Long Service Leave
A GUIDE TO LONG SERVICE LEAVE ENTITLEMENTS

Long Service Leave Act 1955
Long service leave is a period of paid leave a worker can take after ten years of continuous service with an employer.

The Long Service Leave Act 1955 provides full-time, part-time and casual workers in NSW to 2 months (8.6667 weeks) paid long service leave when they have completed a continuous period of ten years service and further paid leave after each additional period of five years of service with that employer.

Continuous Service

There are circumstances where a break will not affect the continuity of a workers service but will not count when calculating the length of service, for example, a period of parental leave.

However, there are other breaks that will not affect the continuity or the calculation of service, for example, an absence due to illness or injury.

For more information please visit our website or refer to the Long Service Leave Act 1955.

Entitlements Between 5 and 10 Years

Under the following circumstances a worker who has completed five years (but less than 10 years) of service may be entitled to a payment for pro-rata long service leave:

- Resigns on account of illness, incapacity, domestic or other pressing necessity; or
- Dismissed for any reason except serious and wilful misconduct; or
- By reason of the death of the worker.

If the Business is Sold

If a business is sold in whole or in part and that business:

- continues by the new owner as the same business; and the worker continues to be employed in that business

the continuity of the worker’s service is not considered to be broken and the entitlement to long service leave will continue.

Taking Long Service Leave

Long service leave cannot be paid out. The long service entitlement must be taken as leave or paid on termination.

Long service leave can be taken in one continuous period, or if the employer and the worker 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.
Paying Long Service Leave

Full-time or Part-time Workers
The payment for long service leave is based on whichever is the greater:

The workers ordinary pay for the last pay period prior to the leave being taken; or the average weekly pay earned during the previous five years.*

Casual Workers
The payment for long service leave is based on whichever is the greater and at the workers current hourly rate of pay (including casual loading):

The normal weekly number of hours averaged during the previous 12 months; or previous 5 years.*

*Shift allowances, penalty rates, overtime payments, travelling allowances and other expense related allowances are not included.

Piece workers, commission only workers
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, the payment for long service leave is based on whichever is the greater:

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.

Bonuses and Incentives
In addition, bonuses and incentives (commissions) received by the worker 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 and incentives paid to workers who are otherwise paid above the annual high income threshold annually are not included. This figure is adjusted annually on 1 July. Refer to our website for further information.

Public Holidays
If a public holiday occurs during a workers long service leave, an extra day must be added if it is a day the worker would have worked had they not been on long service leave.

Understanding Federal Awards for Long Service Leave

The 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 (for example - 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 (for example - 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 or visit their website.

NSW Industrial Relations recommends that this material be read in conjunction with an authorised copy of the relevant legislation and that no action should be taken on the basis of the information contained in this material without first obtaining independent advice from suitable advisors.

Further Information
If you have a question, please contact our Industrial Relations Information Service on 13 16 28 or visit industrialrelations.nsw.gov.au for further information.

Aboriginal Community Engagement Unit

The ACE unit provides information on industrial relations, employment and related matters to help improve the employment conditions experienced by Aboriginal and Torres Strait Islander People in NSW.

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