

Fact Sheet – Long service leave

1 What is long service leave?

Long service leave is an entitlement granted to employees who have been continuously employed by the same employer for a long period of time.

2 Entitlement to long service leave

2.1 Which employees are eligible for long service leave?

All permanent employees, whether full-time or part-time (and in some cases, casual employees too), are entitled to long service leave if they have been continuously employed by an employer for the necessary period.

2.2 When does the entitlement to long service leave arise?

In Western Australia, an employee must be continuously employed for 10 years to be entitled to take long service leave.

3 How is long service leave calculated?

Long service leave payments are based on the “ordinary” rate of pay applicable to an employee when he or she takes his or her leave. In Western Australia, the ordinary rate of pay does not include shift premiums, overtime, penalty rates, allowances, or the like, but does include bonuses and commissions.

An employee is usually entitled to the whole amount before going on long service leave.

3.1 What is the long service leave entitlement?

After 10 years of continuous employment, an employee is entitled to $8\frac{2}{3}$ weeks of paid long service leave. For every further 5 years of employment after the first 10 years, employees are entitled to an additional $4\frac{1}{3}$ weeks of paid long service leave.

3.2 What happens to long service leave on termination of employment?

Where an employee has completed 7 or more years of continuous service with an employer, he or she is entitled to a pro-rata long service leave termination payment, unless the employment is terminated for serious misconduct.

To calculate the amount of long service leave upon termination, the actual period accrued must be divided by the period of service required for the full entitlement.

For example, an employee resigns after 8 years' continuous employment with the same employer. The employee needs 10 years of continuous service with the same employer to be entitled to long service leave. Therefore, on termination the employee is entitled to 80% (8 years of actual service ÷ 10 years of required service) of the full long service leave entitlement.

3.3 Can there be payment in lieu of long service leave?

An employer and an employee may agree that the employee forgoes his or her entitlement to long service leave, provided that the employee is given an adequate benefit in lieu of the entitlement and the agreement is in writing. An equivalent cash payment is likely to be an "adequate benefit".

4 Commencement of long service leave

4.1 Is there a requirement for notice of when the leave will be taken?

Under Western Australian law, an employer must give an employee one month's notice of when the employee can take their leave, unless otherwise agreed.

4.2 When may leave be taken?

Where an agreement has not been made between an employer and employee, an employee may take his or her leave at any time after 12 months of the entitlement becoming due.

An employee must give 2 weeks' notice of his or her intention to take leave.

4.3 Can long service leave be taken in advance?

Long service leave of one month or more may be taken in advance of the entitlement arising if agreed by the employer and employee. If long service leave is taken in advance and the employee does not fulfil the period of service owed, the employer is entitled to adjust the monies paid on termination to that employee to compensate for this.

4.4 Can separate periods of long service leave be taken?

Under Western Australian legislation, an employee may take separate periods of one week's leave at a time if the employer agrees to this. Otherwise, on the first long service leave entitlement the employee may take 3 separate periods of leave and then on subsequent long service leave entitlements the employee may take 2 separate periods of leave.

4.5 Can an employee work for another employer during long service leave?

It is unlawful for an employee to work for another employer while on long service leave.

5 Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111

Web www.elcwa.org.au

Wageline

Tel 1300 655 266 or 08 6251 2100

Web www.dmirs.wa.gov.au/wageline

6 Disclaimer

By using this publication and the information* contained within it, you agree that:

The Employment Law Centre of WA (Inc), and its directors, employees and agents (**ELC**), do not accept responsibility for any consequences, including loss and/or damage, arising from your access to, or use of, the information contained in this publication, or from your reliance on any materials contained within this publication.

While the information has been formulated with all due care, ELC does not guarantee the accuracy, currency, reliability or correctness of any of the information, nor that the information provided is exhaustive. This publication, and all the information therein, is intended to be for informational purposes only and is not intended to provide or replace specialist legal advice.

ELC does not accept responsibility for the accuracy, currency, reliability or correctness of any information included within the publication that has been provided by third parties, including third party website links.

None of the information or materials provided within this publication may be used, reproduced or transmitted, in any form or by any means, without written permission from ELC.

Ultimately, you use this publication, and the information contained within it, at your own discretion and risk. You accept as a condition of your use of this publication and the information contained therein that you will make no claim for any loss, damage or expense that may arise from your use of publication, or your reliance on any of the information contained within it.

If you have concerns or questions about any of the above, you should contact ELC for assistance on 1300 130 956.

*Information includes any and all data, documents, pages and images.