



# **LONG SERVICE LEAVE ACT 1976**

## **Workplace Relations Fact Sheet – September 2016**

### **Who does the Long Service Leave Act 1976 cover?**

The *Long Service Leave Act 1976* (ACT) (**LSL Act**) covers most private sector employees in the ACT who are not covered by an award or agreement that contains a clause in respect of long service leave entitlements.

Please be aware that there is a *Long Service Leave (Portable Schemes) Act 2009* (ACT) covering the building and construction industry, contract cleaning industry, security industry, the community sector, aged care sector and (most) waste management activities. Other employees may derive long service leave entitlements from a former industrial award such as the Clerks LSL (ACT) Award, or the Metal Trades (ACT) Award.

The LSL Act covers full-time and part-time workers. Casual employees, who work regular and systematic hours and have the expectation that work will continue, will also be covered. Long service leave payments for part-time and casual employees are reduced to account for their hours of work.

### **Long Service Leave Entitlements**

The LSL Act provides that employees who have completed 7 years of continuous service are entitled to 1.4 months (or 6.0667 weeks) of paid leave. An employee can take paid long service leave after 7 years' continuous service, and will accrue an additional 1/5 month (0.8667 weeks) of long service leave for each further year of service. If an employee resigns or the employee is terminated, any unused long service leave entitlement must be paid out upon termination.

Continuous service includes:

- Periods of annual leave or long service leave;
- Leave for up to 14 days per year for illness or injury;
- The period of an apprenticeship of an employee who continues employment or recommences employment with the same employer within 12 months of completing the apprenticeship; and
- Part-time service with the Defence Force, e.g. Army Reserve.

### **Granting and Payment of Long Service Leave**

The employer must grant long service leave to the employee as soon as practicable after the leave is accrued at a time mutually agreed between the employee and employer. If no agreement can be made the employer may notify the employee in writing that leave must be taken (from a date at least 60 days after the notice is given). Smaller periods of leave may be used if agreed, or leave may be deferred by agreement.

Payment for long service leave is at the employee's ordinary remuneration. That is, at the employee's pay rate exclusive of overtime, penalty rates and allowances that may otherwise be paid under award



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or agreement conditions. A period of long service leave is extended by one day for each public holiday or award specific holiday occurring during the period of long service leave.

Special conditions apply to an employee who ceases to be full-time and becomes a part-time or casual employee within 2 years immediately before the date on which they become entitled to long service leave. In these circumstances adding together the employee's salary from the past 5 years and dividing the total by 5 will provide the employee's ordinary remuneration.

Payment must be made in advance of the employee going on leave, or if agreed during the usual pay cycle. Payment on termination should be made as soon as possible after termination.

An employer commits an offence if an employee becomes entitled to 4 or more weeks of long service leave and the employer does not grant the leave as soon as reasonably practicable having regard to their business or as otherwise agreed between both parties.

## Pro-Rata Payments

Pro-rata payments are only payable once employees have been employed for at least 5 years (but less than 7 years) on a continuous basis, and only when the employment is terminated:

- By the employee, due to pressing circumstances beyond their control or alternatively upon attaining the minimum retiring age; or
- By the death of a person; or
- By the employer, for reason(s) other than for the employee's serious and wilful misconduct.

In these circumstances, the employee is entitled to a pro-rata payment of long service leave for each completed year and completed month of service.

## Transfer of Business

In the event that you sell your business, the new employer of the business may accept liability for existing employees' long service leave entitlements, but if they do not agree to do so, the liability remains with the former owner. In such circumstances pro rata payments will need to be made for all employees who have more than 5 years of continuous service by the employer selling the business.

## Record Keeping

It is an employer's responsibility to keep records showing:

- The name, occupation and classification of the employee and whether the employee is full-time, part-time or casual;
- The employee's ordinary remuneration (including the base rate of pay);
- Any loading payable to the employee and the purpose of the loading;
- The number of hours worked each week by the employee;
- The date on which the employee commenced service;
- The period of any long service taken by the employee, the employee's entitlement to long service leave and long service leave granted, or payment in lieu of leave made to the employee;
- The date and manner in which an employee ceased to be employed;
- The date of birth of an employee; and



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- The number of hours worked as overtime by the employee on each day, when the employee commenced and ceased work, and the name of each award or agreement under which the employee has entitlements.

## Authorised Offices/Penalties

Authorised Officers are empowered under the Act to inspect employer records and to investigate complaints. The Authorised Office may require an employer to comply with the LSL Act. The LSL Act allows an employer to apply to the Registrar of Long Service Leave to review any decisions made by an Authorised Officer.

Failure to fulfil employer obligations under the Act may incur a penalty of up to \$25,000.

**Note:** This information is provided for convenient reference only on the basis that it is not to be relied upon without reference to the Workplace Relations Advisers of the Canberra Business Chamber, as the circumstances in each matter are different and no one piece of advice will apply to all circumstances. For more information, please contact the Workplace Relations Hotline on 1300 277 881 or [wradvice@canberrabusiness.com](mailto:wradvice@canberrabusiness.com).