

# 05

## What is the entitlement to take long service leave?

Long service leave accrues at the rate of one week for each 60 weeks of employment with one employer, that is, at approximately 0.866 weeks per year.

### For employees with 15 years or more of continuous employment with one employer

An employee with continuous employment with one employer is entitled to 13 weeks paid long service leave, taken as a break from work without loss of pay, at 15 years.

For every 5 years of continuous employment after this initial 15 years, the employee is entitled to an additional 4.333 weeks of leave.

### For employees with between 10 and 15 years of continuous employment with one employer

An employee will be entitled to take long service leave after 10 years of continuous employment with one employer. The entitlement is calculated on a pro-rata basis. Based on the formula of one week per 60 weeks of employment, an employee will be entitled to take approximately 8.66 weeks long service leave after 10 years of continuous employment.

It is important to note that since 1 January 2006 the entitlement to take long service leave after 10 years service has been progressively phased in.

To calculate *when* an employee is eligible to take leave:

- > two thirds of an employee's period of service before 1 January 2006; and
- > all of an employee's period of service from 1 January 2006 is taken into account.

When this amounts to a total of 10 years, the long service leave entitlement is due to be taken.

This phasing-in method does not reduce the amount of long service leave to which an employee is entitled once the 10 year service is calculated. At this time, an employee is entitled to one week of leave for every 60 weeks' of employment, taking into account the employee's full period of employment with no reductions.

### Example

*Sarah has been employed in a flower shop since 1 July 1996. A friend told her about an entitlement to long service leave at ten years. On 1 July 2008 she asked her employer about the entitlement.*

*Sarah's employer explained that her entitlement to take long service leave is calculated as follows:*

- > *Sarah worked a total of 9.5 years in the period before 1 January 2006. Two thirds of this period is taken into account. 9 years and 6 months – 1/3 = 6.33 years.*
- > *Sarah worked a total of 1.5 years from 1 January 2006 to 1 July 2008. All of this period is taken into account.*
- > *Sarah's relevant period of service is therefore 6.33 + 1.5 = 7.83 years. Because this is less than 10 years, she is not eligible to take long service leave.*
- > *On 1 September 2009, when Sarah has worked another 1.17 years, she will have completed 10 years eligible service and will be entitled to take long service leave.*
- > *At that time, the amount of long service leave Sarah will be entitled to is 1/60th of her full period of service since 1 July 1996, being 13 years and 2 months, which will entitle Sarah to take approximately 11.4 weeks of leave.*

Refer to our online calculator to check when your leave is due and how many weeks long service leave you will be entitled to at [www.business.vic.gov.au/lslcalculator](http://www.business.vic.gov.au/lslcalculator)

**Note that phasing in does not apply on termination**



## 06

### Taking long service leave – when and how

Although the LSL Act provides that the employee has an entitlement to take leave, the actual date the leave commences should be agreed between the employer and the employee.

The long service leave must be taken in one period, except where an employer and employee agree to separate periods. The first thirteen weeks of long service leave may be taken in up to three separate periods, and subsequent long service leave may be taken in two separate periods.

#### Can long service leave be taken in advance?

Yes. The employee and employer may agree on the leave being taken before an entitlement is actually due. If the employment is then terminated before the long service leave is accrued, the employer may recover the amount of any advance payment.

#### Can the taking of long service leave be deferred?

Yes. An employee can request deferral of their long service leave. The rate of pay when the employee then takes the long service leave will be the rate agreed in writing between the employer and employee. The rate cannot be less than the employee's ordinary rate of pay at the time the leave was due.

#### Can I be directed to take my long service leave by my employer?

Yes. If you can not agree when long service leave is to be taken, an employer may direct an employee to take leave at a particular time by giving at least 3 months written notice. This notice can however be appealed in the Magistrate's Court.

#### Can the period of leave be extended?

An employee and employer may make an agreement which allows the employee to take a period of leave at half pay. For example, an employee with 13 weeks accrued leave could take a 26 week break at half pay. However taking half the leave at double pay is not permitted.

Refer to our online calculator to check when your leave is due and how many weeks long service leave you will be entitled at [www.business.vic.gov.au/lslcalculator](http://www.business.vic.gov.au/lslcalculator)

## 07

### Can long service leave be “cashed out” rather than taken as a break from work?

No. An employee cannot “cash out” their long service leave. It is an offence under the LSL Act to give or receive payment instead of the employee actually taking the break from work. An employee can only receive payment in lieu of taking long service leave if their employment ends before the leave is actually taken.

The penalty for this offence is 20 penalty units for each of the employee and the employer. If an employer or employee is found guilty of this offence, a criminal conviction may also be recorded.