Department of **Local Government, Industry Regulation and Safety**
Private Sector Labour Relations

GOVERNMENT OF WESTERN AUSTRALIA

wageline 1300 655 266



Guide to the Western Australian *Long Service Leave Act*

Long service leave is a paid leave entitlement for full time, part time, casual and seasonal employees. Providing long service leave to eligible employees is a legal requirement.

This guide provides information on long service leave entitlements for employees and obligations for employers in Western Australia (WA) who are covered by the state *Long Service Leave Act 1958* (the LSL Act). **It is not intended to provide advice on individual or specific circumstances.**

The LSL Act provides the long service leave entitlement for most private sector employees in WA. Details of who is – and is not – covered by the LSL Act are included in Chapter 1 – Coverage of the LSL Act.

This publication has been prepared by the Department of Local Government, Industry Regulation and Safety – Private Sector Labour Relations division.

It primarily replicates the long service leave content provided on the department's website at www.lgirs.wa.gov.au/longserviceleave.

The department's Wageline contact centre, available on 1300 655 266, can also provide information on long service leave entitlements under the LSL Act.

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Disclaimer

The Department of Local Government, Industry Regulation and Safety has developed this guide to provide information on the entitlements under the WA *Long Service Leave Act 1958*. It is not designed to be comprehensive or to provide legal advice. The department does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.

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Preliminary information

Two systems of employment law

Two systems of employment law operate for the private sector in WA:

- the state industrial relations system; and
- the national fair work system.

Which system covers a particular employer and employee depends on the business structure of the employer.

Visit www.lgirs.wa.gov.au/which-ir-system for guidance on how to establish which system covers an employer and its employees.

In this publication, the term ‘state system employees’ is used to refer to employees who are covered by the state industrial relations system. The term ‘national system employees’ is used to refer to employees in the national fair work system.

Underpayments of long service leave

The Private Sector Labour Relations division at the Department of Local Government, Industry Regulation and Safety is able to investigate alleged underpayments of long service leave entitlements under the LSL Act.

Under the LSL Act, employers have obligations to provide employees with the correct long service leave entitlements, and to keep and maintain the required long service leave records. Employers who do not meet these obligations can face penalties.

An employee who believes they have been underpaid an entitlement under the LSL Act can lodge an underpayment complaint via www.lgirs.wa.gov.au/underpaymentcomplaints.

Chapter 1 – Coverage of the LSL Act

Who is covered by the LSL Act?

The LSL Act covers:

- Western Australian private sector employees (subject to the exclusions listed in 'Who is not covered by the LSL Act').
- Full time, part time, casual and seasonal employees.
- Apprentices and trainees.
- Full time, part time or casual employees in the state public sector who are not entitled to long service leave in their award or agreement that is at least equivalent to long service leave in the LSL Act (see 'State public sector employees').

Who is not covered by the WA LSL Act?

The LSL Act does not cover:

- An employee who, under:
  - an award;
  - an industrial agreement/enterprise agreement;
  - an agreement between the person and their employer; or
  - a state, territory or Commonwealth law,

  is entitled to, or eligible to become entitled to, long service leave that is at least equivalent to the long service leave entitlement under the LSL Act.
- Employees of WA local government authorities – these employees are covered by the Local Government (Long Service Leave) Regulations 2024.
- Many employees working on site in the construction industry who are covered by the *Construction Industry Portable Paid Long Service Leave Act 1985 (WA).*
- National system employees who:
  - have long service entitlements in a federal pre-modern award that would have covered the employer and its employees before 1 January 2010; or
  - were previously covered by specific federal registered agreements made before 1 January 2010, and who had fully accrued a long service leave entitlement under such an agreement before 7 December 2023.
- Workers who are not employees, such as independent contractors.

An assessment on whether an entitlement in an award or industrial/enterprise agreement is at least equivalent to the entitlement under the LSL Act is based on the complete long service leave entitlement, not just one element.

For example, an industrial agreement may provide a long service leave entitlement of 13 weeks of paid long service leave when an employee completes 10 years of continuous employment but not provide for pro rata long service leave prior to completing 10 years of continuous employment. As the leave entitlement is greater than that under the LSL Act (which provides an entitlement of 8.667 weeks of long service leave when an employee completes 10 years of continuous employment), the entitlement under the industrial agreement would be deemed to be at least equivalent.

Important information for national system employees

National system employees who may be covered by a federal pre-modern award or the specific types of federally registered agreements noted above should check whether the LSL Act applies to them by following the process outlined on the long service leave page on the Fair Work Ombudsman website (www.fairwork.gov.au). This information can also be obtained by calling the Fair Work Ombudsman on 13 13 94.

If the Fair Work Ombudsman advises that the LSL Act applies to the employee, rather than any pre-modern award or federal agreement, then the information in this guide about the state LSL Act will apply.

If a national system employee is covered by the LSL Act, then any long service leave provisions in an enterprise agreement made on or after 1 January 2010 will be subject to the LSL Act. This means that the LSL Act will prevail over a long service leave provision in an enterprise agreement where that provision is less beneficial than the LSL Act.

State public sector employees

All public sector employees, including casual employees, are entitled to long service leave if they have the requisite continuous employment. A public sector employee's entitlement may derive from the LSL Act, the Long Service Leave Conditions State Government Wages Employees General Order, or the relevant award or industrial agreement that covers the employee.

The LSL Act **does not apply** to public sector employees if they are entitled to long service leave under their award or industrial agreement that is at least equivalent to the entitlement to long service leave under the LSL Act.

Casual public sector employees who are not entitled to paid long service leave under their award or industrial agreement or whose entitlement is not at least equivalent to the entitlement to long service leave under the LSL Act are entitled to long service leave under the LSL Act. This is regardless of the casual loading paid to such employees.

While the Long Service Leave Conditions State Government Wages Employees General Order does not apply to casual public sector wages employees, an industrial instrument that incorporates the General Order may extend long service leave to them.

Public sector employees should contact the Human Resources area of their employing agency with queries regarding their long service leave entitlements.

Construction industry employees

Many employees working on site in the construction industry are covered by a portable long service leave scheme established under the *Construction Industry Portable Paid Long Service Leave Act 1985* (CIPPLSL Act). MyLeave (www.myleave.wa.gov.au) is the organisation that administers this scheme.

Generally, if an employee has an entitlement to long service leave under the CIPPLSL Act (or is eligible to become entitled to long service leave under the CIPPLSL Act), then the LSL Act **will not apply** to that employee. This is because the entitlement/prospective entitlement under the CIPPLSL Act is **at least equivalent** to the entitlement under the *Long Service Leave Act*.

Long service leave entitlements under the CIPPLSL Act and the LSL Act are calculated in different ways, with different rules.

Construction industry employers and employees should contact MyLeave with queries regarding employee entitlements and employer obligations under the CIPPLSL Act.

Local government employees

The long service leave entitlements for most local government employees come from the Local Government (Long Service Leave) Regulations 2024 (LGLSL Regulations), (www.legislation.wa.gov.au) rather than the LSL Act.

Provisions in a state industrial agreement that covers local government employees may also contain more favourable long service leave provisions that supplement the LGLSL Regulations.

Local government employees should contact the Human Resources area of their local government employer with queries regarding their long service leave entitlements.

The Private Sector Labour Relations division may be able to assist local government employees with underpayment of a long service leave entitlement under the LGLSL Regulations. The Steps to making an underpayment complaint page of the department's website outlines the process to follow to lodge a complaint with Private Sector Labour Relations.

Independent contractors

The LSL Act does not apply if a worker is an independent contractor.

There is an objective test set out in the *Industrial Relations Act 1979* for determining whether a worker is an employee or an independent contractor. This test also applies when determining whether a worker is an employee for the purposes of the LSL Act.

The objective test requires an employment relationship to be determined by assessing the real substance, practical reality and true nature of a relationship.

Consideration must be given to the totality of the relationship including the terms of any contract governing the relationship and also other relevant factors, including how the contract is performed in practice.

The objective test safeguards against workers being artificially labelled as independent contractors by the terms of a contract.

Where a party to proceedings before the Industrial Magistrates Court claims an individual who carries or carried out work is or was not an employee of the party, the onus will be on the party to prove that the individual is not or was not an employee of the party.

It is recommended that employers and workers seek legal advice if they are unsure whether a particular working arrangement is an employment or contracting arrangement.

Chapter 2 – Entitlement to take long service leave while employed

When a full time, part time, casual or seasonal employee completes 10 years of **continuous employment**, they accrue an entitlement to 8.667 weeks of paid long service leave.

An employee will then accrue a further 4.333 weeks of long service leave for every five years of continuous employment after the initial 10 years (for example after 15, 20, 25, 30 years of continuous employment).

Length of continuous employment	Long service leave an employee can take
At least 10 years, less than 15 years	8.667 weeks long service leave
At least 15 years, less than 20 years	4.333 weeks, plus any of the previous long service leave entitlement not yet taken
At least 20 years less than 25 years	4.333 weeks, plus any of the previous long service leave entitlement not yet taken

The term continuous employment has a specific meaning and some absences do not count towards an employee's period of continuous employment. More information on continuous employment is provided in 'Chapter 6 – What counts towards long service leave for full time and part time employees' and 'Chapter 7 What counts towards long service leave – casual and seasonal employees'. Continuous employment may include service with a previous employer where there has been a change of business ownership – more information is provided in 'Chapter 8 – Long service leave when a business changes ownership'.

Granting and taking long service leave

Long service leave must be granted and taken as soon as reasonable after it becomes due.

Importantly, an employer cannot direct an employee to take long service leave at a particular time. An employee and the employer may agree when the employee will take long service leave.

Where an employer and employee have not agreed on when the employee is to take leave, the employer cannot refuse the employee taking long service leave which they became entitled to more than 12 months before. This leave can be taken at any time that is suitable to the employee, however:

- the employee must give the employer at least two weeks' notice of taking the leave; and
- the leave must be taken in one continuous period.

Taking a period of long service leave

Long service leave is to be taken in one continuous period, or if the employer and employee agree, can be taken in separate periods.

A casual or seasonal employee is entitled to take long service leave in the same manner as a full time or part time employee. During a period of paid leave, a casual or seasonal employee would not be able to be rostered or called into work.

An employee may also request that an employer grant them a period of long service leave:

- on half pay – for example, an employee who is entitled to eight weeks of long service leave may request that they take 16 weeks of leave at half pay; or
- on double pay – for example, an employee who is entitled to eight weeks of long service leave may request that they be granted four weeks of leave at double pay.

An employer is not obligated to agree to a request to take long service leave in a flexible manner.

Generally, an employee taking long service leave would use an amount of leave equivalent to the hours they would otherwise be working during the period of leave. For example, if an employee normally worked 22 hours per week, they would generally take 22 hours per week of long service leave.

When an employee accesses a period of long service leave, the period of long service leave taken is deducted from the total hours of long service leave the employee has accrued.

Public holidays during long service leave

If a full time or part time employee is on a period of long service leave, and the employee would have ordinarily been entitled to the public holiday had they not been on long service leave, the period of long service leave is increased by one day for each such public holiday.

Personal leave during long service leave

The LSL Act **does not** specifically provide for personal leave to be taken during a period of long service leave. However, an employee may request an employer to cancel/reverse their approved long service leave for a period of sickness that occurs during that leave. Any request to cancel/reverse an employee's long service leave is by mutual agreement – an employer is not required under the LSL Act to approve such a request.

Accrual of annual leave and personal leave during long service leave

National system employees should visit the Fair Work Ombudsman website (www.fairwork.gov.au) or contact the Fair Work Ombudsman on 13 13 94 for information on the accrual of annual leave and personal leave during periods of long service leave.

Employees in the state system accrue annual leave and personal leave entitlements during periods of long service leave that have been taken.

Postponing long service leave

An employer and employee may agree to postpone a period of long service leave to suit the convenience of the employee.

If long service leave is deferred to suit the employee, the employee and employer should agree on whether the leave will be paid at the employee's rate of pay:

- when the leave was accrued; or
- at the employee's rate of pay when the leave is taken.

It is best to put this in writing.

Long service leave in advance

An employee can make a request and if the employer agrees, can reach an agreement to take long service leave in advance. An employee who enters into this agreement is not entitled to additional long service leave until they have accrued back the amount they were given in advance.

If an employee leaves or if their services are terminated before they have accrued their long service leave the employer may deduct from their final pay the amount that represents payment for any period for which the employee has been granted long service leave in advance.

Example:
After seven years of continuous employment, Liam asks his employer if he can access eight weeks of long service leave in advance.

Liam resigns after eight years of continuous employment. If Liam had not taken any long service leave in advance, he would have been entitled to be paid for 6.94 weeks of pro rata long service leave.

As Liam has taken eight weeks of long service leave in advance, his employer can deduct from his final pay, the **difference** between the long service leave Liam has taken in advance and the amount Liam is entitled to when employment ends (e.g. 6.94 weeks pro rata LSL less 8 weeks LSL in advance equals 1.06 weeks that can be deducted from Liam's final pay).

Restrictions on working another job during long service leave

Employees accessing long service leave cannot engage in paid employment in substitution for any employment from which they are taking long service leave.

If an employee does engage in paid employment, this may result in the employee forfeiting their right to long service leave, enabling the employer to withhold any further leave payments and to reclaim any wages paid for the period of long service leave already taken.

Where an employee has two or more jobs and is accessing long service leave for one of those jobs, generally the employee may continue working in their other job or jobs while on long service leave, as this employment is not in substitution for the job for which they are taking long service leave.

Watch the 'Taking long service leave' video



www.lgirs.wa.gov.au/lsl-videos

Chapter 3 – Entitlement to long service leave when employment ends

After seven years of continuous employment, a full time, part time or casual or seasonal employee may have an entitlement to payment of long service leave when their employment ends due to resignation, dismissal, redundancy or if the employee dies.

The long service leave entitlement when employment ends is based on:

- the length of the employee's continuous employment and particularly whether it is between seven and 10 years, or 10 years or more; and
- if the employee is dismissed, whether they were dismissed for serious misconduct.

If an employee's employment ends **before** they have completed seven years of continuous employment, they do not have an entitlement to long service leave.

The term continuous employment has a specific meaning, and some absences do not count towards an employee's period of continuous employment. More information on continuous employment is provided in 'Chapter 6 – What counts towards long service leave for full time and part time employees' and 'Chapter 7 What counts towards long service leave – casual and seasonal employees'. Continuous employment may include service with a previous employer where there has been a change of business ownership – more information is provided in 'Chapter 8 – Long service leave when a business changes ownership'.

When an employee resigns or is dismissed, all hours worked up until employment ends (including any notice period worked) count towards their period of continuous employment for long service leave entitlements.

The WA long service leave calculator (www.lgirs.wa.gov.au/lslcalculator) can provide an estimate of the number of weeks of long service leave an employee is entitled to under the LSL Act **when employment ends**.

The calculator **cannot be used** for an employee who is **taking** long service leave while still employed.

At least seven years but less than 10 years of continuous employment

An employee with at least seven years but less than 10 years of continuous employment is entitled to receive payment of pro rata long service leave when their employment ends.

The only exception is where the employee has been dismissed for serious misconduct, in which case the employee is not entitled to any pro rata long service leave.

Serious misconduct is unacceptable or improper behaviour of a substantial nature. The onus is on the employer to prove that dismissal for serious misconduct was warranted. Determining whether an employer has justifiably dismissed an employee for serious misconduct is always assessed according to the facts particular to that situation.

The pro rata long service leave entitlement is calculated as a proportion of a full long service leave entitlement. A full entitlement is 8.667 weeks of leave for 10 years of continuous employment. The pro rata entitlement for an employee with less than 10 years of continuous employment is calculated based on the number of years, months, weeks and days of continuous employment the employee has completed.

Example
Riley resigned from her job at a local supermarket after eight years, four months and five days of continuous employment. As Riley has more than seven years of continuous employment, she is entitled to receive payment of pro rata long service leave on resignation.

Riley's pro rata long service leave entitlement works out to be 7.24 weeks of leave. This entitlement is paid out at Riley's ordinary pay.

10 or more years of continuous employment

When an employee completes 10 years of continuous employment, they fully accrue a long service leave entitlement of 8.667 weeks of long service leave.

An employee will accrue a further 4.333 weeks of long service leave for every five years of continuous employment they complete after the initial 10 years.

When employment ends, any long service leave that has not been taken must be paid out to the employee.

An employee with more than 10 years of continuous employment may also be entitled to receive payment of pro rata long service when employment ends. The pro rata long service leave entitlement is calculated as a proportion of a full long service leave entitlement. A full entitlement is 8.667 weeks of leave for 10 years of continuous employment. The pro rata entitlement for an employee with more than 10 years of continuous employment is calculated on **completed years** of employment only.

The pro rata entitlement will also apply to each year of continuous employment after the employee accrues each further 4.333 weeks of long service leave for every five years of continuous employment (for example after 15, 20, 25, 30 years of continuous employment).

Example
Lee has been made redundant after 12 years of continuous employment. Lee's employer works out the long service leave entitlement due on termination is 10.4 weeks.

This is on the basis of a full entitlement of 8.667 weeks for the first 10 years of continuous employment plus a pro rata amount for the other two years of 1.733 weeks (2 years/10 years x 8.667 weeks). If Lee had taken any long service leave this would be deducted from the total amount he is due to be paid out.

An employee who is dismissed for serious misconduct is only entitled to be paid for any part of a fully accrued entitlement which has not been taken and is not entitled to receive payment of pro rata long service leave.

Serious misconduct is unacceptable or improper behaviour of a substantial nature. The onus is on the employer to prove that dismissal for serious misconduct was warranted. Determining whether an employer has justifiably dismissed an employee for serious misconduct is always assessed according to the facts particular to that situation.

Example
Anastasia was terminated for serious misconduct after being employed continuously for 12 years and one month. Anastasia had not taken any LSL prior to her dismissal.

On termination, Anastasia was entitled to be paid out her accrued LSL for the first 10 years of employment (that is, 8.667 weeks) but she was not entitled to receive payment for the pro rata portion of LSL on the two completed years of employment since her first entitlement to LSL.

Watch the 'Long service leave when employment ends video'



www.lgirs.wa.gov.au/lsl-videos

Chapter 4 – Payment for long service leave

An employee must be paid their 'ordinary pay' when taking long service leave or when receiving payment for long service leave.

An employer is required to provide payment in advance for a period of long service leave if the employee requests pay in advance in writing before the period of leave commences.

What is ordinary pay?

Ordinary pay is payment for an employee's 'normal weekly number of hours of work' calculated on their ordinary time rate of pay (see also the 'Normal weekly number of hours' section in this chapter).

An employee's ordinary time rate of pay is the rate that applies to the employee when they:

- take a period of long service leave;
- receive payment for long service leave that is cashed out; or
- receive payment for untaken long service leave when their employment ends.

Ordinary pay **does not include** shift premiums, overtime rates, penalty rates, allowances or any similar payments.

For a casual employee, ordinary pay **includes** their casual loading.

Ordinary pay also includes the cash value of any meals or accommodation normally provided to the employee, if the meals and accommodation are not provided to (and taken by) the employee during a period of long service leave.

Ordinary pay for an employee paid by results (e.g. piece rates or commission)

Ordinary pay for an employee who is employed on a system of payment by results (for example piece rates, commission, bonus work) is the average weekly rate earned by the employee during the previous 365 days ending on the day immediately before the day on which:

- the employee commences long service leave;
- the employee and the employer reach agreement on payment instead of long service leave; or
- the employee was last in employment (if the employee is no longer employed).

Any periods of unpaid leave and stand down are excluded from the 365-day period. This ensures that employees are not disadvantaged if, for example, they have taken a period of unpaid leave – such as unpaid parental leave. However, any periods of paid leave are included in the calculation.

The average weekly rate for an employee who is paid a base rate and a commission/bonus is based on both the ordinary time rate of pay and the amount of the commission/bonus earned during the previous 365-day period.

To calculate the average weekly rate, the employee's earnings (including any base salary plus bonuses) are totalled over the previous 365 days (excluding any periods of unpaid leave). This figure is then divided by 365 and multiplied by 7.

The average weekly rate method is only applicable where an employee is regularly paid an amount wholly or partly based on results, and this forms an integral part of their payment system. For example, this method would not apply if an employee received occasional or irregular bonus payments at the employer's discretion.

Example 1 – Calculating ordinary pay
Alex is paid wholly by commission. Alex took six months' unpaid parental leave from 1 April to 30 September 2025 and she wants to take long service leave from 1 January 2026. Her ordinary pay for this period of leave is calculated over a period totalling 365 days ending on the day immediately before the day on which her leave commences (i.e. 31 December 2025).

Calculating Alex's ordinary pay requires averaging the commission she earned in the 273 days prior to 1 April 2025 and in the 92 days from when she returned to work between 1 October 2025 and 31 December 2025 (i.e. a total of 365 days excluding the period 1 April to 30 September 2025 when Alex was on unpaid leave).

Example 2 – Calculating payment when employment ends
Harley has resigned after working for a business for eight years. Harley's pro rata long service leave entitlement is 6.94 weeks. Harley is paid a base salary plus commission, meaning Harley's ordinary pay for this period is calculated over a period totalling 365 days ending on the day immediately before Harley's last day of employment. Harley has not taken any unpaid leave during the last 365 days.

To calculate Harley's average weekly earnings, Harley's employer calculates the total amount of salary and commission earnt by Harley over the previous 365 days (in this case $100,000) and then divides this amount by 365 and multiplies it by 7 (e.g. $100,000 / 365 x 7 = $1,917.81).

To calculate Harley's pro rata long service leave payment on termination, Harley's employer multiplies Harley's average weekly earnings by Harley's pro rata long service leave entitlement (e.g. $1,917.81 x 6.94 weeks = $13,309.60).

Normal weekly number of hours

If an employee's hours have varied during a **period of employment**, the employee's normal weekly number of hours is the average weekly hours worked by the employee during the period.

A **period of employment** means the accrual period for a long service leave entitlement rather than the entire period an employee has been employed with an employer. For example, the first 10 years of continuous employment is one accrual period, and the next five years of continuous employment is a second accrual period.

If an employee has more than one long service leave accrual period, normal weekly working hours are determined separately for each accrual period – see the 'Calculating normal weekly hours where an employee has worked more than 10 years' section in this chapter.

An employee's hours may have varied for a number of reasons including because they worked overtime during a period of employment, they were a casual employee working varying hours, they were a fly-in fly-out employee, or they changed employment status such as from part time to full time.

Example
Jasmine's employer totals the number of hours Jasmine worked over the 10-year accrual period and divides by the relevant number of weeks:

Total hours worked over the 10 years = 27,129 hours divided by 521.7 weeks = 52 average weekly hours worked.

After 10 years of continuous employment, Jasmine has accrued an entitlement to 8.667 weeks of paid long service leave at 52 hours per week, a total of 450.684 hours of long service leave.

Absences which are not counted when averaging hours – full time and part time employees

Absences which are not counted when calculating the length of a full time or part time employee's continuous employment (for example, a period of unpaid leave) are not included when averaging the employee's hours. 'Chapter 6 – What counts towards long service leave for full time and part time employees' provides details on these absences.

Example
Ezra worked for the same employer for 10 years. Ezra took 12 months of unpaid parental leave during this time. While this period of unpaid leave does not break Ezra's period of continuous employment, it **does not count** towards the length of Ezra's continuous employment.

When Ezra is made redundant after 10 years, the length of Ezra's period of continuous employment for the purposes of long service leave is therefore nine years. He is entitled to pro rata long service leave on ordinary pay for this period. Ordinary pay is Ezra's remuneration for his normal weekly number of hours calculated on his ordinary time rate of pay.

Ezra's hours have also varied during this period. He worked four years on a full time basis at 38 hours per week and then five years on a part time basis at 30 hours per week.

As Ezra's hours have varied, calculations to determine his normal weekly working hours are required. The averaging will not include the 12-month period during which Ezra was on unpaid leave and worked no hours. Therefore, the calculation will require averaging the hours Ezra worked over the nine-year period of continuous employment, not over the 10-year period which has elapsed since he first started work.

Ezra's normal weekly number of hours of work during the nine-year period of continuous employment were therefore 33.56 hours per week.

Normal weekly number of hours – casual and seasonal employees

A casual or seasonal employee's normal weekly number of hours of work is the average weekly number of hours worked by the employee during a **period of employment**.

A **period of employment** means the accrual period for a long service leave entitlement rather than the entire period an employee has been employed with an employer. For example, the first 10 years of continuous employment is one accrual period, and the next five years of continuous employment is a second accrual period.

If an employee has more than one long service leave accrual period, normal weekly working hours are determined separately for each accrual period – see the 'Calculating normal weekly hours where an employee has worked more than 10 years' section in this chapter.

Averaging the varying hours worked by a casual or seasonal employee takes into account periods when their employer did not provide them with work in accordance with their terms of employment.

Absences which are not counted when calculating the length of a casual or seasonal employee's continuous employment are not included when averaging the employee's hours. 'Chapter 7 – What counts towards long service leave for casual and seasonal employees' has more information.

Example 1
On 1 January 2013, Jennifer is employed to work casually at an amusement park. As the amusement park is only open for part of the year, Jennifer does not work every week of the year. For those weeks of the year that Jennifer is not required to work (because the park is closed) her weekly hours are recorded as 'zero'.

During the first 10 years of employment, Jennifer does not have any absences that would be excluded from continuous employment. Jennifer therefore becomes entitled to 8.667 weeks of long service leave on 1 January 2023, after completing 10 years of continuous employment. As Jennifer's hours of duty have varied over the accrual period, her employer needs to calculate the average number of hours she has worked each week over the entire period.

Jennifer's employer calculates that over the 10-year accrual period (521.7 weeks), Jennifer has worked a total of 7,775 hours. Jennifer's average weekly hours are therefore 14.9 (7,775 hours ÷ 521.7 weeks). Jennifer is therefore entitled to 8.667 weeks of long service leave, paid at 14.9 hours per week.

Example 2
Zayne was employed to work casually in Brian's Café in March 2009. Zayne took 12 months of unpaid parental leave in 2016, but did not have any other absences that would be excluded from continuous employment based on the rules that applied at the time (see 'Chapter 7 – What counts towards long service leave for casual and seasonal employees').

Zayne therefore became entitled to 8.667 weeks of long service leave in March 2020, after completing 10 years of continuous employment. As Zayne's long service leave entitlement fully accrued **before** 20 June 2022, the 12-month period of Zayne's parental leave **does not count** towards the length of Zayne's continuous employment.

Normal weekly hours and ordinary pay for a 'fly-in fly-out' (FIFO) employee

The average weekly number of hours for a FIFO employee will include both 'on weeks' and 'off weeks'. For example, if a FIFO employee works a two-week on and one-week off roster and works 77 hours per week when they are rostered on, their average hours worked over the three-week cycle would be 51.33 hours per week (154 hours / 3 weeks).

Calculating normal weekly hours where an employee has worked more than 10 years

When an employee completes 10 years of continuous employment, they accrue an entitlement to 8.667 weeks of long service leave, and a further 4.333 weeks of long service leave for every five years of continuous employment after the initial 10 years.

An employee with more than 10 years of continuous employment may also be entitled to receive payment of pro rata long service leave when employment ends. The pro rata entitlement is calculated on completed years of employment only.

This means that if an employee has completed more than 10 years of continuous employment, there will be more than one accrual period for long service leave. These periods will be:

- the initial 10 years of continuous employment; and
- each subsequent five-year period (or completed years of employment within a subsequent five-year period, if calculating pro rata long service leave entitlements on termination).

If an employee's hours have varied in one or more of their accrual periods and calculations to identify normal weekly working hours are required, any averaging of hours is based only on the hours worked in the relevant accrual period.

Examples of calculations for employees with multiple accrual periods

Example 1 – Employee has completed more than 10 years of continuous employment and employment is ending

Mike has worked for 18 years and six months for his employer. For the first 10 years, Mike worked full time at 38 hours per week. Mike then changed to casual and worked varying hours for the next eight years and six months until his employment ended. Mike did not take any long service leave (LSL) during his employment.

Accrual period 1 – 10 completed years of continuous employment
An employee is entitled to 8.667 weeks of leave in respect of 10 completed years of continuous employment.

As Mike's weekly hours did not vary over 'accrual period 1' (the initial 10 years of continuous employment), averaging of hours is not required. Mike's normal weekly number of hours of work for this period were therefore 38 hours per week.

8.667 weeks of leave x 38 normal weekly number of hours of work = 329.346 hours of LSL for 'accrual period 1'.

Accrual period 2 – Next five completed years of continuous employment
An employee is entitled to 4.333 weeks of leave in respect of each five years of continuous employment completed after 10 years of continuous employment.

As Mike's weekly hours varied during 'accrual period 2' (the next five years of continuous employment), averaging of Mike's hours over the five-year accrual period is required in order to determine his normal weekly number of hours of work. Mike worked an average of 20 hours per week over the five-year accrual period.

4.333 weeks of leave x 20 normal weekly number of hours of work = 86.66 hours of LSL for *accrual period 2*.

Accrual period 3 – Next three years and 6 months of continuous employment (pro rata LSL)
An employee with at least 10 years of continuous employment on termination is only entitled to LSL in respect of **completed** years of employment.

Mike is therefore only entitled to LSL in respect of three years of continuous employment, not 3.5 years of continuous employment.

As Mike has three completed years of employment since last becoming entitled to LSL (i.e. at 15 years), he is entitled to a proportionate amount of 8.667 weeks leave for those three years. This equals 2.6 weeks of leave (3 years/10 years x 8.667 weeks).

Mike's employee's hours varied during the third accrual period (his final 3.5 years of employment).

However, averaging of an employee's hours (if required) only occurs over **completed years** of continuous employment. Averaging of Mike's hours to determine his normal weekly number of hours of work therefore **does not include** the hours worked in his final six months of employment.

Mike worked an average of 25 hours per week in his final three completed years of continuous employment.

2.6 weeks of leave [3 years/10 years x 8.667 weeks] x 25 normal weekly number of hours of work = 65 hours of LSL for *accrual period 3*.

Mike's total LSL entitlement on termination
329.346 hours + 86.66 hours + 65 hours = **481.006 hours**

Example 2 – Employee has completed more than 10 years of continuous employment and is taking a period of long service leave (LSL).

Esther has worked for 16 years for her employer. For the first four years, Esther worked on a casual basis and worked varying hours each week. Esther then became a part time employee and worked 22.5 hours every week for the next seven years. Esther then commenced working full time and has been working 38 hours per week for the last five years. Esther has not yet taken any LSL during her employment.

Accrual period 1 – 10 completed years of continuous employment
An employee is entitled to 8.667 weeks of leave in respect of 10 completed years of continuous employment.

As Esther's weekly hours varied over her first accrual period (the initial 10 years of continuous employment), averaging of her hours over the 10-year accrual period is required in order to determine her normal weekly number of hours of work. Esther worked an average of 26 hours per week over the 10-year accrual period.

8.667 weeks of leave x 26 normal weekly number of hours of work = 225.342 hours of LSL for 'accrual period 1'.

Accrual period 2 – Next five completed years of continuous employment
An employee is entitled to 4.333 weeks of leave in respect of each five years of continuous employment completed after 10 years of continuous employment.

As Esther's weekly hours varied during the second accrual period (the next five years of continuous employment), averaging of her hours over the five-year accrual period is required in order to determine her normal weekly number of hours of work. Esther worked an average of 34.9 hours per week over the five-year accrual period.

4.333 weeks of leave x 34.9 normal weekly number of hours of work = 151.222 hours of LSL for 'accrual period 2'.

Next one-year period
An employee is only entitled to **take** LSL in respect of **completed accrual periods**, that is, the initial 10 years of continuous employment, and each subsequent completed five-year period.

Esther is therefore only entitled to take LSL which has accrued in her first 15 years of continuous employment.

Hours worked by Esther during this period are not relevant to the calculations done for each of her first two accrual periods.

Esther's total amount of LSL available to take
Esther has a total of 376.564 hours (225.342 hours + 151.222 hours) which she can take.

Taxation and superannuation

For information on tax and superannuation arrangements relating to long service leave payments, visit the Australian Taxation Office website (www.ato.gov.au).

Chapter 5 – Cashing out long service leave

After an employee has fully accrued a long service leave entitlement, an employer and employee can agree to the employee receiving a cash benefit instead of the leave.

It is not permitted for a long service leave entitlement to be 'cashed out' in advance of the employee having completed the necessary continuous employment (that is prior to the leave being accrued), either:

- through a lump sum payment;
- incrementally through an extra amount paid on top of a base rate of pay; or
- through a commission payment.

An employer and employee are able to agree to cash out some or all of an employee's long service leave **only once** the employee has completed the necessary period of continuous employment and fully accrued the entitlement (after 10 years of continuous employment and then after each subsequent five years of continuous employment).

When an employee cashes out long service leave, they must be paid at least the amount of ordinary pay they would have received had they taken the leave. This is to ensure that an employee who cashes out accrued long service leave is not financially worse off for cashing out their leave than taking the leave.

An agreement to cash out long service leave must be in writing and signed by the employer and employee.

The employer must keep a copy of the written agreement, including details of the amount of leave and the dollar value of the long service leave cashed out.

An employee who cashes out their long service leave rather than taking the leave **does not accrue** annual leave, personal leave or long service leave on the leave that is cashed out.

Example
Emma has worked for Ryan for 11 years and has accrued a long service leave entitlement for 8.667 weeks after 10 years' continuous employment.

Emma requests to cash out four weeks of the 8.667 weeks' leave she has accrued. Ryan agrees to this, and he prepares a written agreement for them both to sign, specifying that Emma will receive an amount equivalent to four weeks' salary as payment for the cashed out long service leave.

Watch the 'Cashing out long service leave' video



www.lgirs.wa.gov.au/lsl-videos

Chapter 6 – What counts towards long service leave for full time and part time employees

A full time, part time, casual or seasonal employee's entitlement to long service leave depends on the length of their **continuous employment**. The term **continuous employment** has a specific meaning under the LSL Act.

There are some absences that do not count towards a period of continuous employment, meaning an employee's length of continuous employment may not be the same as the total time they have worked for an employer. These absences may be treated differently depending on whether an employee is full time, part time or casual.

If an employee has changed their work arrangement from full time to part time or casual, or vice versa, this does not break the employee's continuous employment with the employer.

Continuous employment is not necessarily restricted to service with just the existing employer but can also include employers who previously owned a business. 'Chapter 8 - Long service leave when a business changes ownership' has information on this issue

The way that continuous employment was calculated under the LSL Act changed in 2022. If an employee has a long service leave entitlement that fully accrued **prior** to 20 June 2022 (that is, their initial 10-year period of continuous employment, or subsequent five-year periods were completed **prior** to 20 June 2022), the previous (pre 20 June 2022) LSL Act provisions about absences that count towards the period of continuous employment apply to that entitlement.

This chapter has two sections:

- Current continuous employment provisions – full time and part time employees.
- Continuous employment for long service leave accrued **before** 20 June 2022 – full time and part time employees.

Details on how continuous employment is calculated for casual and seasonal employees are provided in 'Chapter 7 – What counts towards long service leave for casual and seasonal employees'.

Current continuous employment provisions - Full time and part time employees

The information in this section covers how continuous employment is calculated for long service leave entitlements for full time and part time employees that fully accrue (i.e. fall due) **on or after** 20 June 2022.

Absences that count towards continuous employment

The information in this section **does not apply to casual or seasonal employees**. Refer to 'Chapter 7 – What counts towards long service leave for casual and seasonal employees' for information about continuous employment for these employees.

There are many absences from work that count towards an employee's continuous employment. This includes all forms of paid leave and public holidays.

Absences that **count** towards an employee's continuous employment are:

- periods of paid annual leave;
- periods of paid long service leave;
- periods of paid personal leave, sick leave or carer's leave;
- periods of parental leave for which the employee has received payment (whether from the employer or the Australian Government under its parental leave pay scheme);
- periods of paid compassionate or bereavement leave;
- periods of paid family and domestic violence leave;

- any other form of leave provided as part of the employee's employment, including leave authorised by their employer or provided in legislation or in an award, agreement or contract of employment, for which the employee has received payment;
- paid public holidays;
- any period following the termination of the employee by their employer irrespective of the duration, if this was done by the employer with the intent of avoiding their long service leave or annual leave obligations; and
- service with the Defence Forces Reserves, whether paid or unpaid.

Example
Mei has worked full time for her employer for 11 years and is taking eight weeks long service leave.
The eight weeks Mei is on long service leave **counts** towards the period of continuous employment for her next accrual of long service leave.

An employee's period of employment with a previous owner of a business is also counted as part of their period of employment with the new owner where there has been a transfer or transmission of the business. 'Chapter 8 – Long service leave when a business changes ownership' has more information on this topic.

Absences that do not count towards continuous employment – Full time and part time employees

The information in this section **does not apply to casual or seasonal employees**. Refer to 'Chapter 7 – What counts towards long service leave for casual and seasonal employees'.

For **full time and part time employees**, some types of absences do not count towards an employee's period of continuous employment. This includes most forms of leave for which the employee **has not** received payment, such as unpaid carer's leave or leave without pay. These absences will not break an employee's service for long service leave purposes, however they **will not count** as time worked when calculating the length of continuous employment and will **push out the accrual date by the length of the absence**.

The absences that **do not count** towards continuous employment for long service leave accrual are:

- periods of leave for which the employee has not received payment. For example, a period of unpaid carer's leave or leave without pay;
- any period between employment where the employer terminates an employee for a reason other than slackness of trade but then re-employs them within two months of the termination;
- any period between employment where the employer terminates an employee due to slackness of trade but then re-employs them within six months of termination;
- any period when the employee was stood down by their employer in accordance with an award, agreement, order or determination. Please note the situation may be different if a stand down was based on a JobKeeper enabling stand down direction;
- any period during a transfer or transmission of business where the employment of an employee of the old employer has terminated and the employee has not yet been employed by the new employer;
- any absence arising directly or indirectly from an industrial dispute if the employee returned to work in accordance with the terms of settlement of the dispute;
- any reasonable absence on legitimate union business for which the employee has requested, but been refused, leave;
- any gap between the completion of an employee's apprenticeship or traineeship and the employment of the employee on a new contract of employment; and
- other types of absences authorised by the employer which are not listed above.

If an employee has had any of these types of absences, the period of the continuous employment is reduced by the length of the absence.

Although these absences do not count as part of an employee's period of employment for long service leave, they will not break an employee's continuity of employment.

Example
Simon has worked full time for his employer for 10 years. During his employment, Simon took 12 months of leave without pay to travel.

The 12 months' leave without pay **does not count** towards his period of continuous employment for long service leave.

Simon's period of continuous employment is reduced by the period of leave without pay and his period of continuous employment for long service leave is only nine years.

Parental leave and continuous employment

A period of parental leave for which an employee **has received payment** (whether from their employer or the Australian Government under its parental leave pay scheme) **will count** towards the employee's continuous employment for long service leave.

A period of parental leave for which a full time or part time employee **did not receive payment** is an absence that **does not count** towards continuous employment for long service leave. If a full time or part time employee has taken a period of unpaid parental leave, the period of the continuous employment is reduced by the length of the unpaid parental leave.

Example
Jess has worked full time for her employer for eight years and is about to take 12 months parental leave.

Jess receives 24 weeks **parental leave pay** from the Australian Government under its parental leave pay scheme. This period **counts** as part of her period of continuous employment for long service leave as she was receiving payment during this period.

The balance of her parental leave, 28 weeks, is **unpaid** parental leave and **does not count** towards her period of continuous employment for long service leave.

Jess' period of unpaid parental leave will extend the elapsed time until she is has accrued a long service leave entitlement by 28 weeks.

JobKeeper scheme and continuous employment

During 2020 and 2021 the COVID-era JobKeeper scheme operated throughout Australia. An employee's period of continuous employment and may be impacted if the employee was issued with a JobKeeper enabling stand down direction. More information is in 'Chapter 10 – JobKeeper scheme'.

Resignation and re-employment

Where an employee gives notice of resignation, their period of continuous employment generally ends when the notice period expires and their employment ends. It should be noted that an employee and employer can mutually agree to extend a notice period, in which case, employment continues to the end of the extended notice period.

If the employee is later re-employed by the same employer, their previous period of employment will not usually count towards continuous employment for long service leave.

However, each case is different and should be considered on the facts. For example, an employee who resigns and is re-employed may have their previous employment period counted where:

- there was effectively no absence, break or interruption in the employee's employment between the ending of one contract of employment and the commencement of another;
- it is not the employee's resignation that brings the employment to an end, but the employer's conduct. This could occur, for example, where:
  - the employer unilaterally brings forward the employee's resignation date (i.e. shortens the notice period without the employee's agreement); or
  - the employee was effectively forced to resign by the employer's conduct.

Special rules also apply where a business has transferred from one employer (the old employer) to another employer (the new employer) – for example, where the new employer has purchased the business from the old employer. An employee who resigns from the old employer, and within three months commences work with the new employer, may have continuous employment if certain criteria are met. In this situation, the new employer is taken to have been the employee's sole employer for the entire period. Refer to 'Chapter 8 – Long service leave when a business changes ownership'.

Continuous employment for 'Fly-in fly-out' (FIFO) employees

FIFO employees may work rosters where they perform work on some weeks ('on weeks') and do not perform work in other weeks ('off weeks').

Off weeks will generally count towards continuous employment for long service leave accrual, as they are not a form of unpaid leave and the employee's employment has not ended.

However, whether a particular FIFO employee has completed the required period of continuous employment will always depend upon the circumstances of their employment.

Continuous employment for apprentices and trainees

Where an apprentice or trainee completes an apprenticeship or traineeship with an employer and continues to be employed by the employer, their period of employment as an apprentice or trainee counts as part of their period of continuous employment for long service leave accrual.

Sometimes there might be a gap between an employee completing their apprenticeship or traineeship with an employer and then being employed by that employer. If an employee enters into a contract of employment with an employer within 52 weeks of completing an apprenticeship or traineeship with that employer, the gap does not break the employee's continuous employment.

However, any gap between the completion of the employee's apprenticeship or traineeship and the employment of the employee on a new contract of employment does not count towards the employee's period of continuous employment for long service leave accrual.

Example

Carlos completes a mechanical apprenticeship with a vehicle repair business. When Carlos completes his apprenticeship, he ceases working for the employer, as the business cannot afford to keep him on. However, six months later, the business has recovered financially, and hires Carlos as a qualified mechanic.

As Carlos has entered into a contract of employment with his employer within 52 weeks of completing an apprenticeship with it, the period of the apprenticeship is taken to be part of his continuous employment. However, the 6-month period where he was not working for the vehicle repair business does not count when calculating the length of his period of continuous employment.

Continuous employment for labour hire employees

Where an employee is employed by a labour hire provider and assigned to work at a host business, any entitlement to long service leave would be based on the period of continuous employment with the labour hire provider / employer, rather than the host business.

Watch the 'Understanding continuous employment for long service leave' video



www.lgirs.wa.gov.au/lsl-videos

Continuous employment for long service leave accrued before 20 June 2022 - Full time and part time employees

The continuous employment provisions in the LSL Act changed in 2022.

The information is this section covers how continuous employment was calculated for long service leave entitlements that fully accrued **before** 20 June 2022.

If an employee has a long service leave entitlement that **fully accrued prior** to 20 June 2022, the previous provisions in the LSL Act about absences that count towards the period of continuous employment still apply to that entitlement, even if the employee takes the long service leave (or receives payment for long service leave on termination) **after** 20 June 2022.

For example, if an employee accrued an entitlement to long service leave in December 2021 but is yet to take that leave, there is no need for the employer to re-calculate the employee's long service leave accrual based on the provisions that are now in place.

Absences that counted towards continuous employment before 20 June 2022

For periods of long service leave that were **fully accrued prior** to 20 June 2022, the following absences **counted** as part of an employee's period of continuous employment:

- periods of annual leave, of any duration;
- periods of long service leave, of any duration;
- periods of leave due to sickness or injury to the employee for a maximum of 15 working days per year of employment;
- public holidays;
- any period following the termination of the employee by their employer irrespective of the duration, if this was done by the employer with the intent of avoiding their long service leave obligations; and
- service with the Defence Forces Reserves.

Example
Victor began working for his employer in February 2010. The period of four weeks' paid annual leave Victor takes each year **counts** towards his period of continuous employment.

As the paid absence on annual leave counted towards his continuous employment and he had no absences that did not count, in February 2020 Victor accrued a long service leave entitlement after 10 years of continuous employment.

Absences that did not count towards continuous employment before 20 June 2022

For periods of long service leave that were **fully accrued prior** to 20 June 2022, the following absences **did not count** as part of an employee's period of continuous employment:

- periods of leave due to sickness or injury to the employee in excess of 15 working days per year of employment;
- absences that are authorised by the employer (other than annual leave and long service leave) – for example, a period of parental leave or leave without pay;
- any period between employment, where an employer terminates an employee for a reason other than slackness of trade but then re-employs them within two months of the termination;
- any period between employment, where an employer terminates an employee due to slackness of trade but then re-employs them within six months of the date of termination;
- any period when the employee was stood down by their employer in accordance with an award, agreement, order or determination. Please note the situation may be different if a stand down was based on a JobKeeper enabling stand down direction. See 'Chapter 10 – JobKeeper scheme and long service leave' for more information;

- any absence arising directly or indirectly from an industrial dispute, if the employee returned to work in accordance with the terms of settlement of the dispute; and
- any reasonable absence on legitimate union business for which the employee has requested, but been refused, leave.

Although these absences did not count as part of an employee's period of employment for long service leave, they did not break an employee's continuity of employment.

Example
Lewis commenced full time employment in July 2011, and then he sustained an injury playing football in 2017 and was absent from work on paid personal leave for seven weeks.

Of the seven weeks of personal leave, only the first 15 working days (three weeks) **counted** towards Lewis' continuous employment for long service leave, and the remaining four weeks **did not count** towards continuous employment.

Lewis's accrual date for long service leave was extended by the four-week period that did not count, and he received his long service leave in August 2021.

Other issues related to continuous employment

Service with related body corporates

From 20 June 2022, an employee's service with related body corporates is considered to be a part of the employee's period of continuous employment. Service with related body corporates **prior** to 20 June 2022 **does not count** towards an employee's continuous employment.

'Related body corporate' has the same meaning as defined in section 9 of the *Corporations Act 2001* (Cwth). An employee's service with a related body corporate is considered to be a part of the employee's period of continuous employment with the same employer.

Example 1
An employee transfers from ABC Construction to XYZ Construction on 1 July 2019. Both of these businesses are related body corporates. Only the employee's service with XYZ Construction from 1 July 2019 will count towards long service leave accrual.

Example 2
An employee transfers from AAA People Consulting to ZZZ People Consulting on 1 September 2022. Both of these businesses are related bodies corporate. Only the employee's service with AAA People Consulting from 20 June 2022 will count towards long service leave accrual.

Employment outside Western Australia

An employee's work interstate or overseas may count towards continuous employment under the LSL Act as the LSL Act may have extra-territorial effect (i.e. outside of the state's boundaries) if there is a substantial connection between the employee's employment and the state of Western Australia. This can only be determined on a case-by-case basis and will depend on the facts of the particular case.

Chapter 7 – What counts towards long service leave for casual and seasonal employees

Casual employees and seasonal employees are entitled to long service leave under the LSL Act when they reach the required period of continuous employment. When a casual employee takes long service leave, or is paid out long service leave when employment ends, their ordinary pay for long service leave purposes includes their casual loading.

A casual or seasonal employee's entitlement to long service leave depends on the length of their **continuous employment**. The term **continuous employment** has a specific meaning under the LSL Act.

There are some absences that do not count towards a period of continuous employment, meaning an employee's length of continuous employment may not be the same as the total time they have worked for an employer.

These absences may be treated differently depending on whether an employee is full time, part time or casual.

If an employee has changed their work arrangement from full time to part time or casual, or vice versa, this does not break the employee's continuous employment with the employer.

Continuous employment is also not restricted to service with just the existing employer but can also include employers who previously owned the business. 'Chapter 8 – Long service leave when a business changes ownership' provides more information on this topic.

A casual or seasonal employee can have continuous employment despite working intermittently and/or with varying hours. As a general principle, breaks between shifts or seasons where the employer does not provide the employee with work and which are part of the employee's terms of employment do not mean:

- the employee has been absent from work; or
- the employee's employment has been terminated at the end of the shift or season.

Such breaks between shifts or seasons that are part of the employee's terms of employment therefore:

- do not break the employee's continuity of employment; and
- count towards the employee's period of continuous employment.

A casual or seasonal employee can also have continuous employment with an employer despite the fact that:

- the employee is employed by the employer under two or more contracts of employment; or
- the employee is also employed by another person during the period of employment with the employer.

Whether a particular casual or seasonal employee has completed the required period of continuous employment will always depend upon the circumstances of their employment.

Example 1
Niall is a casual employee who is engaged by Daniel to only work during school term time. As Daniel does not require Niall to perform work during the term breaks, this 'absence' is one that arises under the terms of Niall's employment and Niall's employment is considered continuous.

Example 2
Freya employs Heidi for six months of the year to perform harvest related work. As Heidi's harvest related work for Freya always recommences at the start of each harvest season, Heidi's employment is considered continuous as the six-month 'absences' each year are caused by seasonal factors.

The way that continuous employment is calculated under the LSL Act changed in 2022. If an employee has a long service leave entitlement that **fully accrued prior** to 20 June 2022 (that is, their initial 10-year period of continuous employment, or subsequent five-year periods were completed **prior** to 20 June 2022), the previous (pre 20 June 2022) LSL Act provisions about absences that count towards the period of continuous employment apply to that entitlement.

This chapter has two sections:

- Current continuous employment provisions – Casual and seasonal employees.
- Continuous employment for long service leave accrued **before** 20 June 2022 – Casual and seasonal employees.

Current continuous employment provisions - Casual and seasonal employees

The information in this section covers how continuous employment is calculated for casual and seasonal employees for long service leave entitlements that **fully accrue** (i.e. fall due) **on or after** 20 June 2022.

A casual or seasonal employee has continuous employment with an employer despite an absence from work for any of the following reasons, irrespective of the duration:

- an absence under the terms of the employment;
- an absence caused by seasonal factors; and
- any other absence after which the employee has, due to the regular and systematic nature of the employment, a reasonable expectation of returning to work for the employer.

Any absence in any one of these categories **counts** towards a casual employee's period of continuous employment.

Absences under an employee's 'terms of employment' can include:

- statutory entitlements (such as personal leave and other minimum leave entitlements that apply to casuals);
- entitlements under an award or registered agreement; or
- entitlements set out in a contract of employment.

Breaks between shifts or seasons where an employer does not provide a casual employee with work count towards the employee's period of continuous employment.

Example
Usman is regularly employed by Howard to work such shifts as determined by Howard. Usman asks Howard for two months off work to study for final exams and Howard agrees to this. As Usman is regularly and systematically employed by Howard and he has a reasonable expectation of returning to work for Howard after the absence, the two-month absence will not break Usman's continuity of employment and will count towards his period of continuous employment.

Parental leave and continuous employment

A period of parental leave for which a casual employee **has received payment** (whether from their employer or the Australian Government under its parental leave pay scheme) **counts** towards the employee's continuous employment for long service leave.

A period of parental leave for which a casual employee **did not receive payment** is an absence that **also counts** towards continuous employment for long service leave where an employee has a reasonable expectation of returning to work for the employer.

Example
Priya has worked as a casual employee for five years and takes 30 weeks unpaid parental leave. She receives payment for 24 weeks of this period are under the Australian Government's parental leave pay scheme and has six weeks where she receives no payment. As Priya has an expectation of returning to work for her employer, the total period of parental leave counts towards her continuous employment.

Continuous employment for long service leave accrued before 20 June 2022 - Casual and seasonal employees

If a casual or seasonal employee has a long service leave entitlement that **fully accrued prior** to 20 June 2022, the previous provisions in the LSL Act about absences that count towards the period of continuous employment still apply to that entitlement, even if the employee takes the long service leave (or receives payment for long service leave on termination) **after** 20 June 2022.

For example, if an employee accrued an entitlement to long service leave in December 2021 but is yet to take that leave, there is no need for the employer to re-calculate the employee's long service leave accrual based on the provisions that are now in place.

There were no specific rules in place for determining casual and seasonal employees' continuous employment **prior** to June 2022, only the general provisions which applied to all employees. As a general principle, breaks between shifts or seasons that are part of a casual employee's terms of engagement count towards the employee's period of continuous employment.

Absences that counted towards continuous employment before 20 June 2022

For periods of long service leave that were fully accrued **prior** to 20 June 2022, the following absences **counted** as part of a casual or seasonal employee's period of continuous employment:

- periods of long service leave, of any duration;
- periods of leave due to sickness or injury to the employee for a maximum of 15 working days per year of employment;
- public holidays;
- any period following the termination of the employee by their employer irrespective of the duration, if this was done by the employer with the intent of avoiding their long service leave obligations; and
- service with the Defence Forces Reserves.

As a general principle, breaks between shifts or seasons that are part of an employee's terms of engagement count towards the employee's period of continuous employment.

Absences that did not count towards continuous employment before 20 June 2022

For periods of long service leave that were fully accrued **prior** to 20 June 2022, the following absences **did not count** as part of an employee's period of continuous employment:

- periods of leave due to sickness or injury to the employee in excess of 15 working days per year of employment;
- absences that are authorised by the employer (other than annual leave and long service leave) – for example, a period of parental leave or leave without pay;
- any period between employment, where an employer terminates an employee for a reason other than slackness of trade but then re-employs them within two months of the termination;
- any period between employment, where an employer terminates an employee due to slackness of trade but then re-employs them within six months of the date of termination;

- any period when the employee was stood down by their employer in accordance with an award, agreement, order or determination. Please note the situation may be different if a stand down was based on a JobKeeper enabling stand down direction. See 'Chapter 10 – JobKeeper scheme and continuous employment' for more information;
- any absence arising directly or indirectly from an industrial dispute, if the employee returned to work in accordance with the terms of settlement of the dispute; and
- any reasonable absence on legitimate union business for which the employee has requested, but been refused, leave.

Although these absences did not count as part of an employee's period of employment for long service leave, they did not break an employee's continuity of employment.

Parental leave and continuous employment before 20 June 2022

For periods of long service leave that were **fully accrued prior** to 20 June 2022 for casual and seasonal employees, a period of parental leave **does not count** towards continuous employment for long service leave. If a casual or seasonal employee has had this type of absence, the period of the continuous employment would be reduced by the length of the absence.

Example

Taj was employed to work casually in Dandy café in March 2010. Taj took 12 months of unpaid parental leave in 2018, but did not have any other absences that would be excluded from continuous employment based on the rules that applied at the time.

Taj therefore became entitled to 8.667 weeks of long service leave in March 2021, after completing 10 years of continuous employment. As Taj's long service leave entitlement fully accrued before 20 June 2022, the12-month period of Taj's parental leave does not count towards the length of Taj's continuous employment.

Chapter 8 – Long service leave when a business changes ownership

If a new employer buys or takes over a business, and retains the existing employees, the employer will take on all the long service leave obligations for those employees.

To be entitled to long service leave under the LSL Act, an employee must have continuous employment with 'the same employer'.

The length of continuous employment is not restricted to service with just the existing employer, but can also include employers who previously owned the business, where there has been a:

- 'transfer of business' for changes of business ownership **on or after** 20 June 2022; or
- 'transmission of business' for changes of business ownership **before** 20 June 2022.

Determining whether there has been continuous employment with the same employer in a particular situation depends on the specific facts and circumstances.

Current change of business ownership provisions - Transfer of business on or after 20 June 2022

The current transfer of business provisions in the LSL Act apply to changes of business ownership that occurred **on or after** 20 June 2022.

When there has been a transfer of business and a new employer buys or takes over a business, and retains the existing employees, subject to certain requirements being met the employer will take on all the long service leave obligations for those employees. This applies regardless of anything written in a sale of business contract.

A transfer of business commonly occurs via the sale of a business, which results in an employee of the old owner/employer becoming an employee of the new owner/employer. A transfer may also occur in other ways, including by succession or assignment, outsourcing and being employed by a related body corporate – 'Chapter 8 – What is a transfer of business' section has more details.

If there has been a transfer of business:

- a transferring employee's employment before and after the transfer is considered a single period of continuous employment; and
- the new employer is considered to have been the transferring employee's sole employer for the entire period.

Therefore, when a business is transferred, an employee's period of continuous employment with the old employer transfers to the new employer and an employee's accrued long service leave (if any) is also transferred. The new employer will take on all the long service leave obligations for the employee.

On the transfer of a business, the old employer must transfer copies of all transferring employees' employment records to the new employer. This will enable the new employer to accurately determine an employee's long service leave entitlement.

Example

In September 2022, Preeti bought a small fashion boutique from Alex. One of the staff members, Morgan had worked for Alex for 11 years prior to the sale and had not yet taken their long service leave. Morgan continued working for Preeti after the sale of the business.

Morgan subsequently resigned in April 2023, as the change of business ownership met the criteria for a transfer of the business under the LSL Act, Morgan had an entitlement to be paid long service leave on resignation and Preeti was responsible for paying all of this entitlement.

As Preeti and Alex had made arrangements for long service leave obligations as part of the sale of business, Preeti had funds in reserve to pay out this expected leave entitlement.

What is a transfer of business?

There is a transfer of business from an old employer to a new employer if the following requirements are satisfied:

- the employment of an employee of the old employer has ended (e.g. by resignation or termination by the employer);
- within three months after the employment ends, the employee becomes employed by the new employer;
- the work (the 'transferring work') the employee performs is the same or substantially the same as the work the employee performed for the old employer; and
- there is a connection between the old employer and the new employer.

In broad terms, there will be a connection between the old employer and the new employer if the new employer owns or has the beneficial use of some or all of the assets (whether tangible or intangible) that the old employer owned or had the beneficial use of, and that relate to, or are used in connection with, the transferring work.

Regardless of whether there is a transfer of assets, there will also be a connection between the old employer and the new employer if:

- the old employer has outsourced work to the new employer, and that work is performed by one or more transferring employees engaged by the new employer;
- the new employer previously outsourced work to the old employer, but decides to in-source that work and engages employees of the old employer to continue performing that work; or
- the new employer is a related body corporate of the old employer when the transferring employee becomes employed by the new employer.

Determining whether there has been a transfer of business in a particular situation will depend on the specific facts and circumstances.

Previous change of business ownership provisions - Transmission of business prior to 20 June 2022

This information is based on the previous transmission of business provisions in the LSL Act and applies only to changes of business ownership which occurred **prior** to 20 June 2022.

A transmission of business can occur when one employer sells their business (or part of their business) to another employer. A transmission may also occur in other ways, including by succession or assignment.

If there has been a transmission of business and an employee of the previous employer becomes an employee of the new employer, the employee's period of continuous employment with the new employer will include the period of continuous employment they had with their previous employer.

This means, if there has been a transmission of business, the employer who buys or otherwise acquires a business or part of a business will take on the long service leave obligations for any of the employees of the old employer who the new employer then employs in the business. This applies regardless of anything written in a sale of business contract.

Determining whether there has been a transmission of business in a particular situation will depend on the specific facts and circumstances.

Example
On 1 January 2017, Sarah bought a hairdressing salon from Tony. One of the staff members, Kim, had worked for Tony for six years and then continued working for Sarah after the sale of business. When Kim resigned on 31 December 2021, she had worked a total of 11 years in the business (six years for Tony and five years for Sarah).

As the change of business ownership met the criteria for a transmission of business under the LSL Act, Kim had an entitlement to be paid long service leave on resignation and Sarah was responsible for paying all of this entitlement.

Watch the 'Long service leave when a business changes ownership' video



www.lgirs.wa.gov.au/lsl-videos

Chapter 9 – Long service leave and workers compensation

The effect of a period of income or workers compensation on an employee's long service leave accrual under the LSL Act will depend on:

- when the period of compensation occurred; and
- when the employee's long service leave entitlement fully accrued (became due).

Please note that employees who have received workers compensation that is not under the WA workers compensation legislation (for example under the federal *Safety, Rehabilitation and Compensation Act 1988* (Cth)) may have different entitlements.

Periods of income compensation on or after 1 July 2024

Under the state *Workers Compensation and Injury Management Act 2023* (WCIM Act), an absence from work on income compensation **on or after 1 July 2024** counts towards the length of an employee's period of continuous employment.

For workers who receive income compensation under the WCIM Act, long service leave accrues during the period of income compensation.

Periods of workers compensation before 1 July 2024

For periods of workers compensation **before** 1 July 2024, the effect on the length of an employee's period of continuous employment is determined by the LSL Act.

The continuous employment provisions in the LSL Act changed on 20 June 2022. This means periods of workers compensation **before** 1 July 2024 will be treated differently depending on whether the employee's long service leave entitlement fully accrued (became due) **before** 20 June 2022 or **on or after** 20 June 2022.

Long service leave entitlements accrued on or after 20 June 2022

If an employee has a long service leave entitlement that **fully accrued on or after** 20 June 2022 (that is, their initial 10-year period of continuous employment or subsequent five-year period was completed **on or after** 20 June 2022), the current LSL Act provisions about continuous employment apply.

This means that for a **full time or part time employee**, a period of workers compensation **does not count** towards the length of the employee's period of continuous employment for long service leave unless:

- the employee was receiving paid annual leave or long service leave while (i.e. at the same time) they were receiving workers compensation payments;
- the employee was performing work during the period of workers compensation, including participating in a return-to-work program, in which case they accrue long service leave for any time that they perform work; or
- the period of workers compensation occurred **on or after** 1 July 2024.

Casual and seasonal employees

Different rules apply for casual and seasonal employees who fully accrue a long service leave entitlement **on or after** 20 June 2022. For these casual employees, any absence after which the employee has, due to the regular and systematic nature of the employment, a reasonable expectation of returning to work for the employer, counts towards the length of the employee's period of continuous employment. A period of workers compensation may therefore count towards long service leave accrual for casual employees. Refer to 'Chapter 7 – Long Service leave for casual and seasonal employees'.

Long service leave entitlement accrued before 20 June 2022

If an employee has a long service leave entitlement that fully accrued **prior** to 20 June 2022, (that is, their initial 10-year period of continuous employment or subsequent five-year period was completed **prior** to 20 June 2022), the previous LSL Act provisions about continuous employment apply.

This means that absences due to sickness or injury (including workplace injuries) of up to 15 days per year count towards the employee's period of continuous employment. Absences due to sickness or injury in excess of 15 days per year would not count towards the employee's period of continuous employment, unless:

- the employee was performing work during the period of workers compensation, including participating in a return-to-work program, in which case they accrue long service leave for any time that they perform work; or
- the employee received paid annual leave or long service leave while (i.e. at the same time) they were receiving workers compensation payments, in which case they accrue long service leave for the period of annual or long service leave.

Chapter 10 – JobKeeper scheme and continuous employment

During 2020 and 2021 the COVID-era JobKeeper scheme operated throughout Australia. An employee's period of continuous employment and their 'ordinary pay' for long service leave may be impacted if the employee was issued with a JobKeeper enabling stand down direction.

This information is not relevant to casual and seasonal employees whose long service leave entitlements became due **on or after** 20 June 2022. Refer to 'Chapter 7 – What counts towards long service leave for casual and seasonal employees'.

National system employees

For national system employees, if a JobKeeper enabling direction was issued which resulted in an employee being completely stood down for a period (that is, they did not work any hours), then that period does not count towards the employee's period of employment for accruing long service leave, but did not break the employee's continuous employment.

If a JobKeeper enabling direction was issued which reduced a national system employee's hours of work for a period, but they were not stood down entirely, then that period will count towards the employee's period of continuous employment for accruing long service leave.

However, the employee's reduced working hours will impact the amount of the employee's 'ordinary pay' for long service leave to be taken or paid out in the future. That is, the employee's reduced working hours for the period of any JobKeeper enabling stand down direction will need to be taken into account when calculating the normal weekly number of hours worked by the employee during their period of employment, for the purposes of calculating 'ordinary pay' for long service leave.

State system employees

The effect of a JobKeeper enabling stand down direction on an employee's long service leave entitlements will depend on whether a WA award applies, and if so, the nature of any long service leave provisions in that award.

Award free employees

For state system award free employees, if a JobKeeper enabling direction was issued which resulted in an employee being completely stood down for a period (that is, they did not work any hours), then that period does not count towards the employee's period of employment for accruing long service leave, but did not break the employee's continuous employment.

If a JobKeeper enabling direction was issued which reduced the employee's hours of work for a period, but they were not stood down entirely, then that period does count towards the employee's period of continuous employment for accruing long service leave. However, the employee's reduced working hours will impact the amount of the employee's 'ordinary pay' for long service leave to be taken or paid out in the future.

That is, the employee's reduced working hours for the period of any JobKeeper enabling stand down direction will need to be taken into account when calculating the normal weekly number of hours worked by the employee during their period of employment, for the purposes of calculating 'ordinary pay' for long service leave.

WA award employees

For private sector WA award employees, the effect of a JobKeeper enabling stand down direction on long service leave entitlements depends on the provisions of the relevant WA award.

WA awards providing for long service leave

If the applicable WA award contains a long service leave clause which specifies that an employee is entitled to long service leave, whether in accordance with the LSL Act, the (now repealed) Long Service Leave General Order, or some other arrangement, then the employee accrues long service leave entitlements based on their usual hours and days of work, as if the JobKeeper enabling stand down direction had not been given.

This means that if a JobKeeper enabling direction was issued which reduced the employee's working hours for a period (including where an employee was completely stood down and did not work any hours), then that period will count towards the employee's period of continuous employment for accruing long service leave, and will not impact the amount of the employee's 'ordinary pay' for long service leave to be taken or paid out in the future.

The employee's reduced working hours for the period of any JobKeeper enabling stand down direction are not to be included in the calculation of the normal weekly number of hours worked by the employee during their period of employment, for the purposes of calculating 'ordinary pay' for long service leave. Instead, the calculation should be based on the employee's usual hours and days of work, as if the JobKeeper enabling stand down direction had not been given.

WA awards which do not provide for long service leave

If the WA award does not contain a long service leave clause which specifies that an employee is entitled to long service leave, then the employee's long service leave entitlements will be impacted by a JobKeeper enabling stand down direction.

If a JobKeeper enabling direction was issued which resulted in the employee being completely stood down for a period (that is, they did not work any hours), then that period will not count towards the employee's period of employment for accruing long service leave, but will not break the employee's continuous employment.

If a JobKeeper enabling direction was issued which reduced the employee's hours of work for a period, but they were not stood down entirely, then that period counts towards the employee's period of continuous employment for accruing long service leave. However, the employee's reduced working hours will impact the amount of the employee's 'ordinary pay' for long service leave to be taken or paid out in the future. That is, the employee's reduced working hours for the period of any JobKeeper enabling stand down direction will need to be taken into account when calculating the normal weekly number of hours worked by the employee during their period of employment, for the purposes of calculating 'ordinary pay' for long service leave.

All WA awards are available on the Western Australian Industrial Relations Commission website at www.wairc.wa.gov.au or you can contact Wageline on 1300 655 266 for award specific information.

Chapter 11 – Record keeping obligations for long service leave

There are record keeping obligations and potential penalties for employers who breach the LSL Act record keeping requirements.

Employers must keep all records relevant to the calculation of an employee's long service leave during an employee's employment and for seven years after employment ends.

Under the LSL Act, it is compulsory for employers to keep employment records for all employees detailing:

- the employee's name, and the employee's date of birth if under 21 years of age;
- the employer's name and Australian Business Number (if any);
- the date the employee commenced employment with the employer;
- the weekly hours worked by the employee;
- the gross and net amount paid to the employee, and all deductions and the reasons for them;
- all leave taken, whether paid, partly paid or unpaid;
- any written agreement to cash out long service leave, including the amount of leave cashed out, the amount that was paid, and the date that payment occurred;
- the date of any transfer of business during the employment of the employee; and
- any other details necessary for the calculation of the entitlement to and payment for long service leave.

The employer must keep all records relating to the calculation of an employee's long service leave for the employee's entire period of employment. All records must also be kept for seven years after the employee's employment ends.

If there is a transfer of a business, the old employer must transfer copies of all transferring employees' employment records to the new employer. This will enable the new employer to accurately determine an employee's long service leave entitlement.

Access to employment records

If an employer receives a written request from an employee or a former employee, the employer must allow them to inspect their own employment records during their employment or after their employment has ceased. The employee can also give written authorisation to another person to inspect the records on their behalf.

Access to records by the employee or their representative includes being able to enter the employer's premises for the purpose of inspecting time and wages records, and taking copies or extracts of those records.

Employers must provide access no later than the end of the pay period after the written request is received, or seven days after the request.

Watch the *Record keeping for long service leave* video



www.lgirs.wa.gov.au/lsl-videos

Chapter 12 – Penalties for breaches of the LSL Act

There can be financial penalties for employers who do not provide employees with a long service leave entitlement or do who do not keep the right employment records.

Under the LSL Act, employers have obligations to provide employees with the correct long service leave entitlements, and to keep and maintain the required long service leave records. Employers who do not meet these obligations can face penalties.

Penalties of up to $18,000 (or up to $180,000 in the case of a serious contravention) for individuals or a penalty of up to $93,000 (or up to $930,000 in the case of a serious contravention) for bodies corporate can apply for:

- not providing a long service leave entitlement;
- not keeping employment records;
- keeping an employment record that the employer knows, or could reasonably be expected to know, is false or misleading; and
- failing to transfer copies of transferring employees' employment records to the new employer, where there is a transfer of business.

A serious contravention is defined as a situation in which the person knowingly commits the contravention, and this conduct is part of a systematic pattern of conduct relating to one or more other persons.

Employer burden to disprove an allegation

An employer will have the burden of disproving an allegation made in proceedings to enforce an entitlement to long service leave if the employer was required to:

- make or keep an employment record under the LSL Act in relation to the matter; or
- make available for inspection a record in relation to the matter; and
- failed to comply with the requirement.

The burden of disproving an allegation does not apply, however, if the employer provides a reasonable excuse for the failure to comply with the requirement to make or keep a record, or make a record available for inspection.

Accessorial liability

A penalty may also be imposed on a person who has been involved in a contravention, including a contravention of a record keeping requirement. This liability may extend to persons such as accountants and HR officers responsible for maintaining and keeping employment records for a business if they are involved in an employer's contravention of the record keeping requirements.

A person is involved in a contravention if the person intentionally participates in the contravention. This requires actual knowledge of the essential matters that make up the contravention. It can, however, also include 'wilful blindness' if a person deliberately shuts their eyes to what is going on and fails to make an inquiry of suspicious circumstances.