

Long Service Leave

A guide to long service leave entitlements



When is an employee entitled to long service leave?

Most workers in NSW are entitled to a long service leave entitlement under the *NSW Long Service Leave Act 1955* (the Act).

Full-time, part-time and casual workers who have completed a continuous period of at least ten years service with the same employer are entitled to long service leave.

The long service leave provisions under the Act are recognised by national workplace relations legislation as applying in NSW.

Who is NOT covered by this Act?

An employee will not be covered by the Act if:

- they are covered by a federal agreement or award, other than a modern award, containing long service leave provisions
- they are covered by long service leave provisions in another Act.

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 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
- 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 NSW IR website provides a service to assist employers and employees to calculate long service leave entitlements at www.industrialrelations.nsw.gov.au

For more information

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

- NSW 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

- *Leave calculator* – helps you calculate 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 NSW IR on a range of employment-related topics to help business owners and managers.

Free workshops include employer rights and responsibilities under the national workplace relations legislation and specific industry employment issues. Other topics include recruiting and retaining staff, developing workplace policies and managing staff performance.

For more information visit the NSW IR website.