

Long Service Leave

*Your obligations as an
employer of construction
industry workers*

*Their Time
to enjoy*



CONSTRUCTION
INDUSTRY
LONG SERVICE
LEAVE SCHEME

Employees in the construction industry have access to a portable long service leave Scheme funded by a compulsory levy on employers.

If you are an employer who employs workers in the construction industry you may be required by law to register in this Scheme.



Do you need to register

- *Are you an employer or labour hire agency who employs workers in the construction industry?*
- *Do you employ workers under a contract of service or apprenticeship in a classification of work referred to in the list of prescribed Awards contained in this brochure?*
- *Do you employ individual subcontractors hired principally for labour and paid by the day or hour?*

If so you need to know about your obligations to contribute to the Construction Industry Long Service Leave Scheme.

IMPORTANT: It is compulsory by law for employers, as defined, to register in this Scheme which is established under the Construction Industry Portable Paid Long Service Leave Act 1985 “the Act”.

Who We Are

The Act is administered by the Construction Industry Long Service Leave Payments Board (the Board) which is a body corporate of seven members who are appointed by the State government principally from nominations made by industry unions to represent employees, the Master Builders Association and the Chamber of Commerce and Industry to represent employers.

Employers must register with MyLeave and are required to pay compulsory long service leave contributions to MyLeave every three months. This levy covers the cost of administering the Scheme and the payment of long service leave to construction industry employees.

About The Scheme

Definition of employer

‘Employer means a natural person, firm or body corporate who or which engages persons as employees in the construction industry’; or ‘labour hire agency which arranges for a person who is a party to a contract of service with the agency to do work in the construction industry for another person’.

Employees include individual subcontractors hired principally for labour and paid by the day or hour.

Registration in the Scheme

Every employer, as defined in the Act, must register with MyLeave. Registration is compulsory by law. Failure to register and pay contributions can result in fines and surcharges being applied to amounts owed.

To register, complete and submit an ‘Employer Application Form’, which can be obtained from MyLeave’s website **www.myleave.wa.gov.au**.

Registration certificates confirming registration are sent to employers after their applications have been processed and accepted by MyLeave.

Definition of Construction Industry

“Construction Industry” means the industry -

- (a)** of carrying out on a site the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition, or maintenance of or repairs to any of the following:
- (i) buildings;
 - (iia) swimming pools and spa pools;
 - (ii) roads, railways, airfields or other works for the passage of persons, animals or vehicles;
 - (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or watercourse for the purposes of navigation;
 - (iv) works for the storage or supply of water or for the irrigation of land;
 - (v) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
 - (vi) works for the extraction, refining, processing or treatment of materials or for the production or extraction of products and by products from materials;
 - (vii) bridges, viaducts, aqueducts or tunnels;
 - (viii) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
 - (ix) pipelines;
 - (x) navigational lights, beacons or markers;
 - (xi) works for the drainage of land;
 - (xii) works for the storage of liquids (other than water) or gases;
 - (xiii) works for the generation, supply or transmission of electric power;
 - (xiv) works for the transmission of wireless or telegraphic communications;
 - (xv) pile driving works;
 - (xvi) structures, fixtures or works for use on or for the use of any buildings or works of a kind referred to in subparagraphs (i) to (xv);
 - (xvii) works for the preparation of sites for any buildings or works of a kind referred to in subparagraphs (i) to (xvi); and
 - (xviii) fences, other than fences on farms;

- (b)** of carrying out of works on a site of the construction, erection, installation, reconstruction, re erection, renovation, alteration or demolition of any buildings or works of a kind referred to in paragraph (a) for the fabrication, erection or installation of plant, plant facilities or equipment for those buildings or works;
- (c)** of carrying out of work performed by employees engaged in the work referred to in paragraph (a) or (b) and that is normally carried out on site but which is not necessarily carried out on site,

Work not included in the Construction Industry

- (a)** the carrying out of any work on ships;
- (b)** the maintenance of or repairs or minor alterations to lifts or escalators; or
- (c)** the carrying out of maintenance or repairs of a routine or minor nature by employees for an employer, or another person under an arrangement with a labour hire agency, who is not substantially engaged in the industry described in this interpretation.

The Scheme does not include work in an employers' workshop or factory.

Three Monthly Returns

A Return is sent to every registered employer every three months. This Return covers the previous three-monthly period. The periods end in March, June, September and December each year. This Return must be completed and submitted with payment to MyLeave within 15 days after the end of each period.

The form must include the names of all employees employed during the three-monthly period in the construction industry, details of days worked in the construction industry and the amount paid as 'ordinary pay' to the employees. The Return is used to calculate the long service leave contribution payable to MyLeave in respect of employees.

No contribution is payable for apprentices, but days worked have to be completed on the Return, as apprentices are eligible for Scheme benefits. A guide explaining how to complete the Return is supplied with each Return.

Ordinary Rate of Pay

The ordinary pay for reportable Service Days will vary depending on if the worker is entitled to paid leave or not. Ordinary pay and reportable Service Days must be calculated in calendar years and not financial years as the levy may differ from 1 January of each year.

If the employee is entitled to paid leave:

For workers entitled to paid leave, ordinary pay means the rate of pay (disregarding any leave loading) to which the person is entitled for leave (other than long service leave) to which the person is entitled.

Please note that ordinary pay does not include annual leave loading but does include other amounts such as rental allowance, utilities allowance, living away from home allowance etc. - if these allowances are due to a worker when on paid leave.

If the employee is not entitled to paid leave:

If a worker is not entitled to paid leave (other than long service leave), the ordinary pay of the person is the rate of pay to which the person is entitled for ordinary hours of work. For instance, the ordinary rate for casuals will include casual loading, other applicable allowances, and may include weekend work.

Long Service Leave Contributions

Employers must make compulsory contributions based on the ordinary rate paid to all the workers they employ in the construction industry, except apprentices, for the days those employees are engaged in site-based construction work. Contributions are calculated as a percentage of an employee's ordinary rate of pay. The contribution rate is assessed each year. For the current rate please contact MyLeave.

Reportable Service Days

Reportable Service Days include part days and weekends, where an employee is employed in the construction industry, on which an employee is entitled to receive ordinary pay. This includes rostered days off, public holidays, annual leave, paid sick leave, paid maternity leave, workers compensation, and stand down. For the period 30/03/2020 - 28/03/2021, long-term casuals who were receiving JobKeeper payments are to be reported as Service Days.

Note: Each day or part day employed as an employee in the construction industry, in an eligible job role is to be reported as a full day.

Reportable Service Days can sometimes be difficult to assess for industrial instruments which are not based upon a standard 5-day week (Monday - Friday). The Compliance and Advisory team at MyLeave will be pleased to provide any necessary assistance to you in clarifying issues regarding penalty rates and/or Reportable Service Days.

You will be required to provide a copy of your industrial instrument to the team for review purposes.

Employee or Subcontractor?

In cases where the situation is not clear, MyLeave has developed guidelines to assist in the determination of the matter. A full copy of the guidelines is available on MyLeave's website.

Interstate Work

Employers who have employees who are domiciled in other States and who work in Western Australia may apply for exemption from paying long service leave charges if direct payments are made for those employees to similar long service leave Schemes in other States.

Employers who wish to continue payments on behalf of workers domiciled in Western Australia who are working outside the State, will need to apply to the relevant interstate long service leave bodies for exemption from paying into their Schemes. Approval of the exemption will be subject to the individual State legislation.

Employees' Entitlements

Employees receive 1 year of service for each 220 days worked in the construction industry and the maximum number of days that can be allocated in any year to an employee is 220.

After 10 years of service (2200 service days) in the construction industry, regardless of the number of employers the employee has worked for, employees are entitled to 8½ weeks leave and, for each 5 years after that, 4½ weeks. Leave may not be taken in more than 3 periods or periods of less than 1 week.

Pro Rata (Proportionate) Entitlements

After accumulating a minimum of 1540 days (7 years) of service an employee may, with the permission of their employer, take leave (6 weeks on reaching 1540 service days) on a pro rata basis. Or on termination of employment, claim a lump sum payment.

Where an employee who has completed at least 1540 days (7 years) of service dies, a pro rata payment will be paid to the dependent spouse of the employee or to the employee's estate.

Rate of Pay for Leave Entitlement

The employee's payment for the period of long service leave will be paid by MyLeave and calculated using the employee's ordinary rate of pay averaged over the last 220 days of service in the construction industry.

What happens if an employee has a break from or leaves the Construction Industry?

Employees may have breaks from the industry of up to 2 years in the first 5 years of service and up to 4 years after that without breaking continuous service and without losing any accrued service days. Naturally these breaks do not count towards their entitlement.

If an employee breaks their continuous service before reaching a minimum of 7 years' service (1540 service days) then all the service accrued to date is extinguished. No payment can be made to an employee who has accumulated less than 7 years' service regardless of the circumstances. MyLeave has no discretion in the matter.

What happens to contributions paid in for an employee who does not get an entitlement?

The Long Service Leave Scheme is not a superannuation scheme. Employees accumulate days of service towards an entitlement not monies. Where an employee leaves the industry before achieving an entitlement, any service days accrued are extinguished.

The contribution rate used for calculating contributions to MyLeave is determined by MyLeave's Actuary. When calculating the levy rate required to meet the costs of the Scheme, considers any surpluses generated due to employees not obtaining an entitlement and from investment returns and adjusts the levy rate accordingly. The rate is assessed annually.

Employee accumulating continuous service in more than one capacity

An employee registered in the Scheme may continue to accrue long service leave entitlements under the provisions of the Long Service Leave Act 1958 or other industrial instrument relating to long service leave which applies to Western Australian employees. Due to this, an employer in some cases may become liable to pay long service leave entitlements to an employee.

The employer can then claim a recovery from MyLeave for that employee. This recovery is based on the average of the employee's ordinary rate of pay for the last 220 service days in the industry as submitted by the employer.

Powers of Inspectors

Inspectors employed by MyLeave have the power to enter the premises of an employer at any reasonable time of the day to inspect any books, records, or documents for any of the purposes of the Act and to take extracts or copies of those records.

Inspectors will produce a certificate of appointment signed by the Chief Executive Officer identifying their appointment as an Inspector.

Surcharges

MyLeave may surcharge an employer if an employer fails to pay the compulsory long service leave contribution within the time frame as specified in the Act.

Records and Offences

Employers are required to keep records of every employee's name and address, date of birth, registration number, starting and finishing dates and the number of days on site. These records must be retained for a period of not less than seven years.

Offences may apply for obstructing a MyLeave Inspector or failing to comply with any section of the Act.

Further Detail

This brochure is a condensed guide covering the main provisions of the Act and was prepared to give employers a general understanding of the Scheme. Employers should contact MyLeave for formal advice concerning any matters of concern that arise.

Copies of the complete legislation and subsidiary regulations governing the Scheme may be obtained from the State Law Publishers [**www.slp.wa.gov.au/legislation**](http://www.slp.wa.gov.au/legislation).

*To register, complete and submit an 'Employer Application Form', which can be obtained from MyLeave's website [**www.myleave.wa.gov.au**](http://www.myleave.wa.gov.au).*



List of Prescribed Awards

- Aluminium Industry Award 2020
- Asphalt Industry Award 2020
- Australian Workers' Union Asphalt and Bitumen Industry (WA) Award 1988
- Australian Workers' Union Construction and Maintenance Award 1989
- Australian Workers' Union Construction and Maintenance (Consolidated) Award 1987
- Australian Workers' Union Construction, Maintenance and Services (W.A. Government) Award 1984 (Limited to temporary employees in receipt of an industry allowance under the award)
- AWU Geomembrane and Geotextile Installation Award 1989
- Bitumen Spraying Services Award 1985
- Building and Construction General On-site Award 2020
- Dredging Industry Award 2020
- Drilling and Exploration Industry (AWU) Award 1998
- Electrical, Electronic and Communications Contracting Award 2020
- Gardening and Landscaping Services Award 2020
- Joinery and Building Trades Award 2020
- Manufacturing and Associated Industries and Occupations Award 2020
- Mining Industry Award 2020
- Mobile Crane Hiring Award 1990
- Mobile Crane Hiring Award 2020
- National Building and Construction Industry Award 1990
- Pest Control Industry Award 2020
- Plumbing and Fire Sprinklers Contracting Award 2020
- Plumbing Industry (Qld and W.A.) Award 1979
- Professional Divers' Award 1988
- Professional Diving Industry (Industrial) Award 2020
- Sprinkler Pipe Fitters' Award 1975
- Telecommunications Services Award 2020 (Limited to employees in the classification structure A.1.3 Technical Street in Schedule A of the award)
- Transport Workers Spraypave Pty Ltd Award 1990
- Western Australian Civil Contracting Award 1998
- Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979
- Building Trades Award 1968
- Building Trades (Construction) Award 1987
- Building Trades (Government) Award 1968 (Limited to temporary employees)
- Earth Moving and Construction Award
- Electrical Contracting Industry Award R 22 of 1978
- Electrical Trades (Security Alarms Industry) Award 1980
- Electronics Industry Award No. A22 of 1985
- Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973
- Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962 (Limited to temporary employees in receipt of an allowance for construction work under the award)
- Foremen (Building Trades) Award 1991
- Furniture Trades Industry Award (Limited to cabinet making and flooring covering)
- Gate, Fence and Frames Manufacturing Award
- Industrial Spraypainting and Sandblasting Award 1991
- Lift Industry (Electrical and Metal Trades) Award 1973
- Mechanical and Electrical Contractors (North West Shelf Project Platform) Award 1986
- Metal Trades (General) Award
- Pest Control Industry Award
- Radio and Television Employees' Award
- Sheet Metal Workers' Award No. 10 of 1973
- Thermal Insulation Contracting Industry Award



*It's their
leave*

Stay in touch at
www.myleave.wa.gov.au

For more information visit us online
or contact us below.



08 9476 5400



1800 198 136

(Toll free for country callers)



hi@myleave.wa.gov.au

Level 3
50 Colin Street
West Perth WA 6005

February 2022



CONSTRUCTION
INDUSTRY
LONG SERVICE
LEAVE SCHEME