Questions

4. When is an employee entitled to Long Service Leave under the Act?



- Full-time, part-time and casual workers are entitled to paid long service leave on completion of ten years continuous service with the same employer
- There is an additional month for each completed 5 years service thereafter
- A pro-rata payment of long service leave available for service of 5 years but less than 10 years on certain circumstances

Answering Your Questions

5. How is Long Service Leave paid?



- For workers who are remunerated wholly in relation to an ordinary time rate of pay **fixed** by the terms of the workers employment:
 - ✓ The workers ordinary pay for the last pay period prior to the leave being taken, or
 - ✓ The average weekly ordinary rate of pay earned during the previous five years
 - ✓ Whichever is the greater
- Shift work, other penalty rates and overtime payments are not included

Answering Your Questions

5. How is Long Service Leave paid?



- For workers who have **no fixed** weekly number of hours of work (such as casual work) long service leave pay is based on whichever is the highest and at the current hourly rate of pay:
 - ✓ The normal weekly number of hours averaged during the previous period of 12 months, or
 - ✓ Previous 5 years
- Shift work, other penalty rates and overtime payments are not included

Answering Your Questions

5. How is Long Service Leave paid?



- For workers who are remunerated otherwise than wholly in relation to an ordinary time rate of pay, such as **piece workers** or **commission-only workers**, Long Service Leave pay is based on whichever is the highest rate:
 - ✓ The average weekly ordinary rate of pay earned during the previous 12 months, or
 - ✓ The average weekly ordinary rate of pay earned during the previous five years
- Shift work, other penalty rates and overtime payments are not included

Answering Your Questions

5. How is Long Service Leave paid?.



- Bonus, incentive or other similar scheme received by an employee are to be included in long service leave pay unless employee is paid a base pay in excess of **\$144,000 pa** calculated as follows:
 - Averaged over previous 12 months, or
 - Average over last 5 years, and if 5 year average pay rate is used
- ✓ This amount is then added to weekly pay rate to calculate the Long Service Leave payment

Answering Your Questions

6. What Allowances are included in the Ordinary Rate of Pay?



- Only work related allowances which are skill related, (e.g. leading hand allowance, site allowance, first aid allowance) are included in the calculation of ordinary pay
- Expense allowances, (e.g. car allowance, meal allowance, living away from home allowance) are not included in the calculation of ordinary pay

Answering Your Questions

7. What happens if a public holiday occurs during Long Service Leave?



- An extra day must be added to the long service leave if it is a day the employee would have worked had they not been on Long Service Leave

Answering Your Questions

8. When can Long Service Leave be taken?



- Long Service Leave can be taken at 10 years and then after every five years completed continuous service i.e. at 15 years then at 20 years etc
- On termination all Long Service Leave is to paid for each completed year, month, week and days or after 15 years only completed years, less any Long Service Leave already taken
- Employer can propose to an employee, one month's notice of the date to which their leave shall be given and taken
- Leave must be granted as soon as practicable once it becomes due to the employee or mutually agreed to postpone to another date

Answering Your Questions

8. How can Long Service Leave be taken?



- Long Service Leave can be taken in one continuous period section **3(b)**, or if the employer and the employee agree
- where the leave owing is two months – in two separate periods
- where the leave owing is between two months and nineteen and a half weeks - in three separate periods
- If leave exceeds 19 weeks can be taken in four separate periods

Answering Your Questions

9. Can an employee be paid their Long Service Leave instead of taking the leave?



- NO



- The Long Service Leave entitlement must be **taken** as leave or **paid** on termination of employment

Answering Your Questions

10. Is continuous service broken when a worker takes leave?



- A break in a workers service will not affect the continuity of service or the calculation of service in the following circumstances:
 - ✓ The absence of the worker is under the terms of the employee's employment
 - ✓ The absence of the worker is on account of illness or injury

Answering Your Questions

11. How does parental leave affect continuous service?



- Section 22 of the Fair Work Act 2009 defines the meaning of service and continuous service:
 - ✓ any period of unpaid leave or unpaid authorised absence (such as parental leave and LWOP) does not break a national system employee's continuous service; but
 - ✓ does not count towards the length of the employee's continuous service

Example:

- If a worker was employed for 10 years and took 1 year of unpaid parental leave or LWOP, the worker would need to work a further 12 months to take the 10 year entitlement

Answering Your Questions

12. What happens if the business is sold?



- If a business is transmitted in whole or in part and that business continues by the new employer as the same business:
 - ✓ A person who was a worker in the business at the time of the transmission; and
 - ✓ the person becomes a worker employed in that business after the transmission; then
 - ✓ the continuity of the worker's service is not considered to be broken and the entitlement to Long Service Leave will continue

Answering Your Questions

13. Is there a long service leave entitlement for less than ten years of service?



- Under certain circumstances a worker who has completed five years (but less than ten years) of service may be entitled to a Long Service pro-rata payment if they:
 - ✓ resign as a result of illness, incapacity, domestic or other pressing necessity; or
 - ✓ are dismissed for any reason except serious and wilful misconduct; or
 - ✓ dies
- A worker will need to demonstrate that their circumstances gave them no option but to resign from work
- Evidence supporting the circumstances of the worker be provided to the employer at the time of resignation to allow an assessment to be made

Answering Your Questions

14. How do Federal Awards affect the NSW Long Service Leave Act?



- The NSW Long Service Leave *Act 1955* may not apply if the employer is respondent to a pre reform federal award or is a member of an employer association (for example the Motor Traders Association) that made them respondent to a pre reform federal award.
- This is because some pre reform federal awards provide for long service leave (see clause 4 of Part III of the federal Metal, Engineering and Associated Industries Award 1998) or there may be a separate long service leave award (see Vehicle Industry - Repair, Services and Retail - (Long Service Leave) Award 1977)
- If you are unsure, we recommend that you check with the Fair Work Ombudsman on 13 13 94

Answering Your Questions

15. What happens if the worker transferred from overseas?



- The question of whether a worker, who started employment with a company overseas before transferring to a subsidiary or holding company in Australia, receives credit for his or her overseas service for the purpose of long service leave has not been dealt with authoritatively by Australian industrial tribunals except to the limited extent in *International Computers (Australia) Pty Ltd v Weaving* 1981 AILR 456; (1981) 2 NSWLR 64
- It was held that to be entitled to long service leave pursuant to the Long Service Leave Act 1955 (NSW) it is not necessary that all service should be substantially connected with New South Wales, but it is essential that at the time of completion, termination or cessation, the worker's service may be said to be New South Wales service

Answering Your Questions

16. Where can I find further information about Long Service Leave?



- www.industrialrelations.nsw.gov.au
- Call us on 13 16 28

The screenshot shows a website interface with three main sections:

- FAQs**: A section with a hand cursor icon and a list of questions:
 - What is Long Service Leave?
 - When is an employee entitled to Long Service Leave?
 - How can long service leave be taken?
 - How is long service leave paid?A "more >>" link is located at the bottom right of this section.
- Make an enquiry**: A section with a question mark and information icon, containing the text: "Can't find the information? Enquire online or call 131 628".
- Lodge a complaint**: A section with a document and pencil icon.
- Long Service Leave Calculator**: A section with a calculator icon and a hand cursor icon.



Answering Your Questions

How can our team help?



- Our Proactive Compliance Unit
 - ✓ Can come out to your workplace
 - ✓ Chat to you over the phone
- This will assist you with monitoring and reviewing your requirements for record keeping obligations under Long Service Leave *Act 1955* legislation

Our Website

NSW Industrial Relations - 13 16 28



www.industrialrelations.nsw.gov.au

- Call us on 13 16 28
- FAQ's assisting with answers
- Easy way to lodge a complaint by using our on-line application form
- Long Service Leave calculator for getting to the right summation

