

## INVESTIGATION

Workers may lodge claims with SafeWork SA relating to Long Service Leave issues. SafeWork SA will endeavour to resolve the matter.

However, if it is found that the worker does not have a valid claim or there is insufficient evidence for SafeWork SA to pursue the matter further, he or she will be notified accordingly. Please note this does not prevent the worker from taking further action in the Industrial Relations Court and SafeWork SA can provide assistance in relation to this action.

If further action is pursued, SafeWork SA may provide the Industrial Relations Court with a summary, and any other relevant information, relating to its involvement with the claim.

## FURTHER INFORMATION

If in doubt over any Long Service Leave matter, contact:

- your employers association or union (if you are a member)
- the SafeWork SA Help Centre on telephone 1300 365 255 for the cost of a local call from anywhere in South Australia
- online at [www.safework.sa.gov.au](http://www.safework.sa.gov.au)

## DISCLAIMER

This publication contains information regarding occupational health and safety. It includes some of your obligations under the occupational health and safety legislation that SafeWork SA administers. To ensure you comply with your legal obligations you must refer to the appropriate Acts and Regulations.

This publication may refer to legislation that has been amended or repealed. When reading this publication always refer to the latest laws.

## SAFEWORK SA

[www.safework.sa.gov.au](http://www.safework.sa.gov.au)

### HELP CENTRE 1300 365 255

Email: [help@safework.sa.gov.au](mailto:help@safework.sa.gov.au)

(the Help Centre closes at 4.15pm on Wednesdays)

To report all serious workplace injuries and incidents telephone **1800 777 209** (24-hour service).

### LIBRARY AND BOOKSHOP

Ground floor, 100 Waymouth Street, Adelaide

Opening hours: 8.30am – 5pm, Monday to Friday

#### LIBRARY

Telephone: **(08) 8204 8877**

Facsimile: (08) 8204 8883

Email: [library@safework.sa.gov.au](mailto:library@safework.sa.gov.au)

#### BOOKSHOP

Telephone: **(08) 8204 8881** or **(08) 8204 8882**

Facsimile: (08) 8204 8883

Email: [bookshop@safework.sa.gov.au](mailto:bookshop@safework.sa.gov.au)

## OFFICES

### HEAD OFFICE

Level 4, 33 Richmond Road, Keswick

GPO Box 465, Adelaide, SA 5001

DX 715, Adelaide

### REGIONAL OFFICES

Located at Berri, Mount Gambier,

Port Lincoln, Port Pirie and Whyalla.

Telephone: **1300 365 255**

### FREE INTERPRETING SERVICE

Telephone the Interpreting and Translating Centre on **(08) 8226 1990** and ask them to contact SafeWork SA.

### HEARING AND SPEECH ASSISTANCE

Contact us through the National Relay Service and ask for SafeWork SA 1300 365 255.

- for TTY/Voice: **133 677**
- Speak and Listen: **1300 555 727**
- [www.relayservice.com.au](http://www.relayservice.com.au)



## LONG SERVICE LEAVE

Some important information about state long service leave entitlements

*safeworksa*

## LONG SERVICE LEAVE

The majority of the South Australian workforce accrue Long Service Leave entitlements under the state *Long Service Leave Act 1987* (the Act). This includes workers in the public sector and local government, and many workers who are employed in the private sector.

This brochure provides information relating to state Long Service Leave entitlements.

The national industrial relations (IR) system for the private sector provides for a National Employment Standard dealing with Long Service Leave entitlements. This standard is derived from federal awards and agreements or from the relevant state Long Service Leave legislation.

For further information on Long Service Leave entitlements covered by the national IR system, call the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au)

## WHO IS ENTITLED TO LONG SERVICE LEAVE?

Under the Act, a worker who has completed 10 years service is entitled to 13 weeks Long Service Leave. A further 1.3 weeks is granted for each completed year after 10 years service.

The employer should give a worker at least 60 days notice of the date from which leave is to be taken.

The Long Service Leave should be taken in one continuous period, but if an employer and their worker agree, separate periods can be taken.

## WHAT IS A PRO RATA PAYMENT?

A worker who leaves, or whose employment is terminated after 7 complete years (but less than 10) is entitled to the monetary equivalent of 1.3 weeks leave for each completed year of service.

There may be reasons why a worker is not entitled to a pro rata payment.

For example, if they are dismissed for serious and wilful misconduct or have terminated their contract of service unlawfully, the employer may not have to pay pro rata Long Service Leave.

## IS A CASUAL WORKER ENTITLED TO LONG SERVICE LEAVE?

A casual worker accrues Long Service Leave if they have been employed on a regular basis for 10 years (or 7 years to receive a pro rata payment).

## HOW WILL LONG SERVICE LEAVE BE PAID?

Generally, Long Service Leave is paid at the ordinary weekly rate a worker is entitled to before going on leave, or at the time of termination. It will include above award payments for work in normal time but will not include overtime, shift premiums or penalty rates.

If the rate of pay increases while a worker is on Long Service Leave, they are entitled to have their payment adjusted.

A worker's hours are averaged over the last 3 years if, during that period, they:

- were employed at an hourly rate of pay
- had their hours varied, or
- worked on a part-time or casual basis.

This average is then used to calculate the weekly rate.

If a worker is paid on a system of payment by result (e.g. commission), their earnings over the last 12 months are averaged to calculate the weekly rate.

Payment for a period of Long Service Leave must be made:

- in advance for the whole period of leave, or
- on the normal pay day, in which case the worker may request a payment by cheque to be sent to a specified address, or
- by another method of payment that is agreed between the worker and their employer.

## CAN I ASK MY EMPLOYER TO PAY ME INSTEAD OF TAKING MY LONG SERVICE LEAVE?

With agreement from their employer, a worker who has worked for 10 or more years may 'cash out' either part or the whole of their accrued Long Service Leave.

To 'cash out' Long Service Leave entitlements, the employer and the worker must make an individual written agreement that is signed by them both.

## WHAT IF THE SERVICE HAS BEEN BROKEN?

An entitlement to Long Service Leave only arises in respect of completed years of service. The Act has provisions that determine whether a worker's service is continuous. For example, where the employer breaks a worker's service and they are then re-employed within 2 months, the service is considered continuous.

## WHAT BREAKS COUNT AS SERVICE?

Any paid leave, unpaid sick leave or workers compensation will count as service. Parental leave and other unpaid leave granted by the employer will not count as service, but will not break a worker's continuity of service.

Where an apprentice is re-employed by the same employer within 12 months of the completion of the apprenticeship, the period of apprenticeship with that employer will count as service.

## WHAT IF MY EMPLOYER HAS CHANGED?

If the business has been sold and a worker has continued with the new employer, then in most circumstances the worker's service will be considered continuous. The new employer will normally assume responsibility for the whole period of service.

## RECORDS

The employer must keep records relating to Long Service Leave throughout a worker's service and at least 3 years after termination. Workers are entitled to inspect these records. The Act and Regulations prescribe what details must be kept.

## LONG-TERM WORKERS

Different entitlements applied prior to 1972.

For assistance in the calculation of Long Service Leave entitlements prior to 1972, please contact the SafeWork SA Help Centre.