

LONG SERVICE LEAVE

The *Long Service Act 1976* (the Act) covers employees in the ACT who are not covered by an award or agreement or where an award or agreement does not contain provisions for long service leave. Full-time and part-time employees (including piece-rate workers) are included in this coverage. Casual employees may also be covered.

Public Sector employees are not covered by this Act. Employees covered by the *Long Service Leave (Portable Schemes) Act 2009*, would not usually be entitled to benefits under this Act. The covered industries under the *Long Service Leave (Portable Schemes) Act 2009* includes;

- a) the building and construction industry,
- b) the contract cleaning industry,
- c) the community sector industry, and
- d) the security industry

LONG SERVICE LEAVE ENTITLEMENTS

An employee who completes a period of continuous service of at least 7 years is entitled to 6.0667 weeks paid leave. When a public holiday or award holiday falls during long service leave, the period of long service leave is increased by one day for each public or award holiday.

For each subsequent year of continuous service, the employee accrues a further 1/5 of a month of long service leave.

Continuous service includes:

- periods of annual leave or long service leave,
- leave for up to 2 weeks per year for illness or injury,
- a period in which the employee's service is interrupted or terminated by the employer with the intention of avoiding the granting of long service leave,
- the period of apprenticeship of an employee who commences service with an employer within 12 months of completing the apprenticeship or approved training contract with the employer. Please note periods of service outside the ACT may not contribute to your total period of service when calculating an entitlement to long service leave.



GRANTING AND PAYMENT OF LONG SERVICE LEAVE

The employer shall grant long service leave to the employee as soon as practicable after the leave has accrued at a time agreed between the parties. If an agreement cannot be reached the employer shall give the employee notice in writing that leave must be taken after 60 days from the date of the notice.

Payment for long service leave is at the rate of the employee's ordinary remuneration. Ordinary remuneration does not include overtime, penalty rates and allowances paid by virtue of an award or agreement.

Special conditions apply to an employee who ceases to be full-time and becomes part-time or casual within a period of two years immediately before the date on which he/she becomes entitled to long service leave. In these circumstances adding the previous five years' salary and dividing the total by five shall attain the employee's ordinary remuneration.

Payment shall be made in advance of the employee going on leave, or if agreed on the normal payday. Payment on termination should be made as soon as possible after termination.

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

PRO-RATA ENTITLEMENT

Where an employee has been employed for at least five years but less than seven years and the employment is terminated:

- by the person, because of illness or incapacity or a domestic or other pressing necessity of such a nature to justify the termination, or
- by the person upon or after 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.

The employee is entitled to a pro rata payment of long service leave for each completed years and months of service.

EMPLOYER RECORDS

An employer shall keep the following records for each employee for seven years after the service ends or on the employee's death.

- name, occupation and classification of the employee and whether the employee is full-time, part-time or casual
- employee's ordinary remuneration (including the base rate of pay); any loading payable to the employee and the purpose of the loading
- number of hours worked each week by the employee



- date on which the employee commenced service
- period of any long service leave 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
- date and manner in which an employee ceased to be employed
- employee's date of birth, and
- number of hours worked as overtime by the employee each day and when the employee commenced and ceased work, and the name of each award or agreement under which the employee has entitlements.

TRANSMISSION OF OWNERSHIP OF A BUSINESS

Where there is a transfer or change of ownership of a business, and the employee continues employment in the business, the period of service of that employee is deemed to be continuous, and the new employer inherits the liability.

AUTHORISED OFFICERS

Authorised Officers are empowered under the Act to inspect employer records and to investigate complaints. The Authorised Officer may require an employer to comply with the requirements of the Act.

The Act allows an employer to apply to the Registrar of Long Service Leave to review any decisions made by an Authorised Officer.

FURTHER INFORMATION

Further information may be obtained from our website, www.act.gov.au/accesscbr or by contacting our office on 02 6207 3000.

