



FACT SHEET

Long Service Leave

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Long service leave ('LSL') is a form of paid leave available to all employees including casuals. LSL entitlements are provided for in the *Industrial Relations Act 2016* (Qld) ('Act') 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

The entitlement to LSL under the Act is:

- 10 years of continuous service - **8.6667 weeks** paid leave;
- 15 years of continuous service - A **further 4.3333 weeks** paid leave;
- More than 15 years of continuous service - a further period of paid leave that is proportionate to the service above 15 years that can be accessed as it accrues.

Important Notes

- In certain circumstances an employee with between 7 and 10 years' service is entitled to a proportionate payment of LSL if employment ends for one of the reasons prescribed in the Act. Further information on this is detailed on page 3 of this Fact Sheet.
- An employee whose employment ends after 10 years is entitled to payment for LSL accrued for the first 10 years and a proportionate payment for the period after 10 years' service, minus any LSL already taken.
- Casual employees are entitled to LSL, there is a specific formula for calculating a casual employee's LSL entitlement based on the employee's actual ordinary hours of work over the period of employment. Further information is detailed on page 5 and 6 of this Fact Sheet.
- The formula for calculating a casual employee's LSL entitlement is also used when an employee has been employed in a mix of employment types (Full time, Part time, Casual) over the period of employment.

WHAT IS 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 are detailed on the next page.

They are:

- 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.

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.

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 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.

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:

- the employee's service is terminated because of the employee's death; or
- the employee terminates the service because of—
 - the employee's illness or incapacity; or
 - a domestic or other pressing necessity; or
- the termination is because the employer—
 - dismisses the employee because of the employee's illness (illness includes injury, incapacity or other medical condition)*;
 - dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
 - unfairly dismisses the employee; or
- the termination is because of the passing of time and—
 - the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service; and
 - the employee was prepared to continue the employment with the employer.

* The Queensland Parliament passed the Community Services Industry (Portable Long Service Leave) Act 2020 on 17 June 2020 amending the *Industrial Relations Act 2016* to clarify that an employee with between 7 and 10 years' service is entitled to receive proportionate payment of long service leave on termination of employment if the employment is ended by the employer because the employee has an illness related incapacity and that is the reason for termination of employment. Illness is defined as including injury, incapacity or other medical condition.

It had been determined in *Schipp & Anor v The Star Entertainment Qld Limited [2019] ICQ 009* that the existing provisions of the *Industrial Relations Act 2016* only recognised an entitlement to receive proportionate payment of long service leave on termination of employment if the employee terminated their own employment, not in circumstances where an employee with between 7 and 10 years' service had their employment terminated because of an illness related incapacity. The amendments to the *Industrial Relations Act 2016* mean that where an employee with between 7 and 10 years' service ends or has their employment ended because of illness, pro rata long service leave is payable.

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 whether an employee might have a legitimate claim to a proportionate LSL payment.

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. Was 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.

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 or a part-time employee's ordinary 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.

CALCULATING LONG SERVICE LEAVE – FULL-TIME EMPLOYEES

Use this table to calculate long service leave entitlements and pro-rata long service leave 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
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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
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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 source: Queensland Government: <https://www.business.qld.gov.au/business/employing/employee-rights-awards-entitlements/long-service-leave>

CALCULATING LONG SERVICE LEAVE WHERE THE EMPLOYEE HAS HAD A PERIOD OF PART-TIME OR CASUAL SERVICE

This formula applies to an employee who is entitled to long service leave if the employee was a casual employee or regular part-time employee at any time during the employee's continuous service to which the long service leave relates. Please note that a casual employee's ordinary hours does not include any hours that attract overtime payments.

$$\left\{ \frac{\text{<total ordinary hours worked>} \times 8.6667}{52} \right\} \div 10 = \text{long service leave entitlement in hours}$$

NOTE: Should the employee have already taken any long service leave, subtract that amount in hours from the **<long service leave entitlement in hours>**

<long service leave entitlement in hours> x **<employee's current hourly rate>** = long service leave entitlement in dollar figure.

Please note that the following timeline arrangements apply to 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.

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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