

Long service leave

January 2008

The information provided in this publication outlines the provisions of the amended *Long Service Leave Act 1958*, that took effect from 4 July 2006.

For information on the *Construction Industry Portable Paid Long Service Leave Act 1985*, contact the Construction Industry Long Service Leave Payments Board by calling (08) 9476 5400 or visit the website www.lslboard.com.au. The changes to this Act took effect from 1 October 2006.

Who does the *Long Service Leave Act* cover?

The amended Long Service Leave Act (LSL Act) governs the long service leave entitlement of Western Australian employees who:

- > are covered by State awards, industrial agreements (EBAs) or employer-employee agreements;
- > are covered by the *Minimum Conditions of Employment Act 1993*;
- > were covered by the LSL Act upon transitioning into the federal system on 27 March 2006; or
- > are covered by federal awards, collective agreements or Australian Workplace Agreements (AWAs) which specifically refer to the LSL Act or are silent on the entitlement.

As a result of the *Workplace Relations Amendment (Work Choices) Act 2006*, long service leave entitlements for employees of constitutional corporations may not be governed by the LSL Act. For assistance with determining whether the LSL Act applies, please contact Wageline on 1300 655 266.

What is the entitlement?

As of 4 July 2006, employees are entitled to take $8\frac{2}{3}$ weeks of paid leave after 10 years of continuous service. For every five years of continuous service after this initial 10 years, employees are entitled to another $4\frac{1}{3}$ weeks of paid leave. Employees are entitled to a proportionate entitlement on termination after seven years of continuous service.

Labour Relations

Dumas House, 2 Havelock Street
West Perth, Western Australia 6005
Telephone: 9222 7700 Wageline: 1300 655 266
Facsimile: 9222 7777 Email: labourrelations@docep.wa.gov.au
Internet: www.docep.wa.gov.au



Department of Consumer
and Employment Protection
Government of Western Australia

	First leave			Subsequent leave		Pro-rata Leave	
	Qualifying period	Leave period	Accrual rates (per annum)	Qualifying period	Leave period	Pro-rata LSL payable after:	Pro-rata LSL is paid for:
Old LSL entitlement	15 years	13 wks	0.8667 wks	10 years	8 $\frac{2}{3}$ wks	10 years	all qualifying service
New LSL entitlement	10 years	8 $\frac{2}{3}$ wks	0.8667 wks	5 years	4 $\frac{1}{3}$ wks	7 years	all qualifying service

The following absences count as continuous service for the purpose of long service leave accrual:

- > annual leave, long service leave and public holidays;
- > sick leave but only to the extent of 15 working days in any year;
- > any period following termination of employment by an employer if such termination has been made merely with the intention of avoiding long service leave obligations; and
- > any period while on duty with the defence forces, eg navy or military.

Commencement of long service leave

Provided agreement is reached between the employer and employee, long service leave is to be granted and taken as soon as reasonably possible after it falls due and may be taken in one continuous period or in separate periods of not less than one week.

Where an employee has been entitled to their long service leave for more than 12 months the employee can give the employer two weeks' notice of his or her intention to take leave. An employer must not refuse the request.

Payment for long service leave

As a general rule, the long service leave entitlement is paid at the ordinary rate of pay applicable at the time the leave is taken. Ordinary pay does not include shift premiums, overtime, penalty rates and allowances. Commissions and bonuses form part of the ordinary rate of pay.

An exception occurs where an employer and employee agree that the employee may postpone his or her long service leave to meet the convenience of the **employee**. In this situation (unless the employer and employee agree otherwise) payment will be at the rate that was applicable when the leave accrued.

In all other circumstances, for instance where there was no specific agreement between the employer and employee about the postponement of leave, or when the leave is postponed to meet the convenience of the employer, the leave will be paid at the rate applicable when the employee proceeds on leave.

In the case of employees who are paid by results, such as piece rates or commission work, their rate of pay while on long service leave is the average rate earned during the preceding 12 months of employment.

Employees whose hours have varied over the course of their employment, such as part time and casual employees, are paid long service leave at the ordinary rate of pay for the average number of hours worked over the period of employment.

The payment for long service leave can be made:

- > in the normal course of the employment; or
- > if requested in writing by the employee, before the period of leave commences; or
- > by any other method agreed to by the employer and employee.

Alternatively, a written agreement can be made in which employees can trade some or all of their long service leave for an adequate benefit in lieu.

The effect of public holidays on long service leave

Where a public holiday falls during a period of long service leave, and the employee would otherwise be entitled to a paid day off work, the period of long service leave is increased by one day.

Prohibition of employment during long service leave

It is prohibited for employees to engage in paid employment that is in substitution for the employment from which they are on long service leave. Where this is found to be the case, an employee may forfeit their long service leave entitlement.

Pro-rata leave on termination

Employees who have completed seven or more years of continuous service are entitled to a pro-rata long service leave payment on termination, unless their employment is terminated for serious misconduct.

The pro-rata long service leave payment must be paid for all qualifying service, not just completed years.

Record keeping requirements

It is important for employers to ensure they are complying with the record keeping requirements as set out in the *Industrial Relations Act 1979* and the *Minimum Conditions of Employment Act 1993*. Failure to keep correct time and wage records is a contravention of the LSL Act and is a civil penalty for the purpose of the *Industrial Relations Act 1979* (see *Time and wages record keeping – employer obligations* brochure).

Buying a business

When buying a business, prospective employers need to be aware of the length of service of any staff they intend to employ from the existing business they are taking over. The length of continuous service for employees does not restart when a new owner takes over the business, as the entitlement to long service leave accrues from the time they were originally employed by any previous owner. Regardless of the sale contract, the LSL Act places the obligation for payment of long service leave on the employer at the time the leave is due.

Examples

Example 1 – Payment of pro-rata long service leave

Ben has worked as a mechanic with the same employer for eight years and 220 days. Ben has decided to resign to accept a job with a mining company in the North West. As Ben has completed more than seven years' continuous service with his employer he is entitled to be paid pro-rata long service leave on termination. His long service leave entitlement is as follows:

0.8667×8 (completed years of service) = 6.93 weeks **plus**

$0.8667 \times 220 / 365$ (proportion of year) = 0.52 weeks

Total: 7.45 weeks at the ordinary rate of pay.

Example 2 – Public holidays falling during long service leave

Barbara is a part time medical receptionist who works Mondays, Wednesdays and Thursdays. If a public holiday falls on any one of those days, Barbara is not required to work but is paid for her normal hours. Barbara is taking her accrued long service leave over the months of September, October and November. During this time the Queen's Birthday public holiday falls on a Monday. Barbara will receive an additional day of long service leave because a public holiday falls on a day on which she ordinarily would have been entitled to paid leave.

Need more information?

If you require more information on employment arrangements contact Wageline on 1300 655 266 or visit our website: www.docep.wa.gov.au

Wageline 1300 655 266

8.30am – 5.00pm weekdays

except Wednesday 9.00am – 5.00pm

This information is provided by the Department of Consumer and Employment Protection (DOCEP) as a general guide only and is not designed to be comprehensive nor to render legal advice. Readers should not rely on the contents of this information without first obtaining legal advice.

DOCEP does not accept liability for any loss suffered by a reader who acts contrary to the advice in the above paragraph.

This publication is available on request in other formats to assist people with special needs

DP097465 / 5000

Regional offices

Great Southern	(08) 9842 8366
South-West	(08) 9722 2888
Mid-West	(08) 9964 5644
Goldfields/Esperance	(08) 9021 5966
North-West	(08) 9185 0900
Kimberley	(08) 9169 2811



**Department of Consumer
and Employment Protection**
Government of Western Australia