




FACT SHEET

Long Service Leave



Updated: May 2017
Replaces: August 2016

Long service leave ('LSL') is a form of paid leave available to all employees – subject to the eligibility criteria stated below. LSL entitlements are provided for in the *Industrial Relations Act 2016* (Qld) and apply to employees subject to both the Queensland and Federal industrial relations jurisdictions. In the federal arena, the *Fair Work Act 2009* defers to the relevant state provisions for LSL entitlements.

LSL ENTITLEMENT

On 3 June 2001 amendments were made to the *Industrial Relations Act 1999* (Qld) (which has since been replaced by the *Industrial Relations Act 2016* (Qld) ('Act')) and entitlements to LSL from that date are as follows -

- 8.6667 weeks paid leave after 10 years of continuous service;
- Further proportionate leave after 5 year periods, for example after the 15th year of continuous service etc.

* Please note differing formulas apply to leave taken whilst employed versus leave paid on termination.

CASUAL EMPLOYEES

The following timeline confirms entitlement arrangements for casual employees:

- *Prior to 23 June 1990* - Casual employees did not accrue LSL prior to this date.
- *Between 23 June 1990 and 30 March 1994* - Only casual employees who worked a minimum of 32 hours during *each and every* four-week consecutive period (between the above dates) were entitled to accrue LSL.
- *From 30 March 1994* - All casual employees accrue LSL in accordance with the legislation.

PROPORTIONATE LSL FOR LESS THAN 10 YEARS SERVICE

A proportionate LSL payment on termination is available for employees who have completed at least 7 years, and less than 10 years continuous service if employment is terminated for one of the following reasons:

- Employment is terminated due to the employee's death;
- The employee terminates their service (eg resignation) for reasons of an illness or incapacity, or a domestic or other pressing necessity;
- Employment is terminated by the employer for a reason other than his/her conduct, capacity or performance;

With respect to the second dot point immediately above, the Act does not provide a definition of *domestic or other pressing necessity*. Guidance as to what constitutes a domestic or other pressing necessity can be taken from recent case law from the Queensland Industrial Relations Commission (QIRC) and similar jurisdictions.

The QHA suggests that members consider the following relevant questions that Commissioner Asbury considered in the QIRC decision of *The Australian Workers' Union of Employees, Queensland v Sunshine Coast Private Hospital (2003)* to determine an employee's proportionate LSL payment entitlement.

This decision referred to section 43(4) of the *Industrial Relations Act 1999 (Qld)*, which has been replicated in section 95(4) of the *Industrial Relations Act 2016 (Qld)*:

1. Was the reason for the termination one which fell within the section?
2. Was the reason genuine and not simply a rationalisation of another reason which did not fall within the section; or a reason that while having the appearance of truth or right, is in reality a pretence or a deception; or a frivolous reason?
3. Although the reason claimed may not be the sole ground which caused the employee to make a decision to terminate his or her employment, was it the real or motivating reason?
4. Did the reason claimed cause the employee to terminate his or her employment?
5. Did the reason claimed affect the employee in relation to the particular service he or she terminated?
6. as the situation which the employee was in at the point of the termination, one in which a reasonable person might have felt compelled to seek to resolve by terminating his or her employment?

It is recommended that members faced with a claim for a proportional LSL payment explore the reasons for the relevant resignation with the above questions in mind.

The below case examples of where a pro rata long service leave payment *was granted* based on a domestic or other pressing necessity provides additional guidance. In all cases it is important to remember the particulars of the individual case will always be considered in any tribunal making a determination about a proportionate entitlement:

- *Mate v Western Sydney Health Service* (2001), where the applicant resigned to travel overseas to care for her sick mother.
- *Kirwan v. H G Palmer Pty Limited* (1964) where the applicant resigned because his employment involved long working hours and his wife had threatened to leave him unless he gave up his job. The applicant did not wish to resign from his job but unless he did so he faced the possibility of his wife leaving him and the consequent disruption of his home and family life.
- *Rumiz v Statts Management Pty Ltd* (1999), where the applicant resigned in order to join her husband who had been transferred overseas.
- *Australian Municipal, Administrative, Clerical and Services Union v Qantas Airways Limited*, where the applicant resigned to travel to America to become married.
- *The Australian Workers' Union of Employees, Queensland (for Caroline Deacon) v Parmalat Australia Ltd* (2004), where the applicant resigned from her employment because of the need to live with her husband and the stress associated with travelling long distances to and from work.

PHASING IN ARRANGEMENTS

As a result of the 2001 amendments, phasing in arrangements were introduced. The transitional arrangements apply a mathematical formula to the accrued entitlements of employees whose service began before 3 June 2001.

It provides:

1. *Taking LSL while still employed:*
In working out when an employee may take LSL while still employed, only two-thirds of the employee's real time service completed before 3 June 2001 counts as continuous service for the purpose of calculating when LSL may be taken.
2. *LSL payment on Termination:*
For employees who terminate employment after 10 years of real time service all time (including time served before 3 June 2001) is recognised as continuous service.

TAKING LONG SERVICE LEAVE

An employer and employee may agree on when and how LSL is to be taken, and this may be in accordance with workplace policies that detail notice periods, timeframes for taking LSL etc. In the absence of agreement, employers may refer to the Act which provides that:

- An employer must give an employee at least 3 months written notice of the date on which the employee must take at least 4 weeks LSL;
- Employers cannot instruct employees to take a day or two here and there as LSL.

If an employee has taken a period of long service leave during which a public holiday falls, employers must be aware that long service leave is exclusive of any public holiday that falls during the period of leave. This means that any public holiday falling within a period of long service leave is to be recognised as a public holiday, not a period of long service leave (for that public holiday).

PAYMENT OF LONG SERVICE LEAVE

Employees on LSL are paid at their current ordinary rate of pay (from their first day of leave). If during the employee's LSL an employee's ordinary rate increases the employer must pay the employee at the higher rate from that point forward.

CONTINUOUS SERVICE

Continuous service is defined in the Act and is relevant for determining eligibility for long service leave.

In summary, an employee's continuous service includes paid working time and paid leave, which includes a period of absence on workers' compensation. In some instances, LSL will not accrue during an absence, even though the absence does not break continuity. An example of this is parental leave, which is an unpaid form of leave – being on a period of parental leave does not break continuity, however, that period of parental leave does not count as service.

By way of practical example, an employee has worked continuously for the same employer for a period of 10 years. During that 10 year period, the employee took one period of 12 months' unpaid parental leave. For the purposes of LSL eligibility, the employee has 9 years' continuous service.

Other periods of absence that do not break continuity of an employee's service include:

- Absence from work on paid or unpaid leave (granted by the employer) including absences through illness or injury;
- Termination of an employee's employment because of illness or injury, provided the employee is re-employed by the same employer and they have not been employed in other work during their absence;
- Termination of an employee's employment if they are re-employed by the same employer within 3 months;
- Interruption or termination of an employee's service due to an industrial dispute or slackness in business or trade if they are re-employed by the same employer.

CASHING OUT A LONG SERVICE LEAVE ENTITLEMENT

Employers **cannot** make payment in lieu of an employee taking all or part of their LSL while the employee is still employed unless:

1. An industrial instrument eg Award or workplace Agreement that applies to the employer and employee provides the ability for an employee to request to receive payment in lieu of taking long service leave. Any such agreement must be in writing and signed by the employee and their employer; or
2. In the absence of an industrial instrument providing this ability, the Queensland Industrial Relations Commission (QIRC) makes an Order+ for the payment of the payment in lieu of taking the long service leave.

+ With regard to point 2 above, the QIRC may only make an Order if it is satisfied that payment should be made on compassionate or financial hardship grounds.

TRANSFER OF EMPLOYMENT AND LONG SERVICE LEAVE ACCRUALS

The Act provides that accumulated long service leave entitlements to transfer from one employer to another, for example:

- When a business changes hands; and
- The new employer continues to employ existing staff.

A transferred employee is entitled to all long service leave accumulated for the total period of their employment – which includes long service leave accumulated with the previous employer.

Long service leave entitlements also transfer if an employee is dismissed at the time the business changes hands or within the preceding month and is then employed by the new employer within 3 months.

Employers who are either selling their business, or considering purchasing a new venue/business are encouraged to take employee entitlements into account in the sale/purchase agreement.

CALCULATING LONG SERVICE LEAVE

TABLE 1

Use this table to calculate LSL entitlements for employees who started employment before 3 June 2001 and had less than 15 years' service as at that date.

The phasing-in provisions in this table are not applicable to the calculation of pro rata LSL payable on termination of employment. Please use TABLE 2 for the calculation of pro rata long service leave.

To calculate long service leave entitlements				
1	2	3	4	5
Years of service as at 3 June 2001	Years of service reduced to two-thirds to allow phasing-in (2/3 x Col 1)	Additional years of service that must be worked before leave can be taken (10 - Col 2)	Total years of service worked before leave can be taken (Col 3 + Col 1)	Total weeks leave entitlement when qualifying period reached (Col 4 x 0.86667)
0	0.0000	10.0000	10.0000	8.6667
1	0.6667	9.3333	10.3333	8.9556
2	1.3333	8.6667	10.6667	9.2445
3	2.0000	8.0000	11.0000	9.5334
4	2.6667	7.3333	11.3333	9.8222
5	3.3333	6.6667	11.6667	10.1112
6	4.0000	6.0000	12.0000	10.4000
7	4.6667	5.3333	12.3333	10.6889
8	5.3333	4.6667	12.6667	10.9778
9	6.0000	4.0000	13.0000	11.2667

10	6.6667	3.3333	13.3333	11.5556
11	7.3333	2.6667	13.6667	11.8445
12	8.0000	2.0000	14.0000	12.1334
13	8.6667	1.3333	14.3333	12.4222
14	9.3333	0.6667	14.6667	12.7112
15	10.0000	0.0000	15.0000	13.0001

To calculate LSL under these 'phasing in' provisions, service before 3 June 2001 is reduced to two-thirds of its total. The difference between this reduced service and 10 years is the period after 3 June 2001 that must be worked before leave is due. This subsequent period of service is added to the actual service before 3 June 2001 and the total is multiplied by 0.86667 weeks leave for each year (and fraction of a year) to calculate the amount of leave owing.

The following examples illustrate this method:

Example 1

An employee has completed 1 year of service immediately before 3 June 2001. The 1 year counts as 0.6667 (i.e. two-thirds x 1) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 9.3333 (0.6667 + 9.3333 = 10) years continuous service.

This means they will be entitled to take leave only after they have achieved a total of 10.3333 (i.e. 1 + 9.3333) years continuous service. The employee's entitlement at that time will be 8.9556 weeks (10.3333 x 0.86667 weeks).

Example 2

An employee has completed 10 years' service immediately before 3 June 2001. The 10 years count as 6.6667 (i.e. two-thirds x 10) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 3.3333 (6.6667 + 3.3333 = 10) years continuous service. This means they will be entitled to take leave only after they have achieved a total of 13.3333 (i.e. 10 + 3.3333) years continuous service. The employee's entitlement at that time will be 11.5556 weeks (i.e. 13.3333 x 0.86667 weeks).

Example 3

An employee has completed 13 years' service immediately before 3 June 2001. The 13 years count as 8.6667 (i.e. two-thirds x 13) years continuous service for working out when the employee may take long service leave.

The employee may take leave after completing another 1.3333 (8.6667 + 1.3333 = 10) years continuous service.

This means they will be entitled to take leave only after they have achieved a total of 14.3333 (i.e. 13 + 1.3333) years continuous service. The employee's entitlement then will be 12.4222 weeks (i.e. 14.3333 x 0.86667 weeks).

These provisions would not reduce any entitlement that an employee has already accumulated (e.g. leave for employees with 15 years or more service) prior to 3 June 2001.

The phasing-in provisions outlined above, where only two-thirds of an employee's continuous service completed before 3 June 2001 counts as continuous service, do not apply to the calculation of pro rata long service leave payments made on termination of employment. In calculating pro rata LSL payments to be made on termination of employment all continuous service by an employee is taken into account.

TABLE 2

Use this table, as reproduced on page 6, to calculate:

- LSL for employees who started employment before 3 June 2001 and had 15 years' service or more at that date;
- LSL for employees who started employment on or after 3 June 2001; and
- pro rata LSL payable on termination of employment.

This table may also be used to calculate leave for a further period of employment after becoming entitled to a first period of LSL.

To calculate pro-rata long service leave entitlements for completed years and months of service												
Completed months (0-5)												
	0	1	2	3	4	5	6	7	8	9	10	11
Completed years												
0	-	0.0722	0.1444	0.2167	0.2889	0.3611	0.4333	0.5056	0.5778	0.6500	0.7222	0.7944
1	0.8667	0.9389	1.0111	1.0834	1.1556	1.2278	1.3000	1.3723	1.4445	1.5167	1.5889	1.6611
2	1.7333	1.8055	1.8777	1.9500	2.0222	2.0944	2.1666	2.2389	2.3111	2.3833	2.4555	2.5277
3	2.6000	2.6722	2.7444	2.8167	2.8889	2.9611	3.0333	3.1056	3.1778	3.2500	3.3222	3.3944
4	3.4667	3.5389	3.6111	3.6834	3.7556	3.8278	3.9000	3.9723	4.0445	4.1167	4.1889	4.2611
5	4.3333	4.4055	4.4777	4.5500	4.6222	4.6944	4.7666	4.8389	4.9111	4.9833	5.0555	5.1277
6	5.2000	5.2722	5.3444	5.4167	5.4889	5.5611	5.6333	5.7056	5.7778	5.8500	5.9222	5.9944
7	6.0667	6.1389	6.2111	6.2834	6.3556	6.4278	6.5000	6.5723	6.6445	6.7167	6.7889	6.8611
8	6.9333	7.0055	7.0777	7.1500	7.2222	7.2944	7.3666	7.4389	7.5111	7.5833	7.6555	7.7277
9	7.8000	7.8722	7.9444	8.0167	8.0889	8.1611	8.2333	8.3056	8.3778	8.4500	8.5222	8.5944
10	8.6667	8.7389	8.8111	8.8834	8.9556	9.0278	9.1000	9.1723	9.2445	9.3167	9.3889	9.4611
11	9.5333	9.6055	9.6777	9.7500	9.8222	9.8944	9.9666	10.0389	10.1111	10.1833	10.2555	10.3277
12	10.4000	10.4722	10.5444	10.6167	10.6889	10.7611	10.8333	10.9056	10.9778	11.0500	11.1222	11.1944
13	11.2667	11.3389	11.4111	11.4834	11.5556	11.6278	11.7000	11.7723	11.8445	11.9167	11.9889	12.0611
14	12.1333	12.2055	12.2777	12.3500	12.4222	12.4944	12.5666	12.6389	12.7111	12.7833	12.8555	12.9277
15	13.0000	-	-	-	-	-	-	-	-	-	-	-

PLUS

Entitlement for completed weeks and days of service

Completed days							
	0	1	2	3	4	5	6
Completed weeks							
0	-	0.0024	0.0048	0.0072	0.0095	0.0119	0.0143
1	0.0167	0.0191	0.0215	0.0238	0.0262	0.0286	0.0310
2	0.0333	0.0357	0.0381	0.0404	0.0428	0.0452	0.0476
3	0.0500	0.0524	0.0548	0.0571	0.0595	0.0619	0.0642
4	0.0667	0.0691	0.0715	0.0738	-	-	-

Tables and examples source:

Queensland Government: <https://www.business.qld.gov.au/business/employing/employee-rights-awards-entitlements/long-service-leave>

TIME AND WAGES RECORDS

Due to long service leave entitlements being based on continuous service, record keeping in line with those requirements of the *Fair Work Act 2009* and *Fair Work Regulations 2009* will assist an employer to determine an employee's eligibility.

This is particularly relevant as a casual employee's total hours of work over the entire period of their continuous service forms the basis for calculating the payment a casual employee receives while on a period of long service leave.

Refer: QHA's *Employee Records and Pay Slips Requirements Fact Sheet*

Further Assistance

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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