

# Long Service Leave

## A guide to long service leave entitlements



### When is an employee entitled to long service leave?

All employees working in New South Wales are entitled to long service leave under the *NSW Long Service Leave Act 1955* (the Act) unless they fall into one of the categories listed below. This includes full-time, part-time and casual employees, after working for a continuous period of ten years for an employer.

### Who is NOT covered by this Act?

An employee will be covered unless:

- they are covered by a federal award or agreement containing its own long service leave provisions
- their long service leave provisions in an award or agreement made under NSW industrial laws are more favourable than those provided for in the Act
- they are covered by long service leave provisions in another Act
- they are working for an employer exempted by the NSW Industrial Relations Commission from having to provide long service leave.

Special conditions may apply to workers in the building and construction industry. For more information contact the Long Service Payments Corporation on 131 441.

### What is the long service leave entitlement under this Act?

Long service leave is two months of paid leave after ten years service with the same employer and one month of paid leave for each additional five years service.

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

Yes. An employee who has completed five years (but less than ten years) of service is entitled to a long service pro-rata payment if he or she:

- resigns as a result of illness, incapacity, domestic or other pressing necessity
- is dismissed for any reason except serious and wilful misconduct
- dies.

### When does an employee qualify for long service leave?

To qualify for long service leave there needs to be continuous service with an employer, even if the employee's duties or position has changed during that time.

Continuous service is also achieved if:

- the employee is transferred between companies within the same group
- the business is sold and the employee continues to work for the new owner running the same business.

### If an employee takes leave does it break the continuity of their service?

Employer-approved absences from work do not break the continuity of an employee's service.

However, some absences, such as parental leave, are not counted as time worked. These absences are not included in an employee's period of service when calculating long service leave.

### How is long service leave paid?

Long service leave pay is based on whichever is the highest rate:

- the employee's ordinary pay for the last pay period prior to the leave being taken
- the average weekly ordinary rate of pay earned during the previous five years.

Shiftwork, other penalty rates and overtime payments are not included.

In addition, bonuses and commissions received by the employee are averaged over the previous 12 months (or averaged over the previous five years if the five year average pay rate is used) and added to the weekly rate used to calculate the leave payment. However, bonuses paid to workers who



are otherwise paid in excess of \$144,000 annually are not included.

The Act makes other provisions for workers who work as piece workers or commission-only workers.

Before taking long service leave, the employee may, with the agreement of the employer, be paid in full for the leave or at their ordinary pay rate at their normal regular pay intervals during their long service leave.

### **How is long service leave paid when an employee is terminated?**

After ten years of continuous service, the employee is entitled to receive a payment calculated in accordance with any long service leave entitlement or on a pro-rata basis where an entitlement exists after five years but less than ten years of service.

### **How can long service leave be taken?**

Long service leave can be taken in one continuous period of leave or, if the employee and employer agree, as follows:

- where the leave owing is two months – in two separate periods
- where the leave owing is between two months and nineteen and one-half weeks – in two or three separate periods
- where the leave exceeds nineteen and one-half weeks – in two, three or four separate periods.

### **Can an employee be paid their long service leave instead of taking the leave?**

No. The long service entitlement must be taken as leave. Payment for long service leave entitlements is only made on termination of employment.

### **When must long service leave be granted to an employee?**

An employer is required to grant long service leave as soon as practicable after it has become due, taking into account the needs of the business.

The employer must give their employee one month's notice of the commencement date of the long service leave. If both the employer and employee agree, long service leave may be postponed to a mutually convenient date.

### **What are the employer's responsibilities?**

The employer must keep full records of their employees' long service leave details for a period of six years after the employee has resigned or been terminated.

### **Can long service leave be taken in advance?**

Yes, as long as the employer and employee both agree. Long service leave taken in advance must not be less than one month.

### **What happens if a public holiday occurs during long service leave?**

An extra day must be included in the long service leave if it is a day the employee would have worked had they not been on long service leave.

### **Long service leave calculator**

The OIR website provides a service to assist employers and employees to calculate long service leave entitlements at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

### **For more information**

If you would like more information on long service leave entitlements contact:

- the Office of Industrial Relations  
Ph: 131 628 (local call charge in NSW)  
TTY: 1800 555 677
- your employer association or union

### **Free online services at**

[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

- *NSW Awards Online* - provides easy access to award information, including pay rates and leave entitlements
- *Pay Rate Updates* – subscribe online and receive email alerts on changes to NSW pay rates and award conditions that affect your workplace
- *Check Your Pay* - helps you calculate wages
- *Leave calculators* – helps you calculate annual and long service leave entitlements
- *Online sample pay slips* help employers create their own employee pay slips
- *Your Workplace Online* – a free quarterly online newsletter to keep you up-to-date with workplace issues.

### **Small business workshops**

State-wide workshops are offered by the OIR on a range of employment-related topics to help business owners and managers. Free workshops include employer rights and responsibilities under industrial relations legislation, the impact of federal industrial relations changes and specific industry employment issues. Other topics include recruiting and retaining staff, developing workplace policies and managing staff performance. For more information visit the OIR website.

