

Chapter
12

Long Service Leave

The NSW Long Service Leave Act 1955 provides that full time, part time and casual workers in NSW are entitled to be paid Long Service Leave after working for an unbroken period of ten years with an employer. In this Act, a worker is defined as a person who is employed, whether on salary, wages, piecework rates or who is paid wholly or partly by commission.

The Act does not cover

Workers who are:

- Covered by long service leave provisions in a NSW award or agreement more favourable than those in the Act;
- Covered by long service provisions in any other Act or Federal award;
- Employed by an employer exempted by the NSW Industrial Relations Commission from having to provide long service leave.

Entitlement

Two months paid leave after ten years Continuous Service (see below) with one employer and one month paid leave for each additional five years service.

Leave entitlements accrue *pro rata* on a daily basis for the first 15 years. After 15 years of service, only full years of service are taken into account for accrual purposes.

Entitlement If Less Than 10 years Service

A worker who has completed five years service as an adult, or has received adult rates of pay, 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 willful misconduct;
- Dies.

Continuous Service

Continuous Service is uninterrupted service with one employer, even if the worker's duties or position is changed during that time. If the company is part of a group and the worker is transferred to other companies within the group, generally the worker's service is continuous. If the business is sold and it is carried on by the new owner as the same business, and the worker is employed in that business, the continuity of the worker's service is not broken. Not all absences from employment will break the continuity of a worker's service, even though they may not count for the purpose of calculation of the period of service for long service leave. (For example, parental leave.)

Rate of Pay

Long service leave is paid at the Ordinary Pay rate which has been paid to a worker prior to taking leave, or an average of the last five years ordinary pay earnings, whichever is greater.

The worker, before proceeding on long service leave, has the right to elect to be paid in full for the leave, or to be paid at the ordinary pay rate at their normal regular pay intervals during their long service leave.

Ordinary Pay

Ordinary Pay is the worker's ordinary time rate of pay plus an average of any bonus, commission or other incentive payments paid over the past 12 months or the past five years, whichever is greater. The cash value of board and lodging provided is also included.

Shift work, other penalty rates and overtime payments are not included.

Payment on Resignation

The worker is entitled to receive a payment calculated in accordance with any long service leave entitlement due after ten years of Continuous Service.

In some circumstances, a pro rata leave payment may be due to a worker with less than ten years service.

Leave Can Be Taken

In one continuous period of leave or, if the worker and employer agree:

- Where the leave due is two months – in two separate periods;
- Where the leave due 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 A Worker Be Paid The Value Of their Long Service Leave?

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

When Can It Be Taken?

When a worker becomes eligible for long service leave, an employer is required to grant it as soon as practicable, taking into account the needs of the employer's establishment. One month's notice should be given. If both the employer and worker agree, leave may be postponed to a mutually convenient date.

What Happens If A Public Holiday Occurs During Long Service Leave?

An extra day must be included in the long service leave.

Web Site

For further information please refer to the NSW Department of Commerce web site at www.industrialrelations.nsw.gov.au.

NSW - LONG SERVICE LEAVE ACT 1955

TABLE OF CALCULATIONS

Table 2A: WHERE QUALIFYING SERVICE COMMENCED AFTER 1 APRIL 1963:

Years of Service	0	1	2	3	Months 4	Of 5	Service 6	7	8	9	10	11
0	-	0.07	0.14	0.22	0.29	0.36	0.43	0.51	0.58	0.65	0.72	0.79
1	0.87	0.94	1.01	1.08	1.16	1.23	1.30	1.37	1.44	1.52	1.59	1.66
2	1.73	1.81	1.88	1.95	2.02	2.09	2.17	2.24	2.31	2.38	2.46	2.53
3	2.60	2.67	2.74	2.82	2.89	2.96	3.03	3.11	3.18	3.25	3.32	3.39
4	3.47	3.54	3.61	3.68	3.76	3.83	3.90	3.97	4.04	4.12	4.19	4.26
5	4.33	4.41	4.48	4.55	4.62	4.69	4.77	4.84	4.91	4.98	5.06	5.13
6	5.20	5.27	5.34	5.42	5.49	5.56	5.63	5.71	5.78	5.85	5.92	5.99
7	6.07	6.14	6.21	6.28	6.36	6.43	6.50	6.57	6.64	6.72	6.79	6.86
8	6.93	7.01	7.08	7.15	7.22	7.29	7.37	7.44	7.51	7.58	7.66	7.73
9	7.80	7.87	7.94	8.02	8.09	8.16	8.23	8.31	8.38	8.45	8.52	8.59
10	8.67	8.74	8.81	8.88	8.96	9.03	9.10	9.17	9.24	9.32	9.39	9.46
11	9.53	9.61	9.68	9.75	9.82	9.89	9.97	10.04	10.11	10.18	10.26	10.33
12	10.40	10.47	10.54	10.62	10.69	10.76	10.83	10.91	10.98	11.05	11.12	11.19
13	11.27	11.34	11.41	11.48	11.56	11.63	11.70	11.77	11.84	11.92	11.99	12.06
14	12.13	12.21	12.28	12.35	12.42	12.49	12.57	12.64	12.71	12.78	12.86	12.93
15	13.00											

Note: (1) No Long Service Leave accrues for less than five years service as an adult.
 (2) In ascertaining the qualifying service only completed years count after 15 years service.
 (3) This calculator is expressed in weeks and decimals of a week.

TABLE 2B

Completed Weeks of Service	0	Completed 1	Days 2 Week's	of 3 Entitlement	Service 4	5	6
0	-	.0024	.0047	.0071	.0095	.0119	.0142
1	.0167	.0190	.0214	.0237	.0261	.0285	.0309
2	.0332	.0356	.0380	.0404	.0427	.0451	.0475
3	.0499	.0522	.0546	.0570	.0594	.0617	.0641
4	.0665	.0689	.0712	.0736	-	-	-

Note: Where an employee is entitled to prorate leave (for service less than ten years), or where employment is terminated between 10 and 15 years service, the calculation must be made for all service up to and including the last day of employment. In these circumstances the entitlement will be the sum of weeks from both Tables 2A and 2B.