



Long-Service Leave

employment law

ENTITLEMENT TO LONG SERVICE LEAVE

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

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.

In Queensland, an employee's entitlement to long-service leave is often found in the *Industrial Relations Act 2016 (Qld)* (Industrial Relations Act) or in a portable long-service leave scheme. However, long-service leave entitlements may also be found in an applicable industrial instrument.

The portable long-service leave schemes currently relate to employees in certain industries, such as the building and construction, coal mining, security, community services and contract cleaning industries. This factsheet considers the entitlement in Queensland under the Industrial Relations Act, unless otherwise specified.

ENTITLEMENT TO LONG-SERVICE LEAVE

Which employees are eligible for long-service leave?

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

An employee's period of continuous service with an employer will be broken where there is a break of more than three months between the end of one employment contract and the start of the next employment contract, except where the employee is undertaking Reserve Service with the Australian Defence Force during the break.

When does the entitlement to long-service leave arise?

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

WHAT IS THE LONG-SERVICE LEAVE ENTITLEMENT?

After 10 years of continuous employment, an employee is entitled to 8.6667 weeks of paid long-service leave. After 15 years of continuous service, employees are entitled to long-service leave proportionate to their further period of continuous service past 10 years (i.e. an employee who has completed 15 years of service is entitled to an additional 4.33335 weeks of long-service leave).



Long-Service Leave | employment law

HOW IS LONG-SERVICE LEAVE CALCULATED?

Long-service leave payments are based on the employee's rate of pay immediately prior to taking their leave. The ordinary rate of pay may include commissions where this would ordinarily be earned.

When can long service leave be taken?

An industrial instrument that applies to the employee's employment may prescribe how long-service leave may be taken. Otherwise, an employer and an employee may agree when the employee is to take their long-service leave. An employee may be required to comply with a policy or procedure of their employer in applying to take a period of long-service leave.

If the employee's industrial instrument is silent about when the leave can be taken, and if the employee and employer cannot agree, the employer may decide when the employee is to take long-service leave by giving the employee at least three months written notice of the date on which the employee must take at least four weeks long-service leave.

For part-time and casual employees, you and your employer may agree on the entitlement to long-service leave to be taken in the form of its full-time equivalent.

For example, if an employee is entitled to be paid 260 hours of long-service leave and the ordinary full-time hours at the employee's place of work is 38 ordinary hours per week, the employee and the employer may agree that the employee will take 6.842 weeks of long-service leave (260 / 38 = 6.842).

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

An employee may be paid for all or part of an entitlement to long-service leave instead of

taking the leave, or part of the leave ('cashing out the leave') if the:

- employee's applicable industrial instrument provides that the employee can be paid all or part of their long-service leave entitlement
- employee and employer agree in writing for the leave to be paid out
- payment is made in accordance with the provisions of the employee's industrial instrument.

If an industrial instrument does not provide for an employee's long-service leave entitlement to be paid out, payment can only be made if it is ordered by the [Queensland Industrial Relations Commission](#) on application by the employee.

Are casual and part-time employees entitled to long-service leave?

For part-time and casual employees (or persons who have had a combination of full-time, part-time and/or casual service), long-service leave entitlements will be calculated on a proportionate basis of the full-time entitlement, according to their ordinary hours worked over the length of their service.

If, at any time during an employee's continuous employment, the employee was a casual or part-time employee, payment for the employee's long service leave should be calculated using the following formula:

$$\frac{\text{actual working hours}}{52} \times \frac{8.6667}{10} \times \text{hourly rate at the time of the leave}$$



Long-Service Leave | employment law

For example:

An employee who has worked 15 600 ordinary working hours over a 10-year period and is being paid an hourly rate of \$20 is entitled to be paid:

$$\frac{15\,600}{52} \times \frac{8.6667}{10} \times 20 = \$5200.02$$

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

An employee who has completed at least seven years, but less than ten years, of continuous service with an employer is entitled to a pro-rata long-service leave payment on termination of their employment, but only if one of the following circumstances applies:

- The employee's service is terminated because of the employee's death.
- The employee terminates the service because of:
 - the employee's illness
 - a domestic or other pressing necessity.
- The termination is because the employer:
 - dismisses the employee because of the employee's illness
 - dismisses the employee for a reason other than the employee's conduct, capacity or performance
 - unfairly dismisses the employee.
- The termination is because of the passing of time and:
 - the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service

- the employee was prepared to continue the employment with the employer.

An employee who receives a proportionate payment of long-service leave on termination of employment is paid at their full rate of pay for a period that is the equivalent proportion of 8.6667 weeks as the employee's period of continuous service is to ten years.

CONTACT POINTS

Caxton Community Legal Centre

Turbot Place

Level 23, 179 Turbot Street
Brisbane Qld 4000

P (07) 3214 6333

E caxton@caxton.org.au

W caxton.org.au

Fair Work Commission

Level 14, Central Plaza 2
66 Eagle Street

Brisbane Qld 4000

P 3000 0399

W fwc.gov.au

Fair Work Ombudsman

W www.fairwork.gov.au

Queensland Industrial Relations Commission

W www.qirc.qld.gov.au



Long-Service Leave | employment law

CAXTON COMMUNITY LEGAL CENTRE

© Copyright Caxton Community Legal Centre

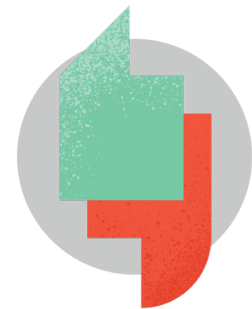
Turbot Place
Level 23, 179 Turbot Street
Brisbane Qld 4000

P (07) 3214 6333

F (07) 3846 7483

W caxton.org.au

This information is current at November 2022.



This factsheet is intended to give general information only and should not be used as a substitute for legal advice. While every effort has been made to ensure the accuracy at the time of writing, the law is complex and constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.