

THE SDA GUIDE TO LONG SERVICE LEAVE IN NSW



LONG SERVICE LEAVE IN NEW SOUTH WALES

What is Long Service Leave?

Long Service Leave is leave granted to employees for continuous service to an employer.

Service is deemed to be unbroken despite the following breaks in continuity:

- (a) If broken by the employer with the intention of avoiding Long Service Leave obligations
- (b) Where absence is in accordance with the terms of the workers employment
- (c) Where the absence of the worker is on account of illness or injury
- (d) Where the absence is for any cause by leave of the employer
- (e) If the break arises directly or indirectly from industrial disputes
- (f) If the break is caused by the employer and the worker returns to the service of, or, is re-employed by, the employer within two months of the date on which the service was interrupted
- (g) Where employees are stood down temporarily due to slackness of trade
- (h) Where business is transferred as a going concern from one employer to another and there is no other break in the worker's continuity of service, then service with the first employer is to be regarded as service with the second employer in computing leave due to the worker
- (i) All time served as a member of the Army, Navy, or Air Force or of the Wartime Civil Construction Corps counts as service with the employer by whom the worker was last employed before becoming a member of the forces or the C.C.C.

What laws apply?

If you work in New South Wales, you are covered by the Long Service Leave Act 1955 and the Long Service Leave Amendment 2001.

Who is entitled?

Any worker who has ten years of continuous service is entitled to Long Service Leave. If you have ten years of service you are entitled to two months of leave (one month is equivalent to 4.33 weeks).



If you have between five and ten years of service you are eligible to a pro rata amount if the termination of your service is due to death, illness, incapacity, domestic or other pressing necessity or if your dismissal is for other than serious or willful misconduct.

Pro rata Long Service Leave is available to all employees who have more than five years of service but less than ten years of service whether employed as an adult, junior, full time, part time or casual.

For continuous service of more than ten years please refer to the table at the end of this booklet.

How much am I entitled to?

The Long Service Leave Calculator table at the back of this booklet explains how many weeks of Long Service Leave you are entitled to.

How will it be calculated?

Long Service Leave may be calculated in one of two ways:

1. The ordinary pay which was being received at the time of going on Long Service Leave;

OR

2. In the case of casual employees and others whose weekly earnings vary, the average weekly amount of ordinary pay earned by you in the twelve months or five years immediately preceding the date upon which Long Service Leave is to be taken.

You are entitled to receive the amount that is greater.

Are overtime rates, shift rates, loading or penalty rates included in calculating the rate of pay for Long Service Leave purposes?

Overtime, shift rates, loadings, penalty rates and allowances are excluded from the rate of leave payment.

Bonus, incentive or similar payments, such as merit money, under the terms of your employment must be taken into account when calculating your rate of payment. Your rate of payment will be calculated as follows:

1. your average weekly wage: plus
2. any bonuses, or incentives or similar payments

Please note that for purposes of calculating an average weekly rate, penalty rates such as Sunday rates are not included.

When will it be paid?

When you begin your Long Service Leave your employer will provide your ordinary pay in respect of the period of leave in one of the following ways:

1. In full when you commence your leave
2. As part of the employee's normal pay cycle
3. In any other way agreed between you and your employer

Can I be paid in lieu?

Except on termination of employment, payment in lieu of Long Service Leave is prohibited.

How will it be taxed?

The rate of tax will differ according to your income. If unsure of your tax rate, you should speak to your accountant or contact the Australian Tax Office.



When can I take Long Service Leave?

Long Service Leave should be taken as soon as practical after it falls due, having regard to your employers' operational requirements. However, it may be postponed to a time that you and your employer agree on.

Whilst you can be asked by your employer to take Long Service Leave, the exact timing of your leave should be agreed to between you and your employer.

You may be granted Long Service Leave in advance if it is for a period of not less than one month. On termination, if your entitlement is less than that already taken in advance, your employer may deduct his amount from your termination pay.

It should be taken in one continuous period unless the worker and employer agree otherwise. If they do so agree then -

(a) where the amount of leave due is two months, it may be taken in two separate periods;

(b) where the amount of leave is no more than two months but less than nineteen and a half weeks, it may be taken in not more than three separate periods;

(c) where the amount of leave exceeds nineteen and a half weeks then it may be taken in not more than four separate periods;

In any case, the employer must give the worker at least one month's notice of the date of commencement of their Long Service Leave.

Do I have to take my long service leave prior to retiring?

Long Service Leave should be taken as soon as practical after it has fallen due.

If you wish to postpone taking your Long Service Leave until retirement you should speak to your employer.

Do I receive additional entitlement if I retire after the age fifty five?

No. Long Service Leave is payable on the length of service, not your age when you decide to take Long Service Leave or at the age which you retire.



How can I find out what my accrued Long Service is?

Check your payslip. Your payslip may indicate your accrued Long Service Leave entitlement.

If you have between five and ten years of service, your accrued entitlements may not appear on your payslip but in any event, employers are required to keep Long Service Leave records, so a check of your Long Service Leave entitlement can be made on request.

What happens if my annual leave, a public holiday or my RDO falls whilst I am on long service leave?

Annual leave that falls during your Long Service Leave is to be granted and taken separately.

Where Public Holidays fall during your Long Service Leave then your Long Service Leave is extended by the number of Public Holidays which fall during this period.

As a full time employee you may be working a 19 day roster cycle including an RDO. This means you work your 152 hours of work in four weeks over 19 days and you can then have the twentieth day off - your RDO. Whilst you are on Long Service Leave you are paid your normal 152 hours per four weeks and you have every day off. That is, you have all 20 days off, including any RDO.



Do I still accrue Long Service Leave if I am away from work for long periods because of illness or injury?

If you are absent from work for a long period because of illness or worker's compensation, then you are entitled to count the period of such absence when calculating your length of service. Your length of service will determine your Long Service Leave entitlement.

Subject to your Award or Agreement, if you are absent on an unpaid leave of absence or Parental Leave, your entitlement to Long Service Leave, whilst maintaining continuity of service with your employer, will be frozen as at the time you take such leave.

This means you do not accrue any Long Service Leave over this period.

If my employer sells the business who is liable for Long Service Leave, the new owner or the previous owner?

When a business is transmitted from your employer to a new one, you transfer from your current employer to the new employer. If this transfer is without a break, then service is continuous. Your new employer becomes liable for your Long Service Leave which you may have already taken.

If you have any other questions regarding your Long Service Leave entitlements please speak to your workplace Delegate, your Organiser, email the Union Office on secretary@s-dan.org.au or phone the Union's Newcastle & Northern Branch on 02 49614694.

Long Service Leave Calculator

Completed Months of Service

Completed
Years of
Service

| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
|----|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 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, 21 - 18.20 27 - 23.40 33 - 28.60 39 - 33.80

16 - 13.87, 22 - 19.07 28 - 24.27 34 - 29.47 40 - 34.67

17 - 14.73, 23 - 19.93 29 - 25.13 35 - 30.33

18 - 15.60, 24 - 20.80 30 - 26.00 36 - 31.20

19 - 16.47, 25 - 21.67 31 - 26.87 37 - 32.07

20 - 17.33 26 - 22.53 32 - 27.73 38 - 32.93



For more information or help
with your Long Service Leave
entitlements, contact the SDA
Newcastle & Northern Branch.

Write to
PO BOX 118, Hamilton
NSW2303

Telephone
(02)49614964

Fax
(02)49622598

Email
secretary@sdan.org.au

Website
www.sdan.org.au

Authorised by Barbara Nebart, Secretary,
Shop Assistants & Warehouse Employees'
Federation of Australia, Newcastle &
Northern Branch, New South Wales, 17
William St, Hamilton 2302.