Long service leave in Western Australia

A fact sheet for employers and employees

This fact sheet contains the same information as the Long service leave page of the Wageline website.

Long service leave is a paid leave entitlement for employees who have worked continuously in a business for a specified period of time. Full time, part time and casual employees are entitled to long service leave.

The state long service leave obligations in the Long Service Leave Act 1958 apply to most WA businesses, including businesses covered by national modern awards. This page provides information on the provisions of the Long Service Leave Act and details which employers and employees are covered by the Act’s provisions. A full copy of the Long Service Leave Act is available at www.legislation.wa.gov.au

State system employers and employees

Generally, the state Long Service Leave Act applies to state system employees unless there is an award, registered industrial agreement or other agreement in place which provides a long service leave entitlement at least equivalent to the entitlement under the Long Service Leave Act. See the Guide to who is in the state system on the Wageline website for details on who in this state system.

Construction industry

Employers and employees in the construction industry are covered by the MyLeave construction industry portable paid long service leave scheme. Please visit the MyLeave website – www.myleave.wa.gov.au for information.

Employees of national system employers (Pty Ltd companies)

The state Long Service Leave Act applies to a national system employer [Pty Ltd businesses that are trading or financial corporations or incorporated associations and other non-profit bodies (that are trading or financial corporations)] unless:

- there are long service entitlements in a federal pre-modern award that would have covered the employer and its employees before 1 January 2010.
- in some circumstances when a federal registered agreement applies.

If the employer may have been covered by a pre-modern award please contact the Fair Work Ombudsman Infoline on 13 13 94 to check whether a pre-modern award containing long service leave provisions applied. If the employer may be covered by a federal registered agreement access a copy of the agreement in you workplace or contact the Fair Work Infoline.

If the Fair Work Infoline advises that the state Long Service Leave Act applies to the employee, rather than any pre-modern award or federal agreement, please refer to the information below on the Long Service Leave Act or contact Wageline on 1300 655 266.

### Employees of State public sector employers

Most Western Australian public sector employees derive their long service leave entitlement from a State award or industrial agreement. However, the Long Service Leave Act may apply to some public sector employees who are not eligible to accrue long service leave under their award or agreement, such as some casual employees.

### Entitlement to long service leave

The long service leave entitlement for an employee is:

- After 10 years of continuous employment working in the same business – $8\frac{2}{3}$ weeks’ paid leave.
- For every 5 years of continuous employment working in the same business after the initial 10 years – $4\frac{1}{3}$ weeks’ paid leave.

When an employee resigns, is dismissed, is made redundant or dies the employee is entitled to long service leave as follows:

- If the employee has completed at least 7 years but less than 10 years of continuous employment – the employee is entitled to pro rata long service leave on a proportionate basis of $8\frac{2}{3}$ weeks for 10 years of continuous employment, including years, months and days (unless terminated for serious misconduct).
- If an employee already had an entitlement to long service leave they are entitled to long service leave on a proportionate basis of $8\frac{2}{3}$ weeks for 10 years of continuous employment for each completed year of employment since last becoming entitled to long service leave. This entitlement is calculated on completed years of employment only.

An employee who has completed a full qualifying period of service (e.g. 10 years) is entitled to be paid out their full long service leave entitlement (e.g. $8\frac{2}{3}$ weeks) on termination, regardless of the circumstances of the termination.

Where an employee has a period of service that is less than the full qualifying period and they were terminated by their employer for serious misconduct, they are not entitled to pro rata long service leave.

### Long service leave when business ownership changes

Under the Long Service Leave Act the length of employment for an employee’s long service leave entitlement is based on the total time with the business, rather than any one specific employer.

The Long Service Leave Act requires that where a business has been transmitted from one employer (the previous owner) to another employer (the new owner) and an employee who at the time of such transmission was an employee of the previous owner in that business becomes an employee of the new owner – the period of the continuous employment which the employee has had with the previous owner (including any such employment with any prior previous owner) is deemed to be employment of the employee with the new owner for long service leave purposes.

A transmission of business includes the sale or transfer of a business or part of a business, whether voluntary or by agreement or by operation of law.
An employer who buys a business or part of a business will take on long service leave obligations for existing employees if there has been a transmission of business. This applies regardless of anything written in the sale contract.

An example –

In early 2012 Sarah bought a small fashion boutique. One of the staff members, Kim had worked with the previous owner for 7 years and continued to work for Sarah. When Kim resigned in December 2015, Sarah was liable to pay all of the long service leave entitlement Kim had accrued while working in the business.

Frequently asked questions about long service leave

How much notice does an employee need to give before going on long service leave?

Long service leave is to be granted and taken, subject to any agreement between the employer and employee, as soon as reasonably practicable after it becomes due. After 12 months, the employer cannot refuse the employee taking leave at a time suitable to the employee. The employee must give the employer at least 2 weeks’ notice of their plan to take long service leave.

What counts as service for long service leave?

Long service leave is calculated on time worked with a business (even if there have been different owners due to a transmission of business), including all annual leave and public holidays, sick leave up to 15 days per year, and for defence force duties. Any time spent on long service leave also counts towards the next entitlement.

What happens if the employee has been on unpaid leave?

Any period of approved absence such as unpaid parental leave or leave without pay does not count as service when calculating long service leave, but does not break the service.

An example -

Amy started work for Joe’s plumbing in March 2006. In 2010, she had 12 months’ unpaid parental leave, and returned to work full time. Her long service leave entitlement will fall due in March 2017, after she has completed 10 years of service working for the business (11 years’ employment minus 12 months’ unpaid parental leave).

What do employees get paid when on long service leave?

Employees are paid their “ordinary pay” when on long service leave. They are not paid for any shift or overtime payments, penalty rates or allowances.

Full time, part time and casual employees are to be paid their ordinary rate of pay (including any casual loading) for the weekly number of hours worked over the period of employment. If the normal weekly number of hours have varied over the period of employment, the normal weekly number of hours of work are deemed to be the average weekly number of hours worked by the employee during that period of employment (calculated by reference to such hours as are ascertainable if the hours actually worked over that period are not known).

If the employee is paid by results, such as piece rates or commission work, the rate of pay while on long service leave is the average weekly rate earned during the past 12 months.

How is leave calculated for employees paid by commission?

For an employee who is paid by commission or piece work, the rate of pay is the average weekly rate earned by the employee while in employment during the period of 12 months:

- ending on the day immediately preceding that on which the employee commences long service leave or would but for payment in lieu of long service leave have commenced long service leave; or
• ending on the day immediately preceding that on which the employee was last in employment, if the employee is no longer in employment.

In order to calculate the entitlement keeping time and wages records is very important.

An example -
Paul leaves his job at Cosy Café after working as a part time staff member for 8 years. His employer Claire needs to review her time and wages records for the last 8 years and work out the average number of hours Paul has worked during his employment. She then calculates his long service leave termination pay and pays him this amount in his final pay.

Can an employer be required to give pay in advance for long service leave?
Yes, if the employee requests pay in advance in writing.

Can an employee cash out their long service leave?
Yes, an employer and employee may agree to cash out an employee’s long service leave once the employee has completed the necessary service and the leave has accrued. This agreement must be in writing and the employee must be given an adequate benefit for the leave they have cashed out.

A long service leave entitlement cannot be cashed out in advance of the employee having completed the necessary service (i.e. prior to the leave being accrued), either through a lump sum payment or a loaded up base rate of pay or commission payment.

An example -
Emma is currently saving hard for her wedding next year. When her long service leave falls due, she asks her employer to cash out half of the leave. Emma’s employer Lorraine writes an agreement for both to sign, specifying that Emma will receive 4 weeks’ additional pay in lieu of taking 4 weeks’ long service leave. Lorraine keeps a copy of this agreement with her time and wages records and in Emma’s employee file.

Can an employee request long service leave in advance?
An employee can make a request and if the employer agrees, can reach an agreement to take long service leave in advance. An employee who enters into this agreement is not entitled to additional long service leave until they have accrued back the amount they were given in advance.

If an employee leaves or if their services are terminated before they have accrued their long service leave the employer may deduct from their final pay the amount that represents payment for any period for which the employee has been granted long service leave in advance.

Can an employer refuse to allow an employee’s request to take long service leave?
An employer cannot legally refuse an employee’s request for long service leave if it has been 12 months since the employee became entitled to it.

Can the employee work in another job while on long service leave?
Employees accessing long service leave cannot engage in paid employment in substitution for any employment from which they are taking long service leave.

If an employee does work, this may result in the employee forfeiting their right to long service leave, enabling the employer to withhold any further leave payments and to reclaim any wages for the period of long service leave already taken.
Where an employee has two or more jobs and is accessing long service leave for one of those jobs, generally the employee may continue working in their other job or jobs while on long service leave, as this employment is not in substitution for the job for which they are taking the long service leave.

Is the employee entitled to be paid superannuation on long service leave?


How is tax calculated for a long service leave payment?


What records does an employer need to keep?

An employer will need to keep time and wages records to accurately record service and calculate when long service leave falls due. An employer will also need to keep records of what long service leave is taken by employees and what they are paid during any period of leave.

Employers are required by law to keep proper records. For more information on time and wage records keeping visit the record keeping requirements page at [www.dmirs.wa.gov.au/wageline](http://www.dmirs.wa.gov.au/wageline)

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More information


Wageline can assist national system and state system employers and employees with queries on Long Service Leave Act provisions. Contact Wageline on 1300 655 266 within Western Australia or 08 6251 2100 from other states.

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Disclaimer

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