

Information sheet

As at 01 December 2014

Long Service Leave

Long Service Leave forms part of the National Employment Standards (NES). As of 1 January 2010, the NES applies to all employees covered by the national workplace relations system and the *Fair Work Act 2009*.

An employer cannot contravene the NES by providing a similar but lesser entitlement. The NES will apply in addition to those terms and conditions set out in modern awards, enterprise agreements or other transitional instruments.

What is long service leave?

Long service leave is a period of paid leave owed to an employee in recognition of a long period of continuous service with the employer. The entitlements are derived from the *Queensland Industrial Relations Act 1999* (The Act).

- As workplace agreements and common law contracts can also provide for long service leave, this guide should be read in conjunction with the relevant industrial instruments.
- Contracts and agreements may supplement the NES by providing for additional long service leave entitlements.

Who is entitled to long service leave?

The Act affords all Queensland employees the right to long service leave entitlements, subject to certain conditions. Part-time employees, casuals and seasonal employees have specific entitlements to long service leave.

What is continuous service?

As defined by the *Fair Work Act 2009*, continuous service refers to paid working time and paid leave. Essentially, it's a period during which the employee is employed by the employer, but does not include excluded absences (including any period of unauthorised leave or any period of unpaid leave).

- An excluded period does not break an employee's continuous service with the employer, but does not count towards the length of the employee's continuous service.
- Continuous service is only broken by a period of unauthorised absence exceeding 3 months.

What is the minimum entitlement to long service leave?

Full-time employees

Under the Act, full-time employees are entitled to long service leave on full pay:

- for the first 10 years continuous service – 8.6667 weeks; and
- if the employee has completed a further 5 years continuous service (15 years in total) – they are entitled to take a further 4.3 weeks leave. After 15 years of continuous service, the entitlement to long service leave accrues at the completion of each year, at a rate of 0.86667 weeks for each completed year of service.

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Part-time/casual employees

The qualifying period for casual or regular part-time employees is the same as full-time employees (8.6667 weeks after 10 years continuous service). However the number of leave hours due, and the amount payable at the due date, is determined by taking into account the reduced hours worked.

Comparisons with previous entitlements

Prior to 3 June 2001, the entitlement was 13 weeks leave after a qualifying period of 15 years' service. As a result of the reduction in time to become entitled to the current long service leave, the Act provides that only two-thirds of an employee's continuous service completed before 3 June 2001 counts as continuous service, for the purposes of working out when long service leave may be taken. This is commonly referred to as the 'two-thirds' rule.

- The two-thirds rule does not affect the accrual of an employee's entitlement, nor does it affect the payment of long service leave on termination.

Example

An employee has completed 1 year of service immediately before 3 June 2001. That year counts as 0.6667 (i.e. two-thirds x 1) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing 9.3333 ($0.6667 + 9.3333 = 10$) years continuous service. This means they will be entitled to take leave only after they achieved a total of 10.3333 (i.e. $1 + 9.3333$) years continuous service. The employee's entitlement at that time will be 8.9556 weeks (i.e. 10.3333×0.86667 weeks).

When can you take long service leave?

The relevant award or agreement may make provisions about the time when, the way in which, and the conditions on which, long service leave may be taken. Generally speaking, however, long service leave can be taken once an agreement has been made between the employee and their employer.

- If the employee and employer can't agree, the employer may direct the employee to take a minimum of four weeks long service leave by giving the employee at least 3 months written notice, unless prohibited in the relevant award or agreement.

Can you cash out your long service leave?

If there is an industrial instrument permitting it (e.g. an agreement approved by the Fair Work Commission), an employee may make an agreement with their employer to receive payment of all or part of their long service leave entitlement instead of taking the leave.

- Any such agreement must be in writing and signed by the employee and employer.

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If the employee is not covered by an industrial instrument, or the industrial instrument does not allow for the payment of long service leave, the employee may make an application to the Queensland Industrial Relations Commission (QIRC) for an order to make such payment.

- However, the QIRC may only make such an order if satisfied that the payment should be made on compassionate grounds or on the ground of financial hardship.

If the QIRC does not accept the application, and there is no industrial instrument permitting it, then an employee cannot cash out their long service leave.

How do public holidays affect a period of long service?

Long service leave is exclusive of public holidays; that is, any public holiday that falls within a period of long service leave must be added to the leave.

Are there any long service leave entitlements for shorter periods of service?

Employees are entitled to receive a proportionate payment of long service leave on termination of employment after completing 7 years of continuous service. This payment is commonly known as pro rata long service leave.

Access to this pro rata long service leave is only available to employees under the following circumstances:

- The employee's service is terminated because of their death
- The employee terminates their service due to illness or incapacity, or because of a domestic or other pressing necessity
- The employer dismisses the employee for reason other than the employee's conduct, capacity of performance (i.e. redundancy)
- The employer unfairly dismisses the employee

For employees who have 10 years continuous service or more, the payment of long service leave on termination of employment is not subject to the above listed criteria.

How do you calculate your long service leave entitlement?

Long service leave is paid at the current ordinary rate (i.e. excluding overtime and penalty payments) for the period of leave. If an employee is paid above the award rate then the leave is to be paid at the higher rate.

The calculation to determine the amount of long service leave an employee has accrued is based on the ordinary hours worked over the entire period of service. This requires accurate timesheet records to be kept, especially for casual and part time employees.

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Full-time employees

As full-time employees work a predetermined set of hours (not more than 38 hours per week within the *Fair Work Act 2009*), the leave entitlement in weeks is calculated by multiplying the total years of service by 0.86667.

Part-time employees

If the part-time employee has always worked a set number of hours per week, the entitlement can be calculated using the full-time employee's calculation (above). If the part-time employee's weekly hours have been varied, the below casual employee calculation will apply.

Casual employees

The casual entitlement to long service leave (in hours) is calculated using the following formula:

$$\frac{\text{total ordinary hours worked}}{52} \times \frac{8.6667}{10}$$

Example casual calculation

A casual or regular part-time employee who worked 18,200 ordinary hours during a 10 year period of service and was paid an hourly rate of \$21 at the time of taking the leave would be entitled to be paid:

$$\frac{(18200)}{(52)} \times \frac{8.6667}{10} \times \$21 = \$6370.02$$

If the employer and the casual or regular part-time employee agree, the entitlement can be taken in form of a full-time equivalent.

Employees paid on commission

If an employee is entitled to receive an amount representing commission in the employee's long service leave payment, the Act stipulates the employer must pay the default average commission unless:

- A relevant industrial instrument or contract between the employer and employee otherwise provides; or
- The industrial Relations Commission, on application, considers that the default average commission would not represent a fair amount in the circumstances.

The Act defines *default average commission* as:

- The total commissions payable to the employee in the 1 year before the leave is taken
- Divided by 52.179
- Multiplied by the number of weeks leave for which payment is being made

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NB: Some industrial instruments contain a formula specific to their industry (e.g. property sales, motor vehicle sales etc.).

Can long service leave be transferred?

The Fair Work Act 2009 provides for certain leave entitlements to transfer from one employer to another when a transfer of business occurs (e.g. when a business changes hands, or is sold and the new employer continues to employ any existing staff). In such a situation, responsibility for long service leave entitlements accumulated with the previous employer transfers to the new employer.

A 'transferred' employee is entitled to all long service leave accumulated for the total period of their employment – including long service leave accumulated with the previous employer.

The transfer of entitlement also occurs if an employee is dismissed at the time the business changes hands, or within the preceding month and is subsequently employed by the new employer within three months.

Portable Long Service leave

Australian states and territories have legislation to provide employees in the coal mining, cleaning and building and construction industries with access to portable long service leave.

This means an employee keeps their long service leave entitlement even if they work on different projects for one or more employers. Portable long service leave in the building and construction, and contract cleaning industry is through AusLeave and QLeave, and in the coal and mining industry is through the Coal Mining Industry Long Service Leave Funding Corporation.



Getting it wrong is expensive. Phone CCIQ Employer Assistance to get it right. Call 1300 731 988 or visit cciq.com.au/eal

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