



Government
of South Australia

SafeWork SA

Guide to long service leave

Long Service Leave Act 1987 (SA)

Table of contents

Who is entitled to long service leave	4
Which long service leave system do I fall under?	4
Workers covered under SA legislation	4
Workers not covered under SA legislation	5
Need further assistance locating your long service leave provisions?	7
Accruing long service leave	8
Long service leave entitlement	8
Subsequent years	8
Pro-rata	8
Continuous service	9
Continuous service for casual employees	9
Leave that counts towards continuity of service AND long service leave accrual	10
Leave or absences that do not break service but DOES NOT count towards long service leave accrual	11
Stand down of workers during the Covid-19 pandemic	14
Fair Work Ombudsman position	14
Impact of government directed stand down on SA long service leave provisions	15
Forced leave during a government directed stand down	16
Working outside of South Australia	16
Service quick reference guide	17
Accrual prior to 1972	19
Calculating long service leave	20
Full-time worker calculation	20
Part-time worker calculation	21
Same hours	21
Varied hours	21
Mix of full-time and part-time service calculation	21
Same hours during the immediate 3 years prior to taking leave	21
Variable hours during the 3 years immediately prior to taking leave	22
Casual worker calculation	23
Working weeks	23
Paid leave	24
Unpaid leave	24
Calculating payment	24
Step-by-step guide for manual calculation of long service leave entitlement	26
Commission, target and per piece worker calculation	27
Workers on commission, payment by result or other sales driven income	27
Calculating payment	27
Target based income & bonuses	28

Requesting and taking long service leave	29
Requesting leave	29
Directing a worker to take leave	30
Taking long service leave	30
Weekends and public holidays	31
Taking leave in separate periods	31
Taking leave in anticipation of an entitlement	32
Record of leave	33
Working whilst on leave	34
Pro-rata entitlement	35
Pro-rata leave following resignation, termination or redundancy	35
Resignation	35
Termination & Redundancy	36
Pro-rata leave whilst still in employment	37
Payment of entitlement	38
Payment when taking leave	38
Increase to rate of pay during leave	38
Accommodation payment	39
Payment in lieu of leave	39
Payment upon resignation / termination / redundancy	40
Contract of service	41
Termination for misconduct	42
Payment upon death of worker	42
Transfer of business	43
Recordkeeping	45
Record of commencement of service	45
Record of worker absences	45
Record of long service leave entitlement	46
Record of termination	46
Template	46
Resolving disputes	47
Role of SafeWork SA in resolving disputes	47
Powers of inspection	47
Directions to employer	48
Non-compliance	48
Questions about your long service leave?	48

Who is entitled to long service leave

Most workers in South Australia are entitled to long service leave regardless of their employment status — e.g. full-time, part-time, casual. However, not all workers in South Australia will receive their entitlements through South Australia's *Long Service Leave Act 1987* (SA).

Which long service leave system do I fall under?

SafeWork SA is the regulator for long service leave provisions only in relation to those workers covered under the *Long Service Leave Act 1987* (SA).

A worker's [long service leave entitlement forms part of the National Employment Standards](#). This standard applies to all workers covered by the national workplace relations system (which includes SA), regardless of any award, agreement or contract.

Workers covered under SA legislation

Workers who generally **are** covered under South Australia's legislation include:

- private sector workers
- local government workers
- workers who, on 1 January 2010, did not have an entitlement under a pre-modernised award
- workers not covered under an award or agreement.

Casual workers

Casual workers who are employed under a contract or a series of contracts can accrue a long service leave entitlement.

A casual worker is an employee who accepts an offer for a job knowing that there is no firm advanced commitment from the employer to provide ongoing work and/or an agreed/regular pattern of work.

Advance commitment is determined by whether:

- the employer has the option to offer the worker hours of work and the worker has the choice as to whether they work or not
- the worker will be offered hours when the business needs them to work
- the employment is described as casual

- the worker is paid a casual loading (higher rate of pay for being a casual employee) or other specific pay rate as a casual worker.

Example

Mary works according to a roster that changes every week to suit her employer's needs (i.e. number of hours and days worked changes with each roster). Mary has the option to refuse shifts, and she can also swap allocated shifts. Mary is paid a casual loading on her rate of pay, and her employment is described as casual.

Under the law, Mary is considered to be employed as a casual employee.

Casual staff continue to be employed on a casual basis unless:

- the employee becomes an ongoing employee
 - via casual conversion
 - through being offered and accepting an offer to become employed on a full-time or part-time basis
- the person ceases to be employed by the employer.

Note for employers

Employers should carefully consider the true nature of the employment of their workers. Some people working under casual contracts may not be true casuals, rather, they are part-time workers. If an employer wants to offer casual work, the work must meet the criteria of casual work (as outlined above).

Example

Sally had been working as a casual working 10-20 hours per week. There has been some restructuring of the business that Sally works for and her boss, Victoria, has asked her to work Mondays, Wednesdays and Fridays between 10am-3pm. Sally has been told that she needs to work these specific days and hours. Sally will continue to be paid her usually hourly rate.

Under this new arrangement, Sally's employment should now be considered as part-time as the work arrangements no longer meet the criteria of casual employment.

See the [Fair Work Ombudsman website for more information on casual workers](#).

Workers not covered under SA legislation

Workers **not** covered under this act include:

- SA and Commonwealth [public sector employees](#)
- workers in the [construction industry](#) and covered under the *Construction Industry Long Service Leave Act 1987 (SA)*

- workers explicitly covered under another Act
- workers who have a [pre-modernised award](#) (in place before 1 January 2010)
- workers who have a long service leave entitlement under a relevant [Agreement](#), [Award](#) or other instrument under the Commonwealth *Fair Work Act 2009* (Cth)
 - for example, entitlements to long service leave outlined in an enterprise agreement will prevail over the laws outlined in the Act.

If your entitlements are not covered under the SA legislation you must contact the [Fair Work Ombudsman](#) for information relating to your long service leave.

Example

We Fix It has several workshops across the Adelaide metro and regional South Australia. We Fix It has been a member of the MTA since they opened in 2001 and their workers are covered under the Vehicle Industry Award. Reggie has been a mechanic working full-time for 13 years. Reggie's long service leave entitlements are under the Vehicle Industry Award and not the *Long Service Leave Act 1987 (SA)*.

Reggie will need to contact the [Fair Work Ombudsman](#) to find out more about his long service leave entitlements.

Construction industry workers

If you are a construction industry worker employed under the [Construction Industry Long Service Leave Act 1987](#) you qualify for long service leave based on your service to the industry, rather than to just one employer.

For information on long service leave provisions, construction workers should contact [Portable Long Service Leave](#) on 8332 6111 or Toll Free (SA country only) 1800 182 124.

Public sector employees

SA public sector

Public sector workers are not covered under the *Long Service Leave Act 1987 (SA)*. Public sector employees have their long service leave entitlements defined through [legislation](#) and a [Determination of the Commissioner for Public Sector Employment](#) if:

- they are employed in the South Australian Public Service in an administrative unit or attached office, as defined by the *Public Sector Act 2009*
- their employment has been declared by another Act or the [Regulations](#).

If in doubt, talk to your agency's human resources section.

Commonwealth public sector

Commonwealth public sector employees have their provisions covered under the [Long Service Leave \(Commonwealth Employees\) Act 1976](#).

Need further assistance locating your long service leave provisions?

If you're unsure if your long service leave provisions fall under SA legislation or an award or agreement ask your employer, HR manager or union representative for the name of your award, agreement or the legislation from where your provisions stem.

- **SA legislation:** Continue reading the information on our [long service leave guide](#).
- **Award or agreement:** Search the Fair Work Commission's [Award database](#) or the [Agreement database](#) to find details of your long service leave provisions.
- **Portable long service leave:** [Contact Portable Long Service Leave](#).
- **Any other system:** Contact the [Fair Work Ombudsman](#).

Accruing long service leave

Long service leave entitlement

A worker is entitled to 13 weeks of long service leave after completing 10 years of [continuous service](#). 10 years of continuous service may not be the same as 10 years since their employment start date as some types of leave do not count as service. A worker who has completed 10 years of continuous service is entitled to:

- 13 calendar weeks leave in respect of the first 10 years of service
- 1.3 weeks (9.1 days) leave in respect of each subsequent year of service.

A worker's employment status — e.g. full-time, part-time, casual — does not affect this rate of accrual.

Subsequent years

Leave accrued during subsequent years – that is, for each year after the 10th year of continuous service – may be taken immediately upon accrual with approval by the employer.

Example

Liam has worked for his employer for 13 years. Liam took 10 weeks long service leave when he received his entitlement. Liam would like to take an extended holiday and has arranged with his employer to use his remaining long service leave entitlement. Liam has 3 weeks left from his initial 13 weeks long service leave entitlement and has accrued a further 3.9 weeks leave since that time.

Pro-rata

A pro-rata payment is available to a worker, upon leaving their employment, once they complete 7 years of completed service. The pro-rata payment is to be equal to the monetary equivalent of 1.3 weeks (9.1 days) leave in respect of each completed year of service.

Example

Aisha has accepted a new job and has given 4 weeks' notice to her employer, Fabulous Floors. She has been with Fabulous Floors for 8½ years. When Aisha leaves her job, Fabulous Floors will need to pay Aisha pro-rata long service leave of 10.4 weeks (8 x 1.3 weeks). Aisha's entitlement will be paid at her current rate of pay.

A worker is **not** entitled to this payment if:

- the worker's contract of service is terminated on the ground of serious and wilful misconduct on the part of the worker, or

- the contract of service is unlawfully terminated by the worker (such as not giving the required notice period for resigning).

Example

Ajay has worked at Fairview Hospital for 7½ years. Ajay quit his job to start his own business. Ajay did not provide his workplace the required 2 weeks' notice period. Ajay has unlawfully terminated his employment by not working his notice period. On that basis, Fairview Hospital has the legal option to withhold his pro-rata long service leave payment.

See our [Pro-rata entitlement page](#) for further details.

Continuous service

Service is defined as 'continuous service with the same employer or related employers under a contract of service or series of contracts of service'.

The service needs to be uninterrupted or unbroken for the duration of the worker's employment subject to the exceptions outlined in the Act (see below).

Any [weeks that do not count towards service](#) must be added on to the 10 years before a long service leave entitlement has been reached. This is of particular note for casual workers who do not receive paid leave.

Example

Jan is a full-time worker and is entitled to paid leave. However, Jan took 6 weeks leave without pay during her 6th year of service. Therefore, Jan must work 10 years **plus** at least a further 6 weeks before she is eligible for long service leave. A pro-rata long service leave entitlement would be available after 7 years and 6 weeks.

Continuous service for casual employees

For a casual worker to accrue long service leave their employment must be continuous. A casual worker's contract of service includes being employed under either a single contract or a *series* of contracts.

Whether or not the individual contracts together constitute 'a series' will depend on:

- the regularity of the engagements
- the period of time between the engagements
- the reasons for the interludes between engagements.

Casual employees generally have continuity of service unless there is a prolonged period of time between contracts or there is a clear termination of the casual contract by either the employer or the worker.

Example

Emily works in a cafe and is a casual worker. She has been employed at the cafe for 8 years.

Every year the cafe closes from 24 December and reopens on 1 February. This absence from work each year does not break Emily's continuity of service with her employer.

Emily is therefore entitled to long service leave as there is an understanding that her employment will continue once the cafe reopens.

Service undertaken by a worker that is intermittent, sporadic or irregular can only satisfy the test of 'continuous service' if the breaks between service fall under the leave categories that preserve continuity (see below).

Leave that counts towards continuity of service AND long service leave accrual

Periods of leave that are included in long service leave calculations are:

- absences from work in accordance with the worker's contract of service
 - this may include days of paid leave such as Christmas stand-down period, employer funded maternity/paternity/parental leave (consult your contract of service or workplace agreement/award for details)
- absences from work due to illness or injury (paid or unpaid sick leave, including for casual workers)
- absences from work due to the worker being on annual leave or long service leave
- absences where a worker enters into service as a member of the Armed Forces of the Commonwealth (not as a member of the Permanent Forces)
 - the period of service will be regarded as service with the employer by whom the worker was last employed
- a break in the worker's service brought about by the employer in an attempt to avoid an obligation or liability imposed on the employer by the Act or by an award, agreement or scheme relating to long service leave
- a break in the worker's service brought about by the employer where the worker is re-employed pursuant to an order of a court or SAET.

- Example: A worker who has their employment terminated and, following a hearing, the SAET determines that the termination was not fair or just; the worker will be reinstated with full entitlements.

Leave or absences that do not break service but DOES NOT count towards long service leave accrual

Periods of leave that count as continuity of service but do not form part of your long service leave calculation are:

- [government-funded maternity/paternity/parental leave](#)
- [unpaid maternity/paternity/parental leave](#)
- [leave without pay](#) (if pre-arranged with, and agreed to by, the employer before leave is taken)
- any other kind of leave not mentioned above
- absences due to a worker being temporarily laid off work and is subsequently re-employed by the same employer within 2 months
- absences due to an industrial dispute (either directly or indirectly) where the worker returns to work, in accordance with the terms of settlement of the dispute or is subsequently re-employed by the same employer
- the [standing down](#) of the worker by the employer on account of slackness in trade where the worker is subsequently re-employed by the employer
- absences of up to 12 months between the completion of an apprenticeship and when the worker is re-employed by the same employer (the period of apprenticeship will count as service).

Example

Three months ago, Lisa completed her apprenticeship to become a chef. Lisa completed her final 2 years of her apprenticeship with Pink Salt restaurant. A chef has recently left the restaurant and Pink Salt have offered Lisa permanent employment. Lisa has accepted the position and started the role.

As Pink Salt has re-employed Lisa within 12 months of completing her apprenticeship, the 2 years of Lisa's apprenticeship with Pink Salt count as service. Therefore, Lisa will need to work a further 8 years before reaching her long service leave entitlement, assuming that she does not have any absences in the future that break or do not count as service.

Maternity/Paternity/Parental leave

Employer-funded leave

Maternity/paternity/parental leave that is paid by your employer as part of your contract of service counts towards your service.

For example, your contract of service may state that you get 15 days maternity leave in addition to the government-funded leave.

Government-funded leave

Generally, when a person takes Government-funded maternity/paternity/parental leave they take unpaid leave from their employer.

Government-funded maternity/paternity/parental leave does not count as service. It also does not break your service. Parental payments made to your employer to pass onto you, also do not count as service.

Example – Maternity leave

Sarah has just celebrated her 9th anniversary since commencing work with her employer. Three years ago, Sarah took 12 months maternity leave when her first child was born. Sarah has just had her second child and has taken 12 months maternity leave.

Before commencing maternity leave, Sarah had completed 8 years continuous service with her employer. Her continuous service excluded the 12 months leave Sarah took following the birth of her first child, as maternity leave is not counted as service.

When Sarah returns to work, she will have to work at least 2 years past her 10-year anniversary with her employer before being eligible for long service leave (10 years plus 2 x 12 months).

If at the conclusion of her maternity leave, Sarah chooses not to return to her job and lawfully resigns her position, she would be eligible for pro-rata long service leave (9 years minus 12 months taken during her first maternity leave = 8 years service).

Example – Paternity leave

Following the birth of his first child Sean has decided to take 12 weeks parental leave to help with the baby. When commencing paternity leave Sean has worked with his employer for 9 years and 6 months. Upon returning to work 12 weeks later, Sean's continuity of service has been unaffected. However, Sean will need to work a further 6 months after his return to work before being eligible for long service leave (3 months to reach his 10-year anniversary with his employer plus 12 weeks to make up time that did not count towards service).

Leave without pay

All workers are entitled to take leave, but some workers do not have a paid leave entitlement or a worker may require additional leave beyond their paid entitlement.

Your continuity of service is not affected by unpaid leave if the dates are confirmed and agreed upon with your employer prior to taking leave. Dates can be re-negotiated, but must be agreed to by your employer.

A casual worker may also take unpaid leave. You should notify your employer of your intended leave dates and record the dates in some way (e.g. via email, on a shared calendar). You need to notify your employer of the date you will be available for new shifts. If you return to the same employer, this period of leave will not break service but will not count as service.

Example

Alistair first started working with his employer in May and has now been with his employer for 9 years. Alistair is a casual shift worker and does not get paid leave. Alistair is a hard worker and his employer is happy to agree to him taking unpaid leave for the four weeks over January each year so Alistair can spend time with his family.

Before Alistair is entitled to take long service leave he must work at least an additional 40 weeks past his 10 year anniversary with his employer to 'make up' for the 4 weeks of leave taken every year for the past 10 years.

Stand down due to slackness in trade

Employers can tell employees not to work if there is a slackness in trade. A slackness in trade is usually temporary and employees can't usefully be employed elsewhere in the business.

This is different from an employee taking unpaid leave. It is also different from a shut down or a government directed stand down during Covid-19.

During a stand down due to slackness in trade, employees:

- don't work
- don't have to be paid
- stay employed.

Where an employer stands down a worker, and the worker is subsequently re employed by the employer, this will not affect the worker's continuity of service, although it does not count as service.

Different or extra rules may apply to standing down employees under an enterprise agreement or employment contract.

Workers employed on a casual basis are not technically 'stood down'. Their employer would simply not roster the worker for any hours whilst there was no useful work available.

Example

Joe worked for his employer for 8 years as a full-time worker before he was stood down due to a lack of work coming into the business (slackness of trade). Seven weeks later business picked up and Joe's employer asked him to resume work.

This time being stood down did not affect Joe's continuity of service in regards to his long service leave benefits. However, Joe will need to work 10 years and 7 weeks from the date he was first employed with the business before being entitled to long service leave.

Stand down of workers during the Covid-19 pandemic

Fair Work Ombudsman position

The Fair Work Ombudsman has made a determination on how a government directed stand down applies under the Fair Work Act.

Employers may have been able to legally stand their employees down during the COVID-19 pandemic when:

- the business has closed because of an enforceable government direction (which means the employee can't be usefully employed, even from another location)
- there's a stoppage of work due to lack of supply for which the employer can't be held responsible.

An employer doesn't have to pay an employee when either the federal or a state or territory government or officer makes an enforceable government direction that prevents an employee from working.

During a stand down workers remain employed. The period the worker is stood down does not break their service. This period also counts as service. All leave provisions (under the Fair Work Act) continue to accrue during a stand down period.

Casual workers are also covered by the above provisions (although due to the nature of their employment, they cannot be 'stood down').

See the [Fair Work Ombudsman website](#) for further details on stand down provisions during Covid-19.

Impact of government directed stand down on SA long service leave provisions

The Fair Work Ombudsman does not have jurisdiction over long service leave provisions relating to workers who fall under the *Long Service Leave Act 1987* (SA). Their jurisdiction only extends to workers who fall under the federal long service leave system (see [Who is entitled to long service leave](#)). Therefore, their determination in relation to Covid-19 may not apply under the SA Act.

The *Long Service Leave Act 1987* (SA) does not provide for a circumstance where a business is forced to close due to a government directive and workers are stood down. SafeWork SA are currently waiting on advice on how the government directed stand downs and JobKeeper should be applied within the context of our Act.

In the meantime, employers are welcome to apply the Fair Work Ombudsman decision to their workers' long service leave provisions. We have provided advice on how we see the application of the Fair Work Ombudsman decision on long service leave.

Alternatively, employers or workers may elect to seek clarification through an application to the [South Australian Employment Tribunal](#).

JobKeeper

When applying the Fair Work Ombudsman's position during a government directed stand down, SafeWork SA's current position (although this may change as we receive legislative advice) is:

Workers, regardless of their employment status, who were nominated by their employer and continued to be paid by their employer through the JobKeeper scheme retain their continuity of service and continue to accrue long service leave.

If you are a full-time worker or part-time worker your long service leave entitlements are not affected by JobKeeper or stand down. Part-time workers who are subject to the averaging process will use their contracted minimum hours in the calculation.

If you are a casual employee who is subject to the averaging process to calculate your long service leave provisions, any full weeks where you did not work any hours will count as zero hours for that week.

Example – Casual worker – 0 hours

Kelly works as a casual in retail. Kelly has been with her employer for 8 years. When the coronavirus pandemic hit and all retail was ordered to close Kelly was unable to pick up any shifts. When the JobKeeper scheme was introduced, Kelly's employer nominated her to receive the payment.

While retail remained closed, Kelly worked zero hours. Eight weeks later when retail stores reopened Kelly's employer was able to offer her new shifts.

Kelly's time on JobKeeper means that her service in respect to long service leave has not been broken and the time counts towards her service. The time Kelly did not receive shifts prior to the introduction of JobKeeper does not break her service and also counts toward service as this absence is in accordance with her contract of service (i.e. casuals are not guaranteed work).

When Kelly becomes eligible for long service leave, her averaging calculation will include 8 weeks of 0 hours. These 8 weeks of 0 hours will also be counted in any pro-rata calculation if Kelly leaves her employment before reaching her full long service leave entitlement.

Example – Full-time worker – Reduced hours

Robyn is Kelly's manager in the retail store. Robyn works full-time. When the store closed during the coronavirus pandemic Robyn was placed on reduced hours working from home 2 days per week and was nominated for JobKeeper.

Eight weeks later when retail stores reopened Robyn returned to full-time work.

Robyn's service in respect to long service leave has not been broken and counts as service towards long service leave. Robyn will be eligible for long service leave at her full-time rate once she completes 10 years of continuous service with her employer.

Until we can clarify the application of JobKeeper on long service leave, disputes between employers and workers on this matter should be directed to the [South Australian Employment Tribunal](#).

Workers who did not receive JobKeeper, should seek a judgement from the [South Australian Employment Tribunal](#).

Forced leave during a government directed stand down

Under the *Long Service Leave Act 1987 (SA)*, an employer cannot force a worker to take long service leave unless they first provide the worker with 60 days' notice. There was no amendment to the Long Service Leave Act due to Covid-19 that changed this provision.

Working outside of South Australia

Long service leave continues to accrue where a worker:

- works within the state of SA
- works outside SA but is predominantly employed in SA

- works outside of SA under a contract of employment governed by the law of South Australia.

Example

Josie is employed by a South Australian company, and part of this work requires Josie to undertake work in Broken Hill for approximately 6 months per year.

The work undertaken by Josie in Broken Hill counts as service for the purposes of calculating her long service leave entitlements in the same way as her work in SA.

Service quick reference guide

Effect of absences/leave on long service leave

Does not cause break in continuous service	Breaks continuous service	Counts in calculation of period of service
Absence due to illness or injury	No	Yes
Absence due to the taking of long service leave	No	Yes
Absence due to the taking of annual leave	No	Yes
Absence due to any other kind of leave	No	No
Stand down	No	No
Break in worker’s service due to employer action/decision where the worker returns to work or is re-employed by the employer within two months .	No	No
Stand down due to a government directive during the Covid-19 AND received JobKeeper.	No*	Yes*
Stand down without pay due to a government directive during the Coronavirus pandemic AND did not receive JobKeeper.	No*	Undetermined*

* Until otherwise determined by a judicial decision.

Miscellaneous breaks from work

	Scenario	Counts in calculation of period of service
Apprenticeship	Worker enters contract of service with employer within 12 months after completion of an apprenticeship with the employer.	The period of apprenticeship will be taken into account in calculating the worker's period of service.
Armed Forces	Worker enters into service as a member of the Armed Forces of the Commonwealth (not being service as a member of the Permanent Forces).	That period of service will be regarded as service with the employer by whom the worker was last employed.
Industrial disputes	Break in worker's service indirectly or directly from an industrial dispute where worker returns in accordance with terms of settlement or is re-employed by the employer after dispute settled	Continuity of service is not broken, but absence will not be counted in calculation of worker's period of service.
Avoidance of obligation or liability	Break in worker's service due to employer trying to avoid obligation or liability imposed on the employer under the Act or award, agreement or scheme relating to LSL	Continuity of service is not broken and the period of absence will be counted in calculating the worker's period of service
Covid-19	Break in the worker's service due to a government directive to close the workplace.	There is no provision within the SA Long Service Leave Act to cover stand downs due to a government directive. Continuity of service may apply and the period of absence may count when calculating the worker's period of service. The outcome will depend on a decision by the South Australian Employment Tribunal or a judicial decision. Employers may wish to adopt the position of the Fair Work Ombudsman in lieu of a SAET hearing.

Accrual prior to 1972

The rate of long service leave accrual differed prior to 1972. If a worker's employment pre-dates 1972 please complete our [long service leave form](#).

Calculating long service leave

A worker who has completed 10 years of service is entitled to 13 weeks long service leave. A further 1.3 weeks leave (9.1 calendar days) is granted for each completed year of service thereafter.

To work out your entitlement you will need to know:

- your employment start date
- your projected long service leave date or termination date
- any periods of leave without pay
- any periods of long service leave already taken
- any absences due to a work related injury.

Remember to deduct any service that does not count towards long service leave. For example, if you took 3 weeks unpaid leave (excluding sick leave) during the 10 years of service, you would need to work 10 years and 3 weeks before being eligible for your full long service leave entitlement.

A worker is eligible for a [pro-rata payment](#) if they leave their employment between 7 and 10 years.

Full-time worker calculation

If you have been employed continuously on a full-time basis for at least the previous 3 years, the calculation is simple.

13 weeks @ current 'ordinary weekly rate of pay'

'Ordinary weekly rate of pay' means your weekly wage at the time of taking long service leave (or receiving a monetary payment) excluding penalty rates and overtime.

Example

Bethany works as the finance officer at the local health clinic. Her office manager, Lucy, has just advised that she will be off work for at least the next 3 months due to illness. Bethany has accepted a short contract to act in Lucy's position as office manager whilst Lucy is absent. Bethany already had 1 week of long service leave booked for next month.

Whilst on long service leave next month, Bethany will be entitled to be paid at the higher (office manager) rate of pay as this will constitute her ordinary weekly rate of pay at the date her long service leave commences.

Part-time worker calculation

A part-time worker's long service leave entitlement is based on the average of all hours worked, including overtime hours, in the 3 years (156 weeks) immediately prior to taking long service leave. Weeks on approved unpaid leave or weeks on workers' compensation are excluded from the calculation and substituted for a working week.

Same hours

If you worked fixed part-time hours, with no additional hours or overtime, over the previous 3 years then your calculation will be:

fixed part-time hours (per week) @ current 'base hourly rate of pay'

Put simply, you will be paid the same amount per week as you would if you were at work.

Varied hours

If your part-time hours varied, even if for a few days or weeks (including any overtime) you will need to calculate your average hours.

total hours worked over previous 3 years ÷ 156 (number of weeks in 3 years)

@

current 'base hourly rate of pay'

If you have worked a mix of full-time and part-time hours during the last 3 years, see our [Mix of full-time and part-time hours calculation page](#).

Mix of full-time and part-time service calculation

A worker may work a mix of full-time and part-time hours during their 10 years of continuous service. However, the long service leave rates are determined by the 3 years immediately preceding the worker taking leave.

Same hours during the immediate 3 years prior to taking leave

In the 3 years immediately preceding taking leave, if you have worked only full-time hours or only fixed part-time hours you are entitled to take 13 weeks leave paid at the same rate per week and for the same number of hours per week as you would if you were at work. See [full-time](#) or [part-time](#) for calculations.

Example – Current full-time worker

When Alex started work with his company he worked fixed part-time hours as he was also studying part-time. Alex worked part-time for 5 years. Upon completing his studies, Alex moved to a full-time position within the company.

Despite Alex working half of his continuous service as a part-time worker, his long service leave will be calculated and paid as a full-time worker as he has worked full-time for the preceding 3 years of service.

Therefore, Alex is entitled to 13 weeks long service leave paid at his current 'ordinary weekly rate of pay'.

See [full-time calculation](#)

Example – Current part-time worker

When Kai started work with his employer he worked full-time. After working for 6 years Kai wanted to take up studies at university. His employer allowed Kai to move to part-time hours. Over the last 5 years Kai has worked fixed part-time hours while completing his studies. Kai has just completed his final exams and would like to take some leave after 5 years of juggling work and studies.

Despite Kai working 6 years full-time at the start of his career, his long service leave will be calculated and paid as a part-time worker as he has worked part-time for the 3 years immediately prior to taking long service leave.

Therefore, Kai is entitled to take leave based on his fixed part-time hours and paid at his current base hourly rate of pay.

See [part-time calculation](#)

Variable hours during the 3 years immediately prior to taking leave

If you worked a mix of full-time hours and fixed part-time hours, with no additional hours or overtime, over the previous 3 years then your weekly LSL calculation will be:

total hours worked over previous 3 years ÷ 156 (number of weeks in 3 years)

@

current 'base hourly rate of pay'

Example

It is October. Charley has worked as a mechanic for the one employer for 12 years. She worked part-time for 6 years after returning from maternity leave. When her child started school in February she returned to full-time hours. Charley's employer has asked her to take some of her long service leave. Charley and her employer have negotiated that she will take one month of her long service leave over February.

To work out Charley's long service leave entitlement her employer needs to calculate the average number of hours worked based on two years of part-time hours and one year full-time hours (which Charley would have worked come February). Charley's payment will be based on her current rate of pay.

Casual worker calculation

Casual workers are entitled to long service leave and under the same conditions as full-time and part-time employees; that is, they will receive 13 weeks after 10 years of [continuous service](#). Pro-rata leave is also available after 7 years of continuous service (if the worker lawfully leaves their employment between 7 and 10 years).

The long service leave entitlement will be calculated by averaging the number of hours worked over the **3 years** (156 weeks) immediately prior to taking leave if you:

- are employed on an hourly basis at an hourly rate of pay, or
- work variable hours per week and consequently your weekly rate of pay is varied (e.g you may work part-time with a set minimum number of hours but the maximum number of hours per week may vary), or
- work on a casual basis.

You will be paid at your current base hourly rate of pay as a casual worker, including the casual loading.

Working weeks

Any week the worker was not officially on leave (unpaid leave for casuals) is counted as a working week.

For casual workers, this includes any week where:

- a worker has undertaken paid employment with the employer
- a worker was available for paid employment but did not receive a shift
- a worker made themselves unavailable to work but did not request leave.

Paid leave

Any weeks of paid leave are counted in the 3 year (156 weeks) averaging period.

Unpaid leave

Any full week where a worker has taken unpaid leave (therefore zero hours worked during that week) or was receiving workers compensation, these weeks are removed from the calculation and replaced by a working week.

If a worker is granted leave in accordance with their employment contract (e.g. Christmas shutdown or holiday periods for employment associated with educational facilities), the weeks of absence count towards service and are included in the 3 year (156 weeks) averaging period. These weeks are recorded with zero hours if they were unpaid weeks.

Example

Sally is a casual employee. Yesterday Sally's workmates surprised her with a 10th anniversary morning tea in celebration of her long service working at Bunches Florist.

Sally approached her employer to discuss when a suitable time would be to take her long service leave entitlement.

When working back through Sally's time sheets for the past 156 weeks, Sally and her employer discover:

Sally took 4 weeks of unpaid leave when her mother was ill 18 months ago

there were four separate weeks where Sally did not work any shifts

Sally took 2 weeks leave without pay to go on a holiday.

Sally must make up the 6 weeks she took on unpaid leave before she is entitled to long service leave (leave without pay does not count toward [long service leave accrual](#)). She does not have to work the additional four weeks where she was not rostered on for shifts. These weeks will be calculated as 0 hours in the calculation.

Once Sally is eligible for long service leave in 6 weeks time, and in order to calculate Sally's entitlement correctly, Sally's employer needs to go back 162 weeks ($156 + 4 + 2$) to find the 156 working weeks required for the averaging calculation.

Calculating payment

To work out your entitlement you will need:

- your employment start date
- current rate of pay
- payslips or record of hours worked for last 3 years
- your expected long service leave date or termination date

- any periods of leave without pay that you have taken
- any periods of long service leave already taken.

A casual worker's long service leave entitlement is based on the average of all hours worked, including overtime hours, in the 3 years (156 [working weeks](#)) immediately prior to taking long service leave.

Casual workers are paid their long service leave entitlement at their current base hourly rate of pay which includes the casual loading (but does not include overtime rates, shift premiums and penalty rates).

For each worker, the employer must at intervals of 12 months, calculate the average number of hours per week worked by the worker over the preceding period of 12 months. So you should be able to get your average number of hours per year from your employer.

To calculate a casual worker's weekly hours and payment:

Total hours worked over 3 years (156 weeks) ÷ 156
This will give you the worker's average hours per week, then calculate:

Average hours per week @ current base hourly rate of pay
This will give you the weekly wage you need to pay the worker

The main point to remember is that you need to calculate all the hours worked in the 3 years (156 [working weeks](#)) immediately prior to taking long service leave.

Example

Steve works as a waiter and is employed on a casual basis. Steve's current hourly rate of pay (not including overtime, shift premiums and penalty rates) is \$25 per hour.

Steve has completed 10 years' service and would like to take some long service leave. To work out his entitlement whilst on leave, Steve will need to average the number of hours he has worked over the preceding 156 working weeks and multiply that number by his current hourly rate of pay.

Steve looks at his payslips and notes that he has worked the following hours over the last 3 years:

1st year – 1000 hours

2nd year – 1440 hours

3rd year – 980 hours

To average:

- add all three totals together and divide by 156, then
- total hours per week x \$25 = \$548.08 per week

Whilst on long service leave, Steve will be entitled to be paid \$548.08 per week. This number becomes Steve's ordinary weekly rate of pay whilst on long service leave.

Rounding calculations

When calculating the averages for a casual worker, you will need to take into consideration any decimal places. Do not round any number until the final calculation as this could impact the worker's actual entitlement.

Step-by-step guide for manual calculation of long service leave entitlement

[Download our Long Service Leave manual calculation form](#) to help work through this step-by-step guide.

Step 1:

Review worker's time records for the last 156 weeks (3 years × 52 weeks).

Note down:

- the number of hours worked each week including overtime
- any calendar weeks where the worker was on unpaid leave or was receiving workers' compensation.

Step 2:

After working back the initial 156 weeks, keep working back one (1) week for each week where the worker did not work due to unpaid leave or was being paid through a workers' compensation claim.

Step 3:

Add up all the hours worked in the 156 worked weeks.

Step 4:

Divide this total number of hours by 156.

This will give you the number of hours to be paid per week of long service leave. Do not round this number up or down.

Step 5:

Multiply the number of hours per week by the workers current base hourly rate (including the casual loading).

This will give you the amount the worker needs to be paid per week of long service leave.

Commission, target and per piece worker calculation

Commission and sales driven income workers are entitled to long service leave; that is, 13 weeks after 10 years of [continuous service](#). Pro-rata leave is also available after 7 years of continuous service (if the worker leaves their employment between 7 and 10 years).

Workers on commission, payment by result or other sales driven income

If a worker is paid on commission or part fixed rate (e.g. retainer) / part commission or some other system of payment by result, the weekly rate of pay is calculated by averaging the weekly earnings over the 12 months (52 weeks) immediately preceding the day of taking leave.

To work out your entitlement you will need the following details:

- your employment start date
- your expected long service leave date or termination date
- any periods of leave without pay that you have taken
- any periods of long service leave already taken.

For each worker, the employer must at intervals of 12 months, calculate the average number of hours per week worked by the worker over the preceding period of 12 months. So you should be able to get this information from your employer.

Calculating payment

A long service leave payment for sales driven income workers is based upon the average of the last 12 months (52 weeks) of income (include base rate, commission, sales, retainers etc). To calculate the weekly entitlement, add together all income from the immediate 12 month period prior to the leave date, and divided by 52.

$$\text{total income over 52 weeks} \div 52$$

Any full week where a worker has taken unpaid leave or was absent due to injury (and receiving workers' compensation), these weeks are ignored and replaced by a worked week.

Any period when the worker was on paid leave is counted in the averaging period.

Example

Jack works on commission as an insurance agent. Jack is due to take his accrued long service leave entitlement starting next week. Jack's boss, Patricia, adds up all the monies she has paid to Jack over the past 12 months before tax.

Jack also looks back through all his payslips for the previous 12 months. Jack has had a profitable year and finds that he has been paid a gross income before tax of \$110,000.

Jack and Patricia's final calculations agree and Patricia provides Jack with a summary of his entitlement for his records. Whilst on long service leave Jack can expect to be paid a gross (before tax) weekly income of \$2,115.38 (i.e. $\$110,000 \div 52$).

Target based income & bonuses

A worker who receives a bonus for achieving a target, is **not** a worker whose payment is by result. For example, a worker who gets paid an hourly rate but earns a bonus for making over 100 shoes in a day, is not receiving a payment by result. The worker still gets their normal pay, and has the opportunity to earn a bonus.

Other types of bonus, such as a Christmas bonus of \$500, are also not included in any long service leave calculations.

Workers who receive a hourly rate must have the [full-time](#), [part-time](#) or [casual](#) employment condition calculations applied.

Requesting and taking long service leave

Long service leave should be taken in one continuous period. An employer should also grant a worker their long service leave as soon as practicable after the worker becomes entitled to the leave.

Any changes to this format of taking leave must be discussed between the worker and their employer and both must agree on the outcome. During this discussion, an employer and a worker may agree on:

- the taking of long service leave in separate periods
- the deferral of long service leave
- the granting and taking of long service leave on less than 60 days' notice
- the taking of long service leave in anticipation of the entitlement to the leave accruing to the worker.

In the absence of an agreement, an employer should grant long service leave:

- as soon as practicable after the worker becomes entitled to the leave, taking into consideration the needs of the business
- in one continuous period
- with at least 60 days' notice to the worker of the date from which leave is to be taken.

Requesting leave

A worker should request to take long service leave as soon as practicable after they have become eligible. The worker does not have to give a set number of days' notice; however, the worker should discuss with their employer a suitable time to take leave.

An employer cannot deny the worker's request. However, an employer is entitled to take into consideration the operational requirements of the business when considering a worker's leave request and can negotiate alternative dates. It is not reasonable for an employer to continually deny a worker their long service leave entitlement due to 'operational requirements of the business'. Once a worker requests to take their long service leave entitlement, the employer should negotiate a date for the worker to commence their leave.

Example

It is May. Matt works as a tax accountant. Matt has just accrued his full long service leave entitlement and has asked his boss, Rhonda, if he can take his full entitlement starting on 10 July. As this is so soon after the end of financial year and the busiest work period for the company, Rhonda requests that Matt delay his leave until October. Matt and Rhonda come to an agreement where Matt will commence his long service leave on 15 October.

Directing a worker to take leave

An employer can direct a worker to take long service leave. However, the employer must give a minimum of 60 days' notice to the worker prior to the period of long service leave that the worker is being directed to undertake.

Example

It is March. Bobby runs a glass company, and has employed the same office manager, Lily, for 12 years. Lily has accrued a significant amount of long service leave, especially as she has elected not to use any of her entitlement to date. Bobby would like Lily to take a well-earned break.

Bobby schedules a meeting with Lily and informs her that he is directing Lily to take 6 weeks' long service leave starting on 15 July (after the end of financial year activities have been completed). Bobby has provided Lily more than the required 60 days' notice, and Lily will need to take the long service leave as directed by her boss.

Taking long service leave

A worker should take their long service leave in one continuous period. If a worker commenced leave on Monday, 1 August they would be expected to return to work 13 weeks later on Monday, 31 October (including weekends and public holidays).

However, an employer and worker may agree that the worker can take the long service leave in separate periods.

Example

Joseph has 5 weeks of long service leave accrued. He would like to take the upcoming October school holidays off work to go away with his family. He would also like to save some of his long service leave to use during the January school holidays. Joseph talks with his boss, Harry, about the possibility of taking long service leave in two separate blocks. Harry is happy to support Joseph's request as the business is quite busy over the next few months, and Harry would prefer Joseph not take the full 5 weeks in one block.

By agreement with Harry, Joseph books in 2 weeks leave for the upcoming school holidays, and a further 3 weeks leave in January.

Weekends and public holidays

When a worker takes long service leave, every day occurring after the commencement of leave is counted as a day of long service leave, this includes public holidays and days on which the worker would not normally work, such as weekends.

Example

Oliver works 5 days per week, Wednesday through Sunday. Oliver is taking 3 weeks long service leave over the Easter period (which will occur between 15 and 18 April in that year). Oliver's long service leave will commence on Wednesday, 6 April and will return to work on Wednesday, 27 April.

Good Friday and Easter Monday will count as long service leave days despite those days being public holidays. Each Monday and Tuesday (days Oliver would not usually work) during that period of leave will also count as a day of long service leave.

Taking leave in separate periods

A worker may take their long service leave in separate periods (periods less than the full 13 week entitlement) if there is mutual agreement between the worker and the employer.

There is no set minimum number of days. A worker may take as little as 1 day long service leave if it is agreed to by their employer.

Unfortunately, the Long Service Leave Act does not provide commentary on how leave of less than the full 13 weeks is to be calculated or at what day it commences and ends. Assumptions can be made that a worker receives 13 weeks of 7 days of leave. Therefore, if a worker was to apply for 5 days of long service leave, they are actually applying for 7 calendar days of leave.

An argument could also be made that, similar to annual leave, when a worker applies for long service leave, they submit a request that covers the first work day of their leave until the last work day of their leave. All days in between are counted as long service leave days.

The Act is not clear on the application of shorter periods of leave.

Example

Molly normally works five days per week from Monday through Friday and has weekends off. Molly decides to take 2 weeks of long service leave, commencing on the Monday immediately following her last Friday worked, and finishing on the Friday of the second week.

Molly think that this will equate to 12 days of her accrued long service leave entitlement as only the weekend falling between the two weeks also count as long service leave days.

When Molly next checks her accrued leave entitlements she see that her employer has deducted 14 days from her long service leave entitlement.

To avoid confusion within the workplace and so long service leave is applied consistently across the workplace, any employer who allows for short periods of long service leave, should consult with workers and establish a long service leave policy. An employer cannot implement a policy that would see their workers receive less than their statutory entitlement. For example, an employer could not deduct 2 days from the worker's entitlement for a single day of long service leave taken (1.4 days would be the maximum deduction permissible).

Some awards and agreements do provide commentary on how short periods of long service leave apply in relation to that workplace. For example:

The long service leave provisions for the South Australian Public Sector states that for periods of 7 or more calendar days of long service leave, the leave must commence on the first normal working day of absence and continue up to, but not including, the day on which the employee resumes duty, or commences other leave.

For periods of less than 7 calendar days, each work day of long service leave will equate to 1.4 calendar days.

If there is a disagreement between the employer and the worker in relation to the application of short periods of leave, an application should be made to the [South Australian Employment Tribunal](#). As a regulator, SafeWork SA is unable to make a determination on aspects of long service leave outside of the provisions of the Act.

Taking leave in anticipation of an entitlement

A worker and their employer may enter into an agreement where the worker will take long service leave in anticipation of an entitlement. This agreement should be in writing, signed by both parties and a copy retained with the worker's employment record.

However, an employer has a right to recover any monies paid to a worker in respect of their long service leave entitlement if:

- the worker has taken long service leave in anticipation of an entitlement, and
- subsequently leaves their employment (for any reason) before the full entitlement has accrued.

The employer may deduct these monies from any monies entitled to the worker on the termination of their employment (such as for unused annual leave).

Example

Catherine has worked for Mark for 8 years. Catherine does not have any annual leave left but wants to take leave to look after her child, Robert, who is recovering from an operation. As Catherine would be eligible for pro-rata leave if she left her current employment, Catherine and Mark have made an agreement that will allow Catherine to take 4 weeks of her long service leave entitlement.

At the end of her leave, Catherine decides that she will leave her employment to spend more time with Robert. As Catherine has completed 8 years in her current employment she would be eligible for a pro-rata long service leave payment of 10.4 weeks (8 years x 1.3 weeks). However, Mark is entitled to deduct the 4 weeks leave that Catherine has already taken from her final payment. Catherine will therefore receive a payment that covers the remaining 6.4 weeks of her pro-rata long service leave entitlement.

Record of leave

Before long service leave is taken, the employer must provide the worker with a written statement setting out:

- the date of the notice
- the worker's current entitlement of long service leave (expressed in weeks or fraction of a week in hours)
- the start and end date of the long service leave period being taken
- the number of days of leave to be taken
- the number of long service leave days (if any) that will remain due to the worker at the conclusion of the leave
- the name of employer.

The employer must sign and date the notice.

A copy of this notice must be kept by the employer with the [worker's service record](#).

See [Recordkeeping](#) for further details.

Working whilst on leave

You must not engage in any other employment, in place of the employment for which you are on leave.

Example

Sienna has two part-time jobs. Sienna is a finance officer who works 1 day per week at CC's Cafe and 3 days per week at All-Star Industries. Sienna does not work on Friday's. Sienna has accrued long service leave with All-Star Industries and is taking her full entitlement as leave.

During her 13 weeks' leave from All-Star Industries, Sienna is not allowed to work with any other employer on the 3 days she would usually work at All-Star Industries. She may continue to work 1 day per week at CC's Cafe.

Using the same scenario as above:

Example

It is nearing the end of the financial year. Sienna's employer at CC's Cafe has asked if she might be able to work the next two Fridays to finalise the bookkeeping. Sienna has worked additional hours at the end of the financial year since she started work at CC's Cafe 4 years ago. As long as Sienna does not work on the 3 days she would usually work at All-Star Industries, she may pick up additional hours with CC's Cafe.

An employer must not engage a worker who they know to be on long service leave.

Example

Tony is employed as a hairdresser and is currently on long service leave for 2 months. Tony's best friend, Joey, owns a barber shop and is aware that Tony is currently on long service leave. Joey has asked Tony to come and work for him next week, whilst another worker is away on holidays. Tony agrees.

Both Tony and Joey are in breach of the Long Service Leave Act and could face penalties of up to \$1000 each.

Pro-rata entitlement

A pro-rata long service leave entitlement is when a worker is paid a lump sum in lieu of leave. To be eligible for a pro-rata entitlement leave you must:

- have completed 7 years continuous service with your employer (but less than 10 years)
- terminated your employment.

Despite the above, there are provisions to take pro-rata as leave if there is agreement with your employer.

Long service leave entitlements are calculated as the monetary equivalent of 1.3 weeks leave in respect of each completed year of service at the worker's ordinary weekly rate of pay immediately before the worker's service was terminated.

The employer must pay the worker the amount to which they are entitled immediately upon termination.

A worker is not entitled to a pro-rata payment if:

- their employment is terminated on the grounds of serious and wilful misconduct
- the contract of service is unlawfully terminated by the worker (such as failure to give the required amount of notice).

If a worker terminates their employment, has their employment terminated by their employer or is made genuinely redundant prior to reaching 7 years of service, then they will not have completed the required years of service to become entitled to long service leave. Therefore, the worker will not be entitled to a long service leave payment upon termination.

Pro-rata leave following resignation, termination or redundancy

Resignation

If you resign from your employment after 7 years of continuous service, but less than 10 years, you are entitled to the monetary equivalent of 1.3 weeks leave for each completed year of service.

You should check that you have completed at least 7 years of [continuous service](#) before submitting your resignation.

Example

Lien has worked as a casual at Daisy's Nursery for a little over 9 years. Lien is retiring to look after her grandchild so her daughter can return to work. As she has just passed her 9 year anniversary since starting at the nursery, Lien hands in her resignation to Daisy giving the required notice period.

When Daisy is working out Lien's termination payment, she notices that due to Lien taking 10 week's unpaid leave during her 9-year service, Lien will fall two weeks short of 9 years of continuous service.

Therefore, Lien will be entitled to 10.4 weeks long service leave instead of 11.7 weeks that she may be expecting.

Termination & Redundancy

If your employment is terminated or you accept a redundancy after 7 years of continuous service, but less than 10 years, you are entitled to the monetary equivalent of 1.3 weeks leave for each completed year of service.

Termination for misconduct

You are not entitled to a pro-rata payment if your employment is terminated on the grounds of serious and wilful misconduct, or if you unlawfully terminated your employment, such as failure to give the required amount of notice upon termination.

'Serious misconduct' is defined as:

- wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment, and
- conduct that causes serious and imminent risk to:
 - the health or safety of a person, or
 - the reputation, viability or profitability of the employer's business.

Examples of serious misconduct include the employee:

- engages in theft, fraud or assault (in the course of their employment)
- being intoxicated at work
- refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

An employee who have had their long service leave entitlements denied due to misconduct but believe that they have been unfairly dismissed should contact the [Fair Work Ombudsman](#) or the [Fair Work Commission](#).

Pro-rata leave whilst still in employment

If you wish to access your pro-rata long service leave and you are still employed, you must discuss your options with your employer. Your employer is under no obligations to grant you pro-rata leave or to pay out your entitlement whilst you are still employed and have not reached 10 years' service.

An employer cannot force a worker to take pro-rata leave or to accept a pro-rata payment instead of leave.

If there is mutual agreement between the worker and employer to take or cash out long service leave, this does not affect a worker's period of continuous service.

Example

Jack has worked with his employer, Sylvia, for 8 years. Jack's daughter is getting married in the UK and he would like to take 4 week's holidays to attend the wedding and do some sightseeing. Jack has also asked Sylvia if his remaining entitlement could be paid out so that he has some money to put towards the trip. Sylvia agrees to let Jack use some of his pro-rata long service leave entitlement and to cash out the rest as she would need to pay out his entitlement if Jack chose to resign from his job.

Jack takes his 4 weeks leave and receives a cash lump sum equal to the remaining 6.4 weeks (Jack's pro-rata entitlement after 8 years is 10.4 weeks – 8 x 1.3 weeks).

Six months later, Jack reaches his anniversary date thereby completing another year of service with Sylvia's business. Jack now has 1.3 weeks long service leave accrued.

Despite taking his pro-rata entitlement, Jack's period of service continues as does his long service leave entitlement.

Payment of entitlement

A worker is entitled to be paid at their ordinary weekly rate of pay whilst on long service leave. A worker's 'ordinary weekly rate of pay' is the worker's normal weekly rate of pay (exclusive of overtime, shift premiums and penalty rates) at the date on which long service leave is commenced or an entitlement to payment in lieu of long service leave arises.

Example

Bethany works as the finance officer at the local health clinic. Her office manager, Lucy, has just advised that she will be off work for at least the next 3 months due to illness. Bethany has accepted a short contract to act up in the office manager role whilst Lucy is absent. Bethany already had 1 week long service leave booked for next month.

Whilst on long service leave, Bethany will be entitled to be paid at the higher (office manager) rate of pay as this will constitute her ordinary weekly rate of pay at the date her long service leave commences.

Payment when taking leave

Payment to a worker for a period of long service leave must be made:

- in advance for the whole period of leave, or
- on the same day as wages would normally be paid if the worker was at work, or
- in some other way agreed to by the employer and the worker, or
- immediately, if it's a payment in lieu at the time of employment termination.

Increase to rate of pay during leave

If a worker's rate of pay increases during the period that they are being paid for long service leave or in lieu of long service leave, the employee is entitled to be paid the higher rate for the applicable weeks.

Example

Mandy has reached 9 years' continuous service. Her daughter is getting married in London and Mandy has asked her employer, Katerina, if she may access some of her long service leave early to attend the wedding and to take a holiday. As Mandy would have reached her full entitlement in 4 months time, Katerina agrees. As requested by Mandy, she will take 8 weeks leave and receive payment on her usual pay day. Katerina puts the agreement in writing and both parties sign the document.

Half way through Mandy's long service leave, all workers receive a 2% pay rise. Mandy long service leave payments for the remaining 4 weeks of leave will be paid at the new rate of pay.

This rule applies even if the worker takes a payout in lieu of leave and continues working.

Example

Conor has 16 weeks long service leave accrued. The company Conor works for has asked all workers with more than 12 weeks long service leave to consider either taking the leave or cashing out some of their leave. Conor ask his boss, Dan, if he could cash out 8 weeks of his entitlement. Dan agrees and the agreement is signed by both parties. 4 weeks after receive the lump sum a new workplace agreement comes in affect which gives each worker a 1.5% increase in salary. Conor is entitled not only to an increase in his wages, but also to be back paid the 1.5% increase on 4 weeks of his long service leave lump sum payment.

An increase in the rate of pay for leave is not applicable to lump sum payments made to workers who take a redundancy, have their employment terminated or resign. They are also not applicable to payments made to workers who have died. In all these instances, the worker's employment is considered to have been terminated.

Accommodation payment

Where a worker is normally provided accommodation by their employer, but not whilst on leave, the worker's ordinary weekly rate of pay or their calculated average weekly rate of pay (for casual and commission workers) will need to be increased by an amount equal to the monetary value of the cost of that accommodation whilst on long service leave.

This value should be calculated by reference to an award or agreement, but where none exists, the monetary value should be calculated according to what is fair and reasonable.

Payment in lieu of leave

On completion of ten years' continuous service, a worker and their employer can agree to a cash payment in lieu of long service leave for either the whole, or part of, an accrued long service leave entitlement. This is often referred to as *cashing out* long service leave.

Prior to entering into any agreement to cash out long service leave, it is recommended that the worker seek information from the Australian Taxation Office regarding the amount of tax payable in relation to the cash payment.

When agreeing to 'cashing out' a long service entitlement, any such agreement must be recorded in writing and signed by both parties. A signed copy of this agreement must be provided to the worker and a copy placed in the worker's service record.

The rate of payment will be at the worker's current ordinary weekly rate immediately before the payment is made. See the [Australian Taxation Office website](#) for details of tax implications on long service leave payments in lieu of leave.

When the payment is made to the worker, the employer must give to the worker a written statement setting out:

- worker's name
- date of the written statement
- current entitlement of long service leave (expressed in weeks or fraction of a week in hours)
- payment amount
- the period of leave in lieu of which the payment is made
- the number of long service leave days (if any) that will remain due to the worker after the payment is made
- name of employer
- employer must sign and date notice.

A copy of this notice must be kept by the employer with the [worker's service record](#).

Example

Theo currently has a significant amount of long service leave accrued and would like to take 4 weeks leave using his long service leave entitlement. However, Theo and his boss have back-to-back jobs booked for at least the next 6 months. Theo approaches his boss, Sam, to discuss his concerns.

Sam agrees it is a difficult situation, and suggests that if Theo is agreeable, Sam could instead pay Theo a cash amount equivalent to 4 weeks of Theo's long service leave entitlement. Theo agrees to accept this payment in lieu of taking the time off work.

Sam and Theo record their agreement in writing, and both sign and date the Agreement, noting that this 'cash' payout will reduce Theo's accrued long service leave entitlement by 4 weeks.

Sam provides Theo a copy of:

- the written agreement for Theo's records
- the written statement outlining details of payment.

During their discussion Sam and Theo also agree to a date at which Theo can take his long service leave. This is recorded so Sam can plan jobs around Theo's leave.

Payment upon resignation / termination / redundancy

If a worker terminates their employment, has their employment terminated by their employer or is made genuinely redundant prior to reaching 7 years of continuous service, then they will not have completed the required years of service to become entitled to pro-rata long service

leave. Therefore, the worker will not be entitled to any long service leave payment upon termination.

If the termination or redundancy occurs after the worker completes 7 years of service, then the worker may be entitled to a [pro-rata](#) payment equal to the monetary equivalent of 1.3 weeks leave in respect of each completed year of service.

A worker is not entitled to a pro-rata payment if:

- their employment is terminated on the grounds of serious and wilful misconduct
- the contract of service is unlawfully terminated by the worker (such as failure to give the required amount of notice).

Long service leave entitlements are calculated according to the worker's ordinary weekly rate of pay immediately before the worker's service was terminated.

The employer must pay the worker the amount to which they are entitled immediately upon termination.

See the [Australian Taxation Office website](#) for details of tax implications on long service leave on termination.

Contract of service

All [casuals work under a contract of service](#) (even if a formal contract has not been signed). For workers employed under a series of contracts of service, termination occurs when the worker resigns or the employer determines that no further contracts will be offered to the worker. It is only at this point that the obligation to pay the worker's long service leave entitlement 'immediately upon termination' arises.

Example — Series of contracts

William has been a casual employee with Homeware Solutions for nearly 12 years. William took 8 weeks leave after his long service leave had accrued after 10 completed years of continuous service. William receives a new contract of service every 3 years so his contract is due for renewal this year.

William is keen to continue working with Homeware Solutions and signs a new contract when it is offered. As William is continuing his employment with Homeware Solutions, he is not paid out his remaining long service leave entitlement. Instead, it will keep accruing at 1.3 weeks per year of service.

Example — Ceasing a casual contract

Con has also been a casual employee with Homeware Solutions for nearly 9 years. Homeware Solutions is closing the store where Con works and he will not be redeployed to another store. Homeware Solutions notify Con that his employment will be terminated when the store closes. Con has completed 8 years of continuous service with Homeware Solutions.

When the Homeware Solutions store closes, they pay Con pro-rata long service leave equaling 10.4 weeks at the hourly rate that he was last paid plus the casual loading.

Termination for misconduct

Workers who have reached 10 years continuous service have a long service leave entitlement. This entitlement cannot be removed even if a worker is terminated for misconduct. A worker who is terminated for misconduct and who has reached 10 years continuous service will need to be paid out their full entitlement.

Payment upon death of worker

A worker's long service leave entitlement remains valid even after the worker has died. If the worker's death occurred prior to reaching 7 years of service, then they will not have completed the required years of service to become entitled to long service leave.

If the worker died after the worker had completed 7 years of service, then the worker's estate will be entitled to a payment equal to the monetary equivalent of 1.3 weeks leave in respect of each completed year of service.

Long service leave entitlements are calculated according to the worker's ordinary weekly rate of pay immediately before the worker died.

The employer must provide a payment to the worker's personal representative (often next-of-kin or executor) for the monetary sum equivalent to the long service leave entitlement accrued by the worker prior to their death.

If part of a long service leave entitlement has already been taken by the worker, or a payment in lieu of long service leave has been made to the worker, the employer will pay out the remaining entitlement to the deceased worker's personal representative.

See the [Australian Taxation Office website](#) for details of tax implications on long service leave payments following the death of a worker.

See the [Australian Taxation Office website](#) for information on managing deceased estates.

Transfer of business

Service for the purposes of long service leave means continuous service with the **same employer or with related employers** under a contract of service or a series of contracts of service.

Where a business transfers to another employer (owner) and a worker continues to be employed by the new employer, the worker's service will not be broken and is deemed continuous.

A business is considered to be related if:

- the business (or part of the business) is sold to, or acquired by, another business, or
- they are related corporations, or
- a series of relationships can be traced between them under either of the above points.

It is the new employer's responsibility to negotiate with the outgoing employer regarding any long service leave liability of a worker.

A business cannot terminate or ask workers to resign their position with one business and re-employ them in the new business in order to avoid the business' long service leave obligations.

Example

Arno has been working for Slicks Stationary Company (SSC) Pty Ltd for 9 years. SSC is a subsidiary of the multinational company Trans-Global. Grand Office Supplies Ltd is also a subsidiary of Trans-Global, which has decided to bring all SSC outlets in Australia under the Grand Office Supplies business and get rid of SSC in Australia. Arno's employment continues unchanged when Grand Office Supplies takes over SSC.

Arno had been looking forward to taking long service leave next year when he reached 10 years' service with SSC, and he is concerned that his period of service will have to start again now that the business has been taken over by Grand Office Supplies.

As Arno's employment has continued with Grand Office Supplies, he will become entitled to take long service leave next year as his previous service with SSC counts towards his service with Grand Office Supplies as the corporations are related for the purposes of the *Corporations Act 2001 (Cth)*.

Example

Elsa works for Romeo's Party Favourites (RPF) as an entertainer at special events and children's parties. Elsa has worked for RPF for 8 years when Romeo announces that he has sold the business to Juliet's Party Tricks. Romeo confirms that the business will be re-branded as Juliet's Party Tricks, however Elsa will not be losing her job and will continue to be employed by Juliet on the same basis as she was employed by Romeo.

Elsa continues to work for Juliet's Party Tricks for 2 years.

Romeo and Juliet are related employers for the purpose of Elsa's long service leave entitlements because Juliet acquired Romeo's business. Elsa's previous 8 years with RPF will count towards her service with Juliet's Party Tricks, and therefore Elsa is entitled to take long service leave as she has reached 10 years' continuous service.

Recordkeeping

Employers must keep employee records relating to long service leave throughout a worker's service.

The employer must keep these records for at least 3 years following the termination of the workers employment (whether by resignation, retirement or other form of termination). There are penalties for failure by the employer to maintain these records.

A worker is also entitled to inspect their records during normal office hours.

Record of commencement of service

Upon commencement of a worker's employment, an employer must keep a record of:

- the worker's full name
- date of commencement of service
- the worker's occupation and/or duties
- the projected date of the worker's entitlement to long service leave
- whether the worker's right to leave is determined by reference to the Act
 - if not, a record of the award, agreement or scheme by which leave is determined
 - date of relevant South Australian Employment Tribunal determination (as applicable).

Record of worker absences

For each period a worker is absent from work, an employer must keep a record of:

- the start and end date of the absence
- the number of days absent
- the reason for absence
- whether the worker's entitlement date is affected by the absence
 - if the entitlement date is affected, the new entitlement date.

Refer to our [Accruing leave page](#) for a list of absences that do and do not affect a worker's entitlement date.

Record of long service leave entitlement

Every 12 months the employer must record a worker's:

- rate of pay
- normal/usual hours (excluding overtime) worked each week in preceding 12 months
 - if there are no normal/usual weekly hours (i.e. for casual or part-time workers), all hours worked each week must be noted for the purposes of calculating an average number of hours worked per week
- entitlement to long service leave
- number of long service leave days taken (or payment in lieu) made by agreement (including record of leave setting out start and end date of leave).

Record of termination

When the service of a worker is terminated (whether initiated by the employee – through resignation, retirement etc – or the employer), the employer must keep a record of:

- the date of termination
- the period of notice
- the reason for / manner of termination
- any long service leave entitlement (expressed in weeks or to express a fraction of a week, in hours)
- any payment of entitlement made (the value of the payment must be recorded in dollar amounts)
- the date the payment of entitlement was made to the worker.

Template

If you do not have a system that can promptly and accurately, keep wages, leave or other similar records, either in hard copy or electronic form, you can use our [records template](#) for this purpose. We also have a [completed sample](#) that shows you how to the employee record.

Resolving disputes

As a worker, you should initially attempt to resolve any long service leave dispute directly with your employer.

If this fails and you believe that your employer has not paid you your full entitlement or is not permitting you to take your entitlement, you can [lodge a claim with us](#). One of our inspectors will investigate your claim and help resolve the matter. In some instances, we may need to refer the matter to the [South Australian Employment Tribunal](#).

Role of SafeWork SA in resolving disputes

SafeWork SA's jurisdiction only extends to workers and employers covered under the *Long Service Leave Act 1987* (SA). If your long service leave provisions are covered under any other Act, Award or Agreement you need to contact the Fair Work Ombudsman.

SafeWork SA can only answer questions or help resolve a claim in relation to long service leave entitlements. If there are any other matters within a dispute between employer and workers, such as leave entitlements or the validity of a resignation, you must first resolve this through the Fair Work Ombudsman or the Fair Work Commission. The outcome of these other matters may impact your long service leave entitlements.

If you are a worker or employer covered under the *Long Service Leave Act 1987* (SA) and you seek our assistance to resolve a claim, please [complete the long service leave claim form](#). A SafeWork SA inspector will be assigned to the case. Our inspectors have regulatory powers that will enable them to assist in resolving a claim.

If your claim is found to be invalid or there is not enough evidence for us to pursue the matter further, you will be notified accordingly. This does not prevent you from taking action in the [South Australian Employment Tribunal](#).

Powers of inspection

A SafeWork SA inspector has the power to require an employer to produce any records relating to the long service leave entitlements for a worker. The inspector may attend the workplace of the worker (or former worker) to retrieve copies of these documents or ask questions of the employer.

The employer must not hinder or obstruct the inspector when they are exercising their powers of inspection nor are they to refuse or fail, without lawful excuse, to comply with the inspector's request for documents or to answer questions asked by the Inspector in relation to a worker's long service leave entitlements.

Directions to employer

If following their investigation, a SafeWork SA inspector may issue a written notice to the employer if the inspector determines that an employer has improperly:

- refused to grant a worker their long service leave entitlement, or
- refused to make a payment in lieu of long service leave for which the worker is entitled.

The written notice will direct the employer to:

- grant the long service leave entitlement to the worker, or
- make a payment to the worker in lieu of long service leave within a specified period (not being less than 14 days).

An employer who receives such a notice is entitled to [apply to the South Australian Employment Tribunal](#) for a review of the notice within 14 days of receipt of the notice.

Non-compliance

The employer will be guilty of an offence if they fail to comply with:

- the notice (and does not apply to the South Australian Employment Tribunal), or
- a South Australian Employment Tribunal order.

The maximum penalty for non-compliance with an inspector's written notice is \$5,000.

Questions about your long service leave?

If you have read all of the long service leave information on our website and you still have questions or concerns about your entitlements, please complete our [long service leave form](#) and we will get back to you.