



LONG SERVICE LEAVE QUEENSLAND

AS AT FEBRUARY 2015

This fact sheet provides an overview of long service leave in Queensland, which is governed by the *Industrial Relations Act 1999* (Qld).

Who is entitled to long service leave?

Full time, part time and casual employees are entitled to long service leave.

What is the long service leave entitlement?

Employees that commenced employment on or after 3 June 2001 are entitled to 8.6667 weeks long service leave after completing 10 years continuous service. As a result of amendments to the legislation, transitional provisions apply for service completed prior to 3 June 2001.

What constitutes continuous service?

The following absences do not break continuity of service and are counted towards the employee's total length of service:

- an employee is absent on paid leave (including worker's compensation) approved by the employer;
- a current employee commences an apprenticeship or traineeship with their employer;
- an employee's services are temporarily lent or hired out to another employer;
- an employee's employment is terminated (or stood down) to avoid a long service leave obligation;
- an employee works with a company and then transfers to work for one of the company's subsidiaries; or
- an employee works for an employer who becomes a partner in a business or withdraws from a business partnership.

The following absences do not break continuity of service, but the absence will not count towards the employee's total length of service:

- an absence on approved unpaid leave, including absences due to illness or injury;
- an employee's employment is terminated due to illness or injury and the employee is re-employed by the employer, provided the employee has not been employed during the intervening period;
- an employee is dismissed or resigns and is re-employed within 3 months by the same employer;

- an employee’s employment is interrupted or terminated as a direct or indirect result of an industrial dispute and is re-employed; or
- the employee’s employment is interrupted or terminated by the employer because of slackness of trade or business and the employer re-employs the employee.

Where an employer continues to employ an apprentice or trainee after, or re-employs them within 3 months of, completing their apprenticeship or traineeship, continuity of service will not be broken.

An employee’s service in the Reserve Forces is taken to be continuous service with the employer who employed the employee immediately before the employee started service with the Reserve Forces.

Additional considerations for casual employees

In working out the length of a casual employee’s continuous service, the following service is not taken into account:

- service by the employee prior to 23 June 1990;
- service between 23 June 1990 and 30 March 1994 if the employee was not regularly employed by the same employer for at least 32 hours in each consecutive four week period.

From 30 March 1994, all continuous service by casual employees after that date is taken into account in calculating long service leave entitlements.

Such service is considered to be continuous unless there is a gap between engagements of more than 3 months.

How much long service leave is an employee entitled to?

Full time employees employed after 3 June 2001

An employee employed after 3 June 2001 is entitled to 8.6667 weeks long service leave after completing 10 years continuous service. Entitlement to further leave exists after the completion of at least a further five years continuous service. For example, if an employee completed an additional five years continuous service, the further entitlement would be half of 8.6667 weeks.

Part time and casual employees employed after 3 June 2001

The following formula is used to calculate the number of hours leave to which part time and casual employees are entitled:

$$\frac{\text{Total ordinary hours worked}}{52} \times \frac{8.667}{10}$$

For example:

An employee who worked 15,600 ordinary hours during a 10 year period of service and was paid an hourly rate of \$15 at the time of taking the leave, would be entitled to be paid:

$$\frac{(15600 \times 8.6667)}{52} = 260 \text{ hours}$$

The dollar entitlement of the paid leave would be 260 hours x \$15.00 = \$3,900 (gross).

If the employer and casual or part-time employee agree, the entitlement can be taken in the form of a full-time equivalent. Using the example above, where an award provides for a 38-hour week, 260 hours paid leave can be taken as 6.842 weeks leave.

The above formula is also used where an employee performed a mixture of casual or part time and full time employment during their continuous service. The total ordinary hours used in the calculation will include both the hours while employed as a full-time employee as well as those while employed as a casual or regular part-time employee.

Full time employees with 15 years or more service as at 3 June 2001

An employee that had completed 15 years service as at 3 June 2001 would be entitled to 13 weeks long service leave.

Where an employee completed more than 15 years continuous service prior to 3 June 2001 but less than 20 years:

- they would retain the entitlement to 13 weeks long service leave (as above); and
- two-thirds of the remaining balance of service would apply to the balance of service when calculating the point when the employee is entitled to take a further period of long service leave (i.e. after a further period of 5 years).

Example: If an employee had completed 17 years continuous service as at 3 June 2001, they will be entitled to 13 weeks long service leave based on the first 15 years of continuous service. Only two-thirds of the further 2 years of continuous service is used to calculate when the employee can take a further period of long service leave. To work out two-thirds of the remaining years of service balance, divide the balance by 3, then multiply by 2. Subtract this number from 5 years (the period after which further leave may be taken) to determine when the employee will be entitled to further leave.

Although the transitional provisions affect the timing of **when** an employee can take long service leave, they do not affect how much long service leave the employee can take.

When an employee in the above situation finally becomes entitled to a further period of long service leave, the amount of leave is calculated by taking the **actual** years of service between the date from which the employee first completed 15 years of service and the date when you are calculating the entitlement.

Example: The employee would have completed 15 years service on 3 June 1999. The entitlement to take further long service leave arises on 3 June 2005 (only 2/3 of leave accrued exceeding 15 years but less than 20 years, prior to 3 June 2001 is used to calculate when further leave may be taken). The actual period in between is 6 years and therefore the entitlement for the further period of 6 years continuous service is 5.2 weeks.

Should an employee have 20 or more years service as at 3 June 2001, they will keep their existing entitlement to 13 weeks (which was accrued at the completion of 15 years continuous service), plus a further period of 4.333 weeks long service leave for their additional 5 years service.

Full time employees with less than 15 years continuous service as at 3 June 2001

Only two-thirds of the employee’s continuous service completed before 3 June 2001, counts as continuous service for calculating **when** they are entitled to take long service leave under the amended laws.

For existing employees with less than 15 years service as at 3 June 2001, the following three-step process is used to calculate the conversion rate for continuous service completed prior to 3 June 2001:

Step 1

Calculate two-thirds of the employee’s continuous service as at 3 June 2001:

$$\frac{\text{Years of service as at 03/06/01}}{3} \times 2 = \frac{2}{3} \text{ service up to 3 June 2001}$$

Step 2

Calculate the further period of service necessary before the employee can take their long service leave entitlement:

10 – the amount calculated in Step 1 = Further service to be completed before the employee can take their long service leave entitlements.

Step 3

Once the employee completes the further period that needs to be completed before long service leave becomes due the long service leave entitlement at that time is calculated using the following formula:

Actual years of service as at 03/06/01 + Period to be completed before long service becomes due x 0.86667
 This means that, although the time when the employee may take long service leave is delayed by the discounting formula, the amount of leave to be taken is based on actual service.

Casual and part time employees prior to 3 June 2001

For existing casual and part-time employees, the following three-step process is used to calculate the conversion rate for continuous service completed prior to 3 June 2001:

Step 1

Calculate two-thirds of the employee’s continuous service as at 3 June 2001:

$$\frac{\text{Years of service as at 03/06/01} \times 2}{3} = \text{service up to 3 June 2001}$$

Step 2

Calculate the further period of service necessary before the employee can take their long service leave entitlement:

10 – the amount calculated in Step 1 = Further service to be completed before the employee can take their long service leave entitlements.

Step 3

Once the employee completes the further period that needs to be completed before long service leave becomes due the long service leave entitlement at that time is calculated using the following formula:

$$\frac{(\text{Total actual ordinary hours worked in service with the employer}) \times 8.6667}{52 \times 10}$$

How is long service leave paid?

The employer must pay the employee for long service leave at the ordinary rate being paid to the employee immediately before the leave is taken (excluding overtime and penalty payments). However, if the employee is, immediately before taking the leave, being paid at a higher rate than the ordinary rate, the employer must pay the employee at the higher rate.

An employer must not reduce an employee's usual rate before an employee starts long service leave with the intent to avoid the employer's obligation. If satisfied an employer has done so, the Queensland Industrial Relations Commission (QIRC) may order the employer to pay the employee at the usual rate even though the employee was not being paid the usual rate immediately before starting leave.

If, during the employee's leave:

- (a) the ordinary rate is increased, the employer must pay the employee at the increased rate for the part of the leave period that the increased rate applies to; or
- (b) the ordinary rate is reduced, the employer may pay the employee at the reduced rate for the part of the leave period that the reduced rate applies to.

If an employee is entitled to receive an amount representing commission in the employee's long service leave payment, the employer must pay the 'default average commission' unless:

- (a) a relevant industrial instrument or contract between the employer and employee otherwise provides; or
- (b) the QIRC, on application, considers that the default average commission would not represent a fair amount in the circumstances.

'Default average commission' means

- the total commissions payable to the employee in the year before the leave is taken;
- divided by 52.179;
- multiplied by the number of weeks leave for which payment is being made.

When is long service leave paid?

An employee and employer may agree on the times when, and the way in which, the employee will be paid for long service leave. If the employer and employee cannot agree, the QIRC may determine the time the amount becomes payable.

How is long service leave taken?

The time and manner of taking long service leave should be agreed between the employer and employee. Where agreement cannot be reached, the employer can, with at least 3 months notice, require an employee to take at least 4 weeks long service leave.

How do public holidays affect a period of long service leave?

Long service leave is exclusive of public holidays. Therefore, any public holidays falling within a period of long service leave must be added to the leave.

Can long service leave be cashed out?

If permitted under an Award or Certified Agreement, an employee may agree with their employer to receive payment for all or part of their long service leave entitlement instead of taking the leave. Any such agreement must be in writing and signed by the employer and the employee.

If the employee is not covered by an industrial instrument that provides for cashing out of long service leave instead of taking the leave, the employee may make application to the QIRC for an order to make such a payment. The QIRC may make such an order only if satisfied that the payment should be made on compassionate grounds or on the ground of financial hardship.

Payment on termination

Employees are entitled to receive proportionate payment of long service leave on termination of employment after completing 10 years continuous service (pro-rata long service leave).

Employees who have completed 7 but less than 10 years continuous service are entitled to pro rata long service leave, if:

- the employee's services are terminated by their death;
- the employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity;
- the employer dismisses the employee for a reason other than the employee's conduct, capacity or performance (e.g. redundancy);
- the employer unfairly dismisses the employee;
- the termination is because of the effluxion of time and:

- the employee had a reasonable expectation that the employment would continue until the employee had completed at least 10 years continuous service; and
- the employee was prepared to continue the employment.

What time and wages records must be kept?

An employer is required to keep a record of the total number of ordinary hours worked by each casual employee during the period 1 July to 30 June each financial year.

What happens to long service leave upon a transfer of business?

An employee's service with an old employer will be taken to be a period of service with a new employer when the employee is transferred to the new employer.

For more information

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IMPORTANT INFORMATION

The information contained in this fact sheet is accurate at the time of distribution to you. Award conditions and industrial relations laws change regularly, however, and you should ensure that you maintain your copy of this fact sheet in an up to date form. Any revised fact sheets issued will be available at www.nra.net.au. The information contained in this fact sheet is not a substitute for independent professional advice. You should obtain any appropriate professional advice relevant to your particular circumstances.