



**Victorian
Chamber of Commerce
and Industry**

Long Service Leave Guide All States and Territories

> LONG SERVICE LEAVE – ALL STATES AND TERRITORIES

This guide provides information about Long Service Leave provisions in each State and Territory across Australia as at the time of publication. The Victorian Chamber of Commerce & Industry advises to check your applicable award/agreement for any Long Service Leave provisions that may apply to your business.

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Introduction

Long Service Leave is an entitlement that derives from State legislation. The relevant acts are as follows:

- > Australian Capital Territory – [Long Service Leave Act 1976](#)
- > New South Wales – [Long Service Leave Act 1955](#)
- > Northern Territory – [Long Service Leave Act 1981](#)
- > Queensland – [Industrial Relations Act 2016](#)
- > South Australia – [Long Service Leave Act 1987](#)
- > Tasmania – [Long Service Leave Act 1976](#)
- > Victoria – [Long Service Leave Act 2018](#)
- > Western Australia – [Long Service Leave Act 1958](#)

A pre-modern award, contract or enterprise bargaining agreement may also effect an employee's entitlements regarding Long Service Leave.

All employees (full time, part time and casual) are eligible to Long Service Leave if they have worked with one employer continuously for a particular length of time. This guide will cover the basic entitlements to Long Service Leave. If you require more information or assistance in calculating your employee's Long Service Leave entitlements, please contact the Workplace Relations Advice Line on (03) 8662 5222.

Qualifying periods of Long Service Leave

Each State and Territory has different rules about when employees are entitled to Long Service Leave in relation to:

- When employees qualify to receive a proportional payment for Long Service Leave on termination; and
- When employees are entitled to take Long Service Leave.

Australian Capital Territory	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Pro rata Long Service Leave entitlement - Section 11C</p> <p>An employee is entitled to a pro rata amount of Long Service Leave if after more than 5 but less than 7 years continuous service they:</p> <ul style="list-style-type: none"> Retire on/after reaching retirement age: <ul style="list-style-type: none"> Either the age specified by an award, agreement, <u>or</u> legislated Resign due to illness or incapacity Resign due to a pressing necessity Are terminated for any reason other than serious misconduct Die 	<p>Entitlement to Long Service Leave - Section 3</p> <p>An employee is entitled to take 6.0667 weeks of Long Service Leave after 7 years continuous service.</p> <p>An employee will accrue 1/5 of a month's Long Service Leave for each year of service.</p>

New South Wales	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Long Service Leave - Section 4</p> <p>An employee is entitled to a pro rata amount of Long Service Leave if after more than 5 but less than 10 years continuous service if they:</p> <ul style="list-style-type: none"> Resign due to illness or incapacity Resigns due to a domestic/pressing necessity Are terminated for any reason other than serious and willful misconduct Die 	<p>Long Service Leave - Section 4</p> <p>An employee is entitled to take 2 months Long Service Leave after 10 years continuous service and one month paid Long Service Leave for each additional 5 years.</p>

Northern Territory	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Entitlement for payment for Long Service Leave credit - Section 10 (2)</p> <p>An employee is entitled to a pro rata amount of Long Service Leave on reaching more than 7 but less than 10 years of continuous service if they:</p> <ul style="list-style-type: none"> • Retire on/after reaching the legislated age • Resign due to a pressing domestic/pressing necessity or resign for illness/incapacity • Are terminated for any reason other than serious misconduct • Die <p>Employees must reach a completed period of continuous service separated by 5 year intervals to be entitled to that portion's full payment pro rata;</p> <p>e.g. an employee who has completed 10 but less than 15 years of continuous service will only be entitled to 10 years pro rata payment.</p>	<p>Long Service Leave entitlement - Section 8 (1)</p> <p>An employee is entitled to take 13 weeks of Long Service Leave after 10 years continuous service.</p> <p>An employee will accrue 1.3 of Long Service Leave per 52 weeks worked.</p>

Queensland	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Entitlement – employees other than seasonal employees - Section 95 (3) and (4)</p> <p>An employee is entitled to a pro rata amount of Long Service Leave on reaching more than 7 but less than 10 years of continuous service if they:</p> <ul style="list-style-type: none"> • Resign due to illness or incapacity • Resign due to a domestic/pressing necessity • Are dismissed fairly for any reason other than conduct, capacity or performance based reason 	<p>Entitlement – employees other than seasonal employees - Section 95 (2)</p> <p>An employee is entitled to take 8.6667 weeks of Long Service Leave after 10 years continuous service.</p> <p>An employee will accrue 1 week of Long Service Leave per 60 weeks worked.</p>

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South Australia	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Long Service Leave entitlement - Section 5 (3) & (4)</p> <p>An employee is entitled to a pro rata amount of Long Service Leave on reaching more than 7 but less than 10 years of continuous service if they:</p> <ul style="list-style-type: none"> • Are terminated for any reason other than serious misconduct or • Terminate the contract of service lawfully 	<p>Long Service Leave entitlement - Section 5 (1)</p> <p>An employee is entitled to take 13 weeks Long Service Leave after 10 years continuous service.</p> <p>An employee will accrue 1.3 weeks of Long Service Leave per 52 weeks worked.</p>

Victoria	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Entitlement to Long Service Leave if employment stops after 7 years - Section 9</p> <p>An employee is entitled to a pro rata amount of Long Service Leave after reaching 7 years continuous service.</p>	<p>Entitlement to Long Service Leave after 7 years - Section 6</p> <p>An employee is entitled take Long Service Leave after completing 7 years of continuous employment with one employer.</p>

Western Australia	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Long Service Leave - Section 8 (3)</p> <p>An employee is entitled to a pro rata amount of Long Service Leave after reaching more than 7 but less than 10 years continuous service unless terminated for serious misconduct.</p>	<p>Long Service Leave - Section 8 (2)</p> <p>An employee is entitled to 8.6667 weeks of Long Service Leave after 10 years continuous service. An employee will accrue 1 week of Long Service Leave per 60 weeks worked.</p>

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Tasmania	
Employee entitlement on termination	Employee entitlement to take Long Service Leave
<p>Period of Long Service Leave to which employees, other than mining employees, are entitled - Section 8 (2)</p> <p>An employee, other than a mining employee, is entitled to a pro rata amount of Long Service Leave on reaching more than 7 but less than 10 years of continuous service if they</p> <ul style="list-style-type: none"> Retire on/after reaching legislated retirement age: <ul style="list-style-type: none"> An employee who has become eligible for a service pension under the <i>Veterans' Entitlements Act 1986</i> Resign due to illness/incapacity Resign due to a domestic/pressing necessity Are terminated for any reason other than serious misconduct 	<p>Period of Long Service Leave to which employees, other than mining employees, are entitled - Section 8 (2)</p> <p>An employee is entitled to 8.6667 weeks Long Service Leave after 10 years of continuous service.</p> <p>An employee will accrue 1 week of Long Service Leave per 60 weeks worked.</p>

Note: A domestic or pressing necessity relates to an issue outside of an employee's employment that has forced them to resign. Previous case law has shown that this can include:

- > A pregnant employee resigning to take on the responsibility of home duties;
- > An employee forced to Long Service Leave work in order to take care of a sick family member or child
- > An employee changing jobs to lessen travel expenses when in a difficult financial situation;
- > An employee resigning because the night shift had become a strain on their familial relationships and repeated requests for a transfer had not been granted; and
- > Relocation, where an employee would have been required to travel substantial distances to attend work each day.

Continuous employment and continuous service

Continuous employment or continuous service refers to the period of time that an employee has remained with their employer, and is defined by the relevant State act. When continuous service is "broken", an employee's Long Service Leave entitlements start afresh.

Note: If you need assistance with establishing the continuous service period, contact the Workplace Relations Advice Line on (03) 8662 5222.

Calculation of Long Service Leave payments

Long Service Leave is paid on the ordinary weekly pay multiplied by the amount of weeks owing to the employee.

Calculation of Ordinary Pay

An employee's ordinary pay is the amount received by the employee for their normal hours of work including casual loading (if applicable).

Note: If you need assistance in calculating the ordinary rate of pay, contact the Workplace Relations Advice Line on (03) 8662 5222.

Calculation of Ordinary Hours

In certain circumstance employees' hours may vary week to week, for example casual employees, part-time employees or employees who have moved from one employment type to another. The table shows how each state calculates varying weekly ordinary hours.

State	Calculation of Ordinary Hours
ACT	An employee's weekly number of hours will need to be averaged over the previous 12 months.
NSW	<p>An employee's hours need to be averaged over:</p> <ul style="list-style-type: none"> > The last pay period prior to the Long Service Leave being taken or the average weekly ordinary rate of pay during the previous 5 years. <p>The amount paid to the employee is whichever is greater; therefore the employee is better off overall.</p>
NT	An employee's ordinary hours will need to be averaged over the previous year of continuous service with the employer.
QLD	An employee's total amount of ordinary working hours over the relevant period, divided by 52.
SA	An employee's ordinary hours will need to be averaged for the previous 3 years.
TAS	An employee's weekly number of hours will need to be averaged over the previous 12 months.
VIC	<p>If there are no ordinary hours or the employee's hours have changed during the previous 104 weeks prior to taking Long Service Leave, an employee's hours will need to be averaged over:</p> <ul style="list-style-type: none"> > The previous 52 weeks; and > The previous 260 weeks; and > Entire period of continuous employment. <p>The amount paid to the employee is whatever is greater.</p>
WA	The normal weekly number of hours of work will be deemed the average weekly number of hours.

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How Long Service Leave is to be taken

Each state regulates the way an employee can take their Long Service Leave. An employee must be entitled to take their Long Service Leave in order to make the below arrangements. In most cases, the employer and employee need to agree on how the Long Service Leave will be taken.

State	How Long Service Leave is to be taken
ACT	<p>Long Service Leave must be taken:</p> <ul style="list-style-type: none"> > As soon as practicable after an employee becomes entitled to 4 weeks or more of Long Service Leave; or > By written agreement, at another time
NSW	<p>Long Service Leave must be taken: In one period; or by agreement:</p> <ul style="list-style-type: none"> > if the Long Service Leave entitlement is 2 months, the Long Service Leave can be taken in two separate periods > if the Long Service Leave entitlement is between 2 months and does not exceed 19.5 weeks, the Long Service Leave can be taken in two or three separate periods > if the Long Service Leave entitlement exceeds 19.5 weeks, the Long Service Leave can be taken in two to four separate periods.
NT	<p>Long Service Leave must be taken:</p> <ul style="list-style-type: none"> > As soon as practicable after the Long Service Leave has accrued; or > Commencing on and from a date agreed between the employer and employee in one period; or > By agreement, in up to 3 separate periods, with each period being a minimum of 4 weeks.
QLD	An employer and an employee must agree when the employee is to take Long Service Leave.
SA	<p>Long Service Leave should be taken:</p> <ul style="list-style-type: none"> > As soon as practicable after an employee is entitled to Long Service Leave and in one continuous period; or > By agreement, in separate periods at a different time
TAS	<p>Long Service Leave should be taken:</p> <ul style="list-style-type: none"> > In one period; or > By agreement, in two periods
VIC	Long Service Leave is to be taken in periods not less than 1 day.
WA	<p>Long Service Leave is to be taken:</p> <ul style="list-style-type: none"> > In one continuous period as soon as reasonably practicable; or > By agreement, in separate periods of at least 1 week at later date.

Note: A 'period' is a separately identifiable amount of time in which an employee takes their Long Service Leave. If an employee takes one day of Long Service Leave in a week, this would count as a period.

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Cashing out Long Service Leave

Cashing out an entitlement refers to where an employer may make a pro rata payment corresponding with an employee's accrual of Long Service Leave at the time. When an employee cashes out their Long Service Leave, there is no entitlement to take the Long Service Leave.

In the Australian Capital Territory, the Northern Territory, New South Wales and Victoria the cashing out of Long Service Leave is prohibited. In all other states, employees may be able to cash out their Long Service Leave entitlement subject to certain conditions.

State	Conditions of cashing out Long Service Leave
QLD	<p>An employee may cash out all or part of their Long Service Leave if:</p> <ul style="list-style-type: none"> > A relevant industrial instruments provides for the employee to be paid their Long Service Leave <u>and</u> the employer and employee agree in writing > The payment is ordered by the Fair Work Commission on application by an employee. The FWC will only order the payment if the employee is able to show: <ul style="list-style-type: none"> o Compassionate grounds; or o Financial hardship.
SA	An employee may cash out all or part of their Long Service Leave if there is an agreement between an employer and an employee. If there is a variation in the employee's rate of pay during their 'Long Service Leave period', an additional payment must be made to reflect the difference in the employee's old and new pay rates.
TAS	An employee may, with agreement from an employer, elect to cash out part or all of their Long Service Leave entitlement.
WA	An employer and an employee can agree in writing to cash out the employee's entitlement to Long Service Leave.

Instructing an employee to take Long Service Leave

By providing a legislated period of notice, an employer may be able to instruct an employee to take Long Service Leave.

In Western Australia and Tasmania, an employer cannot instruct an employee to take their Long Service Leave entitlement.

In all other states, an employer is required to provide the following notice period. However, if the employee refuses to take leave on the proposed dates, an employer should consider whether the reasons for the refusal are reasonable and negotiate alternative dates. Where the employee continues to refuse to take long service leave, please contact the Workplace Relations Advice Line (03) 8662 5222 to seek advice.

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State	Notice period employer is required to provide an employee to take Long Service Leave	Section of the relevant Act
ACT	60 days' written notice of the date	Grant of Long Service Leave - Section 6
NSW	1 months' notice of the proposed date	Long Service Leave -Section 4 (10)
NT	2 months' notice of the proposed date	Long Service Leave entitlement - Section 8 (7)
QLD	3 months' written notice of the date	Taking Long Service Leave - Section 97 (3)
SA	60 days' notice of the date	Taking of Long Service Leave - Section 7 (3)
VIC	12 weeks' notice written of the date	Employer may direct employee - Section - 19(1)

Allowing an employee Long Service Leave in advance

State	Long Service Leave in advance provision	Section of the relevant Act
ACT	No – Long Service Leave Act is silent	N/A
NSW	Yes - by agreement	Long Service Leave - Section 4 (3A)
NT	No - unless granted by the Minister of Public Employment (NT)	Long Service Leave entitlement - Section 8 (5)
QLD	No – Long Service Leave Act is silent	N/A
SA	Yes - by agreement	Taking of Long Service Leave - Section 7 (6)
VIC	Yes - by agreement	Long Service Leave in advance - Section 8
WA	Yes - by agreement	Taking Long Service Leave in advance Section 10

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues. Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

Disclaimer

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