

Long service leave entitlements under the Long Service Leave Act 1987

The national workplace relations system and the *Fair Work Act 2009* (Cth) cover South Australia's private sector workers. Most of these workers also get their long service leave entitlements from the South Australian *Long Service Leave Act 1987*. Long service leave entitlements for local government workers are also covered by this Act.

The South Australian *Long Service Leave Act 1987* does not apply for the following workers:

- Construction industry workers employed predominantly on-site, who are covered by the *Construction Industry Long Service Leave Act 1987*.
- Most workers employed in the South Australian public service, as defined by the *Public Sector Act 2009*, whose long service leave entitlements are provided for by a Determination of the Commissioner for Public Sector Employment.
- Workers who had their long service leave entitlements derived from a federal award or agreement that was in existence prior to 1 January 2010.
- Commonwealth government workers.

Please refer to **Useful contacts** for more information.

Long service leave entitlement

A worker who has completed 10 years of service is entitled to 13 weeks long service leave.

A further 1.3 weeks leave is granted for each completed year of service thereafter.

An employer and worker can negotiate the manner in which long service leave is taken. This could include the deferral of leave or taking leave in separate periods.

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

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

When a worker who is entitled to long service leave has their employment terminated or leaves

their employment, they are entitled to a payment in lieu of taking that leave.

The rate of long service leave accrual differed prior to 1972.

For assistance in calculating such an entitlement, please contact the SafeWork SA Help Centre on 1300 365 255.

Pro rata long service leave

A worker who leaves their employment or has their employment terminated after seven years of service (but less than 10 years) is entitled to the monetary equivalent of 1.3 weeks leave for each completed year of service. This is often referred to as pro rata long service leave.

A worker is not entitled to a pro rata payment if their employment is terminated on the grounds of serious and wilful misconduct, or if the employment is unlawfully terminated by the worker e.g. failure to give the required amount of notice upon termination.

Part-time and casual worker entitlements

Part-time and casual workers accrue long service leave just like full-time workers. However, the payment for a period of leave is based on the weekly hours worked.

Long service leave payments

Generally, long service leave is paid at the ordinary weekly wage a worker is entitled to immediately before going on leave, or at the time of employment termination. It will include above-award payments for work in ordinary time, but not overtime, shift premiums or penalty rates.

If a worker's weekly hours changed during all or some of the three years immediately preceding a payment for long service leave, then their ordinary weekly wage is calculated by averaging the number of hours worked per week in that period of three years, and multiplying that result by the worker's hourly rate at the time of taking leave or employment termination.

If a worker is paid by commission, piece rates or another system of payment-by-result, then their ordinary weekly wage is calculated by averaging their weekly earnings over the 12 months

immediately before taking leave or the time of employment termination.

Payment for long service leave must be made:

- in advance for the whole period of leave, or
- like wages would have been 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 termination of employment.

'Cashing out' leave entitlements

An employer and a worker can agree to 'cash out' either the whole or part of an accrued long service leave entitlement.

Any agreement to cash out long service leave must be recorded in writing and signed by the employer and the worker.

Continuous service

An entitlement to long service leave only arises where service is continuous.

Any period of annual leave, long service leave, sick leave (whether paid or unpaid) and workers compensation will count as service, and will not break continuity of service.

Any absence in accordance with a contract of service will also count as service (e.g. a pre-determined business shut down).

Unpaid parental leave and other unpaid leave granted by the employer will not count as service nor will it break the 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.

Transfer of business

If a business has been sold and a worker continues to be employed by the new employer, then in most circumstances the worker's service will not be broken and is deemed continuous.

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

Records

An employer must keep records relating to long service leave throughout a worker's service, and for at least three years after termination of

employment. Workers are entitled to inspect these records.

The Acts and Regulations prescribe what details must be kept by an employer.

Resolving a dispute

A worker should initially attempt to resolve any long service leave dispute directly with their employer. If this fails, they can lodge a claim with SafeWork SA and an Inspector will investigate and help resolve the matter. If required SafeWork SA will take appropriate action as provided by the Act.

If a claim is found to be invalid or there is insufficient evidence for SafeWork SA to pursue the matter further, the claimant will be notified accordingly. Please note this does not prevent the worker from taking action in the South Australian Employment Tribunal (SAET) (formerly the Industrial Relations Court of South Australia). SafeWork SA can provide assistance in relation to this action.

Useful contacts

- Construction industry long service leave enquiries:
Portable Long Service Leave
Telephone 8332 6111
Toll Free (SA country only) 1800 182 124
www.portableleave.org.au
- Long service leave entitlements provided by a pre-2010 federal award or agreement:
Fair Work Ombudsman
Telephone 13 13 94
www.fairwork.gov.au
- Public service workers (State and Commonwealth): contact your human resources area.

Further information

If in doubt about long service leave matters, contact:

- your employer association or union (if you are a member)
- **SafeWork SA Help Centre**
Telephone 1300 365 255 for the cost of a local call from anywhere in South Australia
Web: **safework.sa.gov.au**
Email: help.safework@sa.gov.au