

Premier's Department  
New South Wales Industrial Relations

# Long Service Leave Guide

March 2026



OFFICIAL

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# Long Service Leave Guide

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## Document purpose

This document sets out Premier's Department Industrial Relations' (NSW IR) guidance for applying the *Long Service Leave Act 1955 (LSL Act)* as at the date of publication, including any revised versions later published.

It is intended as a general guide for employers and workers to apply the LSL Act and does not constitute legal advice. Employers and workers should seek independent legal advice specific to their circumstances.

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# 1 Long Service Leave Act 1955 (NSW)

All workers in Australia are entitled to long service leave, and each State and Territory has its own legislation which sets out the laws governing long service leave within them.

In New South Wales, long service leave is governed by the *Long Service Leave Act 1955 (NSW) (the Act)*. The Act sets out minimum long service leave entitlements to ensure that workers receive paid leave in recognition of long periods of service - rewarding workers with time away from work for rest and recovery. The Act is the primary source of long service leave entitlements for many workers across NSW. An employer cannot use a contract or agreement to avoid its obligations under the Act.

New South Wales Industrial Relations (**NSW IR**) is the regulator for long service leave only for workers covered by the Act. Who is and who is not covered by the Act is addressed in Section 3 below.

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## 2 Using this guide

This guide explains the entitlements and obligations of employers and workers under the Act. It provides practical guidance to help employers, workers, HR and payroll staff understand how long service leave entitlements are accrued, calculated, paid and taken in NSW.

The Act is longstanding legislation and, while certain aspects have been considered by courts, not all provisions have been the subject of detailed interpretation. Accordingly, this guide reflects a considered interpretation of the Act but should not be taken as determinative of how the law will be applied in every case. It sets out the approach that will be taken by NSW IR for compliance purposes under the Act.

This guide does not replace the Act or any applicable award, enterprise agreement or other industrial instrument, constitute legal advice or determine outcomes in any disputed matter. Employers and workers should seek independent legal advice specific to their circumstances.

The guide sets out 14 sequential steps to calculating a long service leave entitlement under the Act. The steps are highlighted in **grey**. The guide also includes a glossary of terms.

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## 3 Who is covered by the Act

Only workers covered by the Act are entitled to long service leave under it. Workers in NSW are covered by the Act by default, unless another source provides them entitlements.

### 3.1 Step 1: Determine if the person is a worker

The Act provides a “worker” with an entitlement to long service leave. A worker includes, but is not limited to:

- Full-time workers
- Part-time workers (including part-time workers with variable or fluctuating hours)
- Casual workers employed under a series of contracts
- Pieceworkers
- Commission workers (including salary plus commission or commission only)
- Outworkers.

The full definition of “worker” is at s. 3 of the Act.

### 3.2 Step 2: Determine if the worker is covered by the Act

The Act may not apply to a worker because they may have an entitlement to long service leave from a different source.

#### 3.2.1 Workers covered by the Act

Generally, workers covered by the Act are:

- Private sector workers who are not entitled to long service leave under an award or agreement or under a pre-modernised award
- Public service or government sector workers who are not entitled to long service leave under an industrial instrument or the *Government Sector Employment Regulation 2014* (NSW)
- Local government workers who are not entitled to long service leave under the *Local Government State Award 2023*
- Workers whose employment contract; enterprise agreement; award; or other industrial instrument provides a less favourable long service leave entitlement than the Act. This includes workers whose instruments are silent about long service leave.

If an industrial instrument provides more generous conditions than the Act, the industrial instrument generally applies.

Employers, HR managers, payroll or union representatives should be aware of, and can answer questions from workers about, the provisions covering a workers’ entitlement to long service leave.

#### 3.2.2 Workers not covered by the Act

Generally, those not covered by the Act are:

- Private sector workers who are entitled to long service leave under an award, agreement or pre-modernised award
- Public service or government sector workers who are entitled to long service leave under the *Government Sector Employment Regulation 2014* (NSW) or an industrial instrument

- Commonwealth government workers
- Workers explicitly entitled to long service leave under another act
- Workers who have a long service leave entitlement under an award, agreement or other *Fair Work Act 2009* (Cth) industrial instrument
- Workers who are entitled to long service leave under a pre-modernised award in place before 1 January 2010
- Workers who are entitled to long service leave under a portable long service leave scheme.

These workers should contact their employer, HR manager, payroll or union representative for support at first instance, or seek independent legal advice specific to their circumstances.

## 4 Calculating continuous service

After determining that the Act applies to a worker (by completing Steps 1 and 2 above), establishment of the worker's continuous service is needed. Workers are only entitled to long service leave under the Act if they have continuous service with the same employer.

Continuous service means employment without a break with a single employer. The service may be made up of permanent, casual, part-time, or other employment under one or more contracts of employment. Service commences on the first date the worker starts with the employer.

1. Section 4(11)(a1) of the Act allows for interruptions in service (i.e. absences from work) that do not break continuous service.
2. Any interruption that *doesn't* fall within the interruptions in s. 4(11)(a1) of the Act will *break* continuous service (see Step 7 at Section 4.5 below).

If a worker has broken service, continuous service commences on the first date the worker starts with the employer *after* the break. The period of the break will not count as service.

1. Continuous service with the 'same' employer may in some cases include service with more than one employer (see Step 6 at Section 4.4 below).

### 4.1 Step 3: Identify the type of service

For the purposes of calculating a worker's continuous service, it is necessary to distinguish between full-time/part-time service and casual service.

#### 4.1.1 Full-time/part-time workers

For full-time/part-time workers (including workers on fixed term contracts), service is any period during which there is an operative employment contract between a worker and their employer. Operative means that the contract is in force and legally effective.

There may be interruptions to the worker's service (i.e. absences from work). Interruptions categorised under s. 4(11)(a1) of the Act do not break service. If interruptions cannot be categorised under s. 4(11)(a1), the worker's service is broken (see Step 7 at Section 4.5 below).

**Note:** The application of the Act to workers on fixed term contracts will usually involve highly fact-specific analysis of a particular employment relationship. Employers and workers should seek independent legal advice about the application of the Act to fixed term workers.

#### 4.1.2 Casual workers

Unlike full-time workers who are engaged on a permanent (ongoing) contract of employment, each engagement (i.e. "shift") of a casual worker with an employer constitutes its own contract of employment. This is so even if the casual worker has signed a contract or employment agreement with their employer at the start of their employment.

Because each engagement is its own contract, there is a two-step approach to determining continuous service for casuals:

- a. **Establish a pattern of a series of engagements:** continuous service for casuals can be achieved through the provisions in the Act (s. 4(11)(a1)) which provide a mechanism to 'string together' each engagement such that the engagements constitute a *series* or *pattern* which give rise to an *ongoing employment relationship*. An ongoing employment relationship is necessary for continuous service.
- b. **Characterise interruptions to the pattern:** there will always be interruptions to a casual's service (i.e. days where a casual does not work). Interruptions categorised under s.

4(11)(a1) of the Act do not break service. If interruptions cannot be categorised under s. 4(11)(a1), the worker's service is broken (see Step 7 at Section 4.5 below).

The assessment of continuous service and the categorisation of interruptions to service are made on a case-by-case basis considering:

1. The *regularity* of the casual worker's engagements ;
2. The *time* between the worker's engagements; and
3. The *reasons* for the interruptions between the worker's engagements.

**Note 1:** If a worker has transitioned from full-time/part-time to casual or vice versa with the same employer during their employment, the worker's entire period of service should be considered.

**Note 2:** Casual service before 9 May 1985 does not count as service.

**Note 3:** A casual hourly rate cannot be loaded to compensate for long service leave because the Act prevents 'cashing out' long service leave (see Section 9 below).

**Note 4:** The application of the Act to casual workers is NSW IR's preferred view based on a considered interpretation of the Act. As this approach will involve highly fact-specific analysis of a particular employment relationship, employers and workers should seek independent legal advice about the application of the Act to a casual worker.

## 4.2 Step 4: Identify the worker's start date

The worker's start date is the date they started employment with the (one) employer. This date marks the beginning of the service period.

If a worker has broken service, their service period commences on the first date the worker starts with the employer *after* the break.

**Note:** Interruptions categorised per s. 4(11)(a1) of the Act do not break service (see Step 7 at Section 4.5 below).

### Example

*Anna was hired as a medical researcher with a hospital and her employment contract nominates her commencement date as 3 March 2009.*

2. Anna's "start date" with the hospital is 3 March 2009.

### Example

*Paula started working as a tennis coach for the Inner West Tennis Club on 15 May 2000. Paula decided she wanted to try swimming coaching instead and resigned from her role with the tennis club on 1 June 2002. After working for a year as a swimming coach, Paula returned to the Inner West Tennis Club as a tennis coach on 1 June 2003 and worked until she resigned from her role in 2015.*

3. Paula's "start date" with the Inner West Tennis Club is 1 June 2003.

## 4.3 Step 5: Identify the worker's end date

For current workers who want to take their long service leave, their end date is the day before their long service leave starts.

For workers whose employment has ceased, their end date is the last day they worked or will work.

### Example

*Jason has worked (and still works) for the same employer since 31 January 2015 and he intends to start his long service leave on 1 February 2025.*

4. Jason’s “end date” is 31 January 2025.

#### **Example**

*Kurt has worked for the same employer since 3 March 2009. His employer terminated his employment, and his termination date was 16 March 2020.*

5. Kurt’s “end date” is 16 March 2020.

## **4.4 Step 6: Identify if deeming provisions apply**

The Act sometimes considers service to be continuous across more than one employer. The way the Act does this is through ‘deeming provisions’. Deeming provisions acknowledge that a worker’s entitlement to long service leave comes from working for a business rather than one employer.

There are three times when a worker’s service with a previous employer is deemed continuous so that their service with the first employer counts as service with the second employer:

1. **A business, undertaking or establishment is transmitted\* to a new employer and a worker who was working for the old employer when the transmission happened is employed by the new employer** (see s. 4(11)(c) of the Act).

\*See Part 4.4.1 below to learn about what a transmission of business means.

2. **Two corporations are *related*<sup>†</sup> and a worker is transferred from one to the other within 2 months of terminating employment with the first corporation** (see s. 4(13)(c) of the Act).

\*See Part 4.4.20 below to learn when two corporations are considered related.

3. **A worker completes their apprenticeship with an employer and starts as a worker for them (or one of their related corporations) within 12 months of the apprenticeship ending** (see ss. 4(11)(b) and 4(13)(d) of the Act).

### **4.4.1 What is a transmission of business?**

Under the Act, a transmission includes a transfer, conveyance, assignment or succession of a business. The most common example of a transmission is the sale of a business.

#### **When does a transmission occur?**

For a transmission to have occurred under the Act:

1. The worker must have been employed in the whole or part of a business, undertaking or establishment.
2. There must have been a change in ownership of the whole or part of the business, undertaking or establishment via transfer, succession, conveyance or assignment.
3. The new business, undertaking or establishment must bear the same character as the old business, undertaking or establishment.
4. The worker must continue working for the new business.

Indicators that the new business has the same character as the old business may include but are not limited to:

- Conducting the same main activity
- The same ABN
- The same name
- The same assets

- The same stock-in-trade, equipment, premises or staff.

### What happens to long service leave after a transmission?

When a business is transmitted, the new employer becomes responsible for payment of the long service leave entitlement/s for workers transferred to them; workers' start dates are the date they started working for the first employer. A contract or other agreement for the transmission of a business cannot exclude the new employer's long service leave liability.

All employers that sell a business must give the new employer all long service leave records they hold for transferred workers (see Section 10 below) The former employer must keep copies of the transferred records for 6 years after they were made, even after the workers have been transferred.

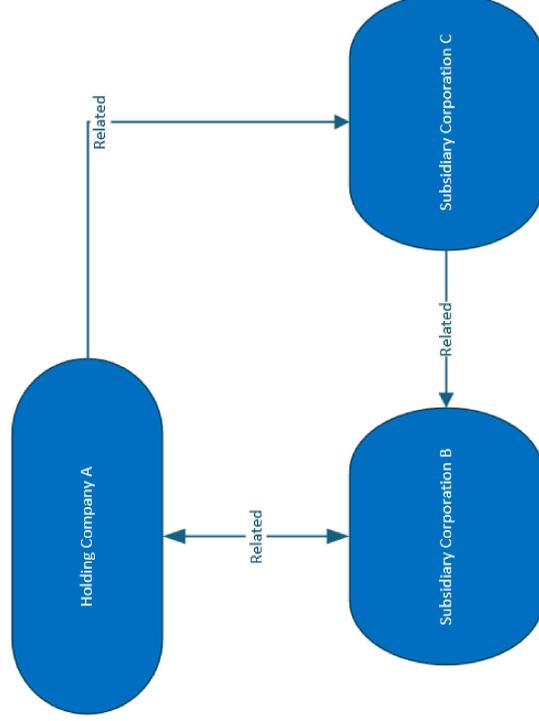
#### Example

*Sasha worked as a hairdresser for Hairy Styles for 8 years until Sasha's manager announced that Hairy Styles was sold to Hair Cuts. The business was re-branded as Hair Cuts but continued to be a hair salon. Sasha continued to work as a hairdresser for Hair Cuts for 2 years.*

- Sasha's 8 years of service with Hairy Styles counted towards her service with Hair Cuts for long service leave purposes. After her 2 years of service with Hair Cuts, Sasha was entitled to take long service leave.

### 4.4.2 When are two corporations related?

Under the LSL Act, two corporations are deemed to be related to one another when one corporation is a holding company of, a subsidiary of, or a subsidiary of the same holding company as, another corporation:



There must be records, such as ASIC records, which show that the corporations are related in one of the ways set out above.

#### Example

*Kateryna has been working as a waitress for Studio Pop café for 9 years. Studio Pop is a subsidiary of the multinational company Studio Rock, which has decided to bring all the Studio cafes in Sydney under the Studio Rock business and get rid of Studio Pop in Sydney. Kateryna will continue to work as a waitress when Studio Rock takes over Studio Pop.*

- Kateryna will be entitled to take long service leave next year as her previous 9 years' service with Studio Pop count as service with Studio Rock.

## 4.5 Step 7: Characterise interruptions to the worker's service

All workers, especially casual workers, are likely to have interruptions to their service, otherwise known as absences from work. There are 3 types of interruptions:

1. **Interruptions which break the worker's continuous service.**
2. **Interruptions which do not break the worker's continuous service and which count as continuous service.**
3. **Interruptions which do not break the worker's continuous service and which do not count as continuous service.** In these circumstances, a worker must work the time that does not count as continuous service beyond their 10-year service anniversary before they can access their long service leave entitlement (unless otherwise agreed between the employer and worker – see Section 8 below).

Interruptions to the worker's service need to be categorised under s. 4(11)(a1) of the Act. An interruption can only be categorised under a single category. A worker's service is broken if an interruption cannot be categorised under a single category in s. 4(11)(a1).

Table 1 below addresses the categories of interruptions and associated impact(s) on a worker's continuous service calculation.

**Note 1:** NSW IR encourages employers and workers to keep a record of the dates of any interruptions (i.e. absences from work) and the reasons for those absences.

**Note 2:** It is sometimes possible to categorise an interruption under more than one category in s. 4(11)(a1) (e.g. a category that counts as service and a category that does not). Where such a choice is available, NSW IR suggests that the absence should be categorised in a category that counts as service over a category that does not.

**Note 3:** To determine a worker's long service leave accrual (see Step 8 at Section 5.1 below), you will need to know interruptions which *do not break* the worker's continuous service and which *do not count* as continuous service in days. When working out total absences (in days) that do not count as service, you need to count each calendar day in the period of the interruption. The examples in Table 1 below show how this is done.

Table 1

|   | Interruption  | Breaks continuous service? | Counts in calculation of period of service? | Considerations  |
|---|---|----------------------------|---|---|
| 1 | A worker terminates their contract of employment (other than due to illness/injury or in connection with an industrial dispute) | Yes                        | No  | <ul style="list-style-type: none"> <li>This is when a worker resigns or shows an unwillingness or inability to perform their obligations under their terms of employment (unless on account of illness/injury or in connection with an industrial dispute).</li> <li>If the worker re-commences with the same employer after breaking their service, their start date for continuous service is the re-employment date.</li> </ul>  |
| 2 | An employer terminates a worker's contract of employment and has not re-employed the worker within two (2) months               | Yes                        | No  | <ul style="list-style-type: none"> <li>The termination must be for reasons other than: <ul style="list-style-type: none"> <li>with an intention of avoiding an obligation under the Act or a sick leave obligation under a NSW industrial instrument</li> <li>termination arising directly or indirectly from an industrial dispute or</li> <li>termination by reason of slackness of trade (see: s. 4(11)(a1)(iii)-(v) of the LSL Act).</li> </ul> </li> <li>If the worker is re-employed on a date after 2 months after the termination date, their start date for continuous service is the re-employment date.</li> </ul>   |
| 3 | An interruption caused by the absence of the worker under the terms of the worker's employment (s. 4(11)(a1)(i) LSL Act)        | No                         | Yes   | <ul style="list-style-type: none"> <li>A term of the worker's employment must <i>cause</i> the relevant interruption.</li> <li>For full-time and part-time workers, it is any day they are not required to work (weekends, public holidays, shift-worker not rostered) and any periods of paid leave. It also includes unpaid parental leave if the terms of employment specifically state it counts as service (s. 59 of the <i>Industrial Relations Act 1996</i>).</li> </ul> <p><b>Note:</b> This is NSW IR's preferred view of s. 59 of the <i>Industrial Relations Act 1996</i>. Employers and workers should seek independent legal advice specific to their circumstances.</p> |

| Interruption | Breaks continuous service?   | Counts in calculation of period of service? | Considerations   |
|--------------|--|---|--|
|              |  |   | <ul style="list-style-type: none"> <li>For casual workers, this is an important provision because it is the main mechanism used to ‘string together’ casual engagements such that they are a <i>series</i> or <i>pattern</i> of engagements giving rise to an ongoing employment relationship necessary for continuous service.</li> </ul> <p>The interruption must fall within the relevant pattern of service or be specifically provided for in the worker’s employment contract.</p> <div data-bbox="835 561 1875 950" style="border: 1px solid black; padding: 5px;"> <p><b>Example</b></p> <p><i>A casual teacher who usually works three days per week does not work for a period of 2 weeks x 3 times per year at the conclusion of a school term and for 6 weeks over December/January at the conclusion of the school year, every year.</i></p> <ul style="list-style-type: none"> <li>The 84 days (12 weeks x 7 days) of absences in non-school term are consistent with their pattern of service (because the interruptions happen every year for the same reason, at about the same time and are about the same length) and are interruptions under the terms of employment. The interruptions do not break the worker’s service and count as continuous service.</li> </ul> </div> |
| 4            | An interruption caused by the absence of the worker on account of illness or injury (s. 4(11)(a1)(ii) the Act) | No  | <ul style="list-style-type: none"> <li><b>All</b> absences due to illness or injury meet s. 4(11)(a1)(ii) of the Act. This is whether or not the absence is taken as paid or unpaid leave, or for casuals - whether an employer does not offer work to a casual/the casual refuses work.</li> </ul> <div data-bbox="835 1078 1875 1412" style="border: 1px solid black; padding: 5px;"> <p><b>Examples:</b></p> <p><i>A full-time worker breaks their leg and is absent from work for 6 weeks on paid sick leave. The worker does not usually work weekends.</i></p> <ul style="list-style-type: none"> <li>The 42-day (6 weeks x 7 days) interruption is due to injury and does not break the worker’s service and counts as service.</li> </ul> <p><i>A casual retail worker who usually works two shifts per week requires surgery for a medical condition and notifies their employer that they will be in recovery and</i></p> </div>   |

|   | Interruption   | Breaks continuous service? | Counts in calculation of period of service? | Considerations  |
|---|--|----------------------------|---|---|
|   |  |                            |   | <p><i>unable to work for the next 4 weeks. The employer does not roster the worker on for 4 weeks.</i></p> <ul style="list-style-type: none"> <li>The 28-day (4 weeks x 7 days) interruption is due to illness and does not break the worker's service and counts as service.</li> </ul>  |
| 5 | An interruption caused by the absence of the worker pursuant to a JobKeeper enabling direction   | No                         | Yes   | <ul style="list-style-type: none"> <li>Workers subject to a JobKeeper enabling direction between 9 April 2020 and 29 March 2021 may have been directed to work reduced hours or no hours during that period.</li> <li>Workers subject to that direction continued to accrue service and leave entitlements as though the direction had not been given.</li> </ul> <p>Further information about JobKeeper directions is available on our <a href="#">FAQs</a>.</p>   |
| 6 | An interruption caused by the absence of the worker where the worker is stood down without pay as a result of COVID-19 between 11/03/2020 and 31/03/2022 | No                         | Yes   | <ul style="list-style-type: none"> <li>Workers who were stood down without pay between 11 March 2020 and 31 March 2022 as a direct or indirect result of the COVID-19 pandemic continued to have continuous service and to accrue long service leave during the stand down.</li> <li>This section applies despite the worker not being paid and despite there being a break in active work.</li> <li>Accrual under this section only applies if the worker was stood down between 11 March 2020 and 31 March 2022.</li> </ul> <p>Further information about COVID-19 stand downs is available on our <a href="#">FAQs</a>.</p> |
| 7 | An interruption caused by an employer with the intention of avoiding any obligation under the LSL Act or in relation to sick                             | No                         | No  | <ul style="list-style-type: none"> <li>Evidence of the employer's intention to avoid obligations under the Act or under a NSW industrial instrument is necessary.</li> </ul>  |

|   | Interruption  | Breaks continuous service? | Counts in calculation of period of service? | Considerations   |
|---|---|----------------------------|---|--|
|   | leave under a State industrial instrument<br>(s. 4(11)(a1)(iii) LSL Act)                                |                            |   |  |
| 8 | An interruption arising directly or indirectly from an industrial dispute<br>(s. 4(11)(a1)(iv) LSL Act) | No                         | No  | <p><b>Example:</b></p> <p><i>A group of warehouse workers participate in a 2-week protected strike organised by their union to protest proposed changes to rostering. During this period, a full-time worker does not attend work and receives no pay.</i></p> <ul style="list-style-type: none"> <li>The 14-day (2 weeks x 7 days) interruption arises directly from an industrial dispute and does not break the worker's service but does not count towards the worker's service.</li> <li>The worker will need 10 years and 14 days' service before being entitled to long service leave.</li> </ul>   |
| 9 | An interruption made by the employer by reason of slackness of trade<br>(s. 4(11)(a1)(v) LSL Act)       | No                         | No  | <ul style="list-style-type: none"> <li>This is when an employer directs a worker not to work because there is reduced commercial activity, declining demand or a slowdown/downturn in business. This is different from a JobKeeper direction or a COVID-19 stand down.</li> <li>For casual workers, the interruption due to slackness of trade must <i>depart</i> from the worker's <i>ordinary pattern</i> of service.</li> </ul> <p><b>Examples:</b></p> <p><i>A worker employed full-time in a sheet-metal manufacturing business is directed by their employer to cease work from 3 March to 30 May 2025 because the business' major project was cancelled, leading to a significant decline in orders. When orders increased in June 2025, the worker was recalled.</i></p> |

|    | Interruption   | Breaks continuous service? | Counts in calculation of period of service? | Considerations   |
|----|--|----------------------------|---|--|
|    |  |                            |   | <ul style="list-style-type: none"> <li>The 89-day interruption was made by the employer by reason of slackness of trade and does not break the worker’s service but does not count towards the worker’s service.</li> <li>The worker will need 10 years and 89 days’ service before being entitled to long service leave.</li> </ul> <p><i>A casual warehouse worker usually worked 3 shifts per week from January 2022 to January 2024. In February 2024, the employer experienced an unexpected downturn and the worker was not rostered on for 6 weeks.</i></p> <ol style="list-style-type: none"> <li>The 42-day (6 weeks x 7 days) interruption is a departure from the casual’s regular pattern of service (i.e. 3 shifts per week) due to slackness of trade and does not break the worker’s service but will not count as service.</li> <li>The worker will need 10 years and 42 days’ service before being entitled to long service leave.</li> </ol> |
| 10 | <p><b>An interruption caused by the employer for any reason other than 7, 8 or 9 above, where the worker returns to service or is re-employed within 2 months</b></p> <p>(s. 4(11)(a1)(vii) LSL Act)</p> | No                         | No  | <ul style="list-style-type: none"> <li>The interruption must be caused by the employer.</li> <li>This provision is relevant for workers on fixed term contracts and in some cases may be the only way that a break between fixed term contracts can be characterised.</li> </ul>   |

|    | Interruption   | Breaks continuous service? | Counts in calculation of period of service? | Considerations  |
|----|--|----------------------------|---|---|
| 10 | <p><b>An interruption arising from the absence of the worker for any cause by leave of the employer</b><br/>(s. 4(11)(a1)(vi) LSL Act)</p> | No                         | No  | <ul style="list-style-type: none"> <li>This is when the employer agrees to a period of unpaid leave such as when a full time/part time worker does not have a leave balance to draw from and requests time off.</li> <li>For casual workers, this applies when they request the employer stop rostering them for a period and the employer agrees, the employer and casual worker agree that the casual is not expected to make themselves available to work in the non-rostering time but their ordinary pattern of work will resume after the period.</li> </ul> <div data-bbox="835 610 1923 1015" style="border: 1px solid black; padding: 5px;"> <p><b>Examples:</b></p> <p><i>A casual retail worker who usually works 3 shifts per week asks their employer not to roster them on for 4 weeks in August because they are going to Europe for a European summer holiday. The worker tells the employer they will be back in Australia on 1 September. The employer agrees to the leave and rosters the worker back on in the first week of September.</i></p> <ul style="list-style-type: none"> <li>The 28-day (4 weeks x 7 days) interruption does not break the worker's service but does not count towards the worker's service.</li> <li>The worker will need 10 years and 28 days' service before being entitled to long service leave.</li> </ul> </div> |
| 12 | <p><b>An interruption on account of unpaid parental leave</b><br/>(s. 59 Industrial Relations Act 1996)</p>                                | No                         | No  | <ul style="list-style-type: none"> <li>This does not apply if the worker's terms of employment specifically provide that the unpaid leave will count as service.</li> </ul> <p><b>Note:</b> This is NSW IR's preferred view of s. 59 of the <i>Industrial Relations Act 1996</i>. Employers and workers should seek independent legal advice specific to their circumstances.</p> <div data-bbox="835 1222 1948 1429" style="border: 1px solid black; padding: 5px;"> <p><b>Example:</b></p> <p><i>A full-time worker who has been employed continuously for 7 years takes parental leave for the birth of their child. They take 14 weeks paid parental leave under the applicable industrial instrument and an additional 36 weeks of unpaid parental leave. Their contract does not mention unpaid parental leave.</i></p> </div>  |

| Interruption | Breaks continuous service? | Counts in calculation of period of service? | Considerations  |
|--------------|----------------------------|---|---|
|              |                            |   | <ul style="list-style-type: none"> <li>• The 252-day (36 weeks x 7 days) interruption does not break the worker's service but does not count towards the worker's service.</li> <li>• The worker will need 10 years and 252 days' service before being entitled to long service leave.</li> </ul> |

## 4.6 Service outside of New South Wales

For work performed outside NSW to count as service under the Act, it needs to have a **substantial connection with NSW when it is performed**.

Some factors which might establish the ‘substantial connection’ are if the:

- contract of employment was made in NSW and is governed by NSW law;
- employer is based in NSW;
- employer is directing the worker to work outside NSW;
- worker has responsibility for, or is reporting to, a team or person based in NSW; or
- worker’s service outside NSW is intended to be temporary.

Further information about overseas service is available in our [FAQs](#).

### Example

*Louise has worked for a company headquartered in Sydney for 12 years. Her employment contract was made in NSW, and she reports to a manager based in NSW. Louise spent 9 months working on a project in Perth before returning to Sydney.*

- Because Louise’s employer is NSW based and she continued to report to a NSW-based manager while in Perth, the 9 month period has a substantial connection with NSW and counts towards her continuous service.

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## 5 Calculating long service leave accrual

### 5.1 Step 8: Determine a worker's accrual

A worker's accrual is based on their period of continuous service. Unlike other types of leave, a worker's entitlement to long service leave accrues only:

1. at certain intervals (milestone accrual); and
2. upon termination of employment in certain circumstances (pro-rata accrual).

Long service leave accrues in months; one month is equal to 4 1/3 (4.33) weeks.

**Note:** NSW IR's Long Service Leave Accrual Calculator can be used to determine a worker's long service leave accrual. It requires:

- The worker's start date
- The worker's end date
- Interruptions to the workers service which do not count as service in days.

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### 5.2 Milestone long service leave accrual

At 10 years continuous service, a worker accrues 2 months (8.67 weeks) of long service leave.

Each 5 years of service thereafter, a worker accrues one month (4.33 weeks) of long service leave. After at least 10 years' continuous service, a worker is entitled to take their accrued 8.67 weeks of long service leave.

If a worker then accrues another 5 years of service, they can take an additional 4.33 weeks. If the worker did not take any long service leave during the preceding 5 years, they can take 13 weeks' long service leave at 15 years of service.

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### 5.3 Pro-rata long service leave accrual

If a worker's employment ends, they may, in certain circumstances, be paid out their accrued long service leave on a pro-rata basis. This means the worker can be paid for any untaken milestone long service leave they have accrued (i.e. long service leave accrued at 10 years and each 5 years thereafter), as well as a proportionate amount for service completed beyond a milestone period (e.g. leave accrued at 16 years or 23 years and 6 months).

These circumstances are when:

1. **A worker has more than 5 years and less than 10 years of continuous service and:**
  - a. the employer terminates the worker's employment for any reason other than serious and wilful misconduct
  - b. the worker resigns on account of illness, incapacity or domestic or other pressing necessity
  - c. the worker dies (**Note:** the Act considers current workers enter long service leave on the day they die).

See s. 4(2)(a)(iii) of the Act.

Further information on pro-rata accrual between 5 and 10 years is at Part 5.3.1 5.3.1 below.

2. **A worker has more than 10 years and less than 15 years continuous service and their employment ceases for any reason.**

See s. 4(2)(a)(ii) of the Act.

**3. A worker has more than 15 years of service with the employer and their employment ceases for any reason.**

See s. 4(2)(a)(i)(C) of the Act.

**Note:** Termination of a casual worker (i.e. the end of a series of casual engagements) or termination of a fixed term worker (i.e. the end of a fixed term contract) *may* constitute termination by the employer for pro-rata purposes. Employers and workers should seek independent legal advice specific to their circumstances.

### 5.3.1 Pro-rata leave between 5 and 10 years

Entitlement to pro-rata long service leave can be hard to assess because who terminated the employment, and why, needs to be made clear. Termination can be made by the worker or the employer. The following paragraphs describe the scenarios in which workers are and are not entitled to pro-rata long service leave.

#### 5.3.1.1 Termination by the employer and serious and wilful misconduct

##### Worker is entitled to pro-rata LSL

If an employer terminates the employment of a worker who has more than 5 years but less than 10 years continuous service, the worker is entitled to pro-rata long service leave. The reason for the termination is always based on the case specific facts.

##### Examples may include:

- An employer advises a worker that their role is no longer required (i.e. the worker is made redundant)
- An employer terminates a worker's employment for underperformance or misconduct (not rising to serious and wilful misconduct)

##### Worker is not entitled to pro-rata LSL

If an employer terminates a worker with more than 5 years but less than 10 years' service for serious and wilful misconduct, the worker is not entitled to pro-rata long service leave.

The employer must prove that the worker was terminated for serious AND wilful misconduct.

For misconduct to be considered 'serious and wilful' it must be more than poor performance. Determining it depends on the specific circumstances and:

- The terms of the worker's employment;
- The nature of the worker's employment; and
- The work the worker did.

##### Examples may include:

- Theft
- Fraud
- Assault or sexual harassment
- Causing serious and imminent risk to the health of another person
- Jeopardising the profits of the employer's business
- Refusing to follow reasonable and lawful instructions consistent with the worker's terms of employment.

Further information about serious and wilful misconduct is available in our [FAQs](#).

### 5.3.1.2 Termination by the worker on account of illness, incapacity or domestic or other pressing necessity

A worker is entitled to pro-rata long service leave if they have more than 5 years but less than 10 years' continuous service with the employer and terminates their own employment because of illness, incapacity, domestic necessity or other pressing necessity. These are called 'qualifying reasons'.

The worker must prove that it is more likely than not (known as balance of probabilities) that they terminated their employment for one of these reasons. When the worker terminated the employment, the reason must:

- have been genuinely held by the worker
- be the real and motivating reason that they terminated their employment
- be a reason that would cause a reasonable person in the worker's situation to resign.

#### Examples may include:

- A chronic sickness impacting the worker's work (i.e. illness)
- A chronic sickness or injury preventing the worker from performing the inherent requirements of their role (i.e. incapacity)
- Moving interstate to support a sick family member (i.e. domestic necessity)
- Concerns about security of employment when there is an impending restructure (i.e. other pressing necessity).

Further information about illness, incapacity, domestic and other pressing necessity is available in our [FAQs](#).

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## 6 Calculating Long Service Leave

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### 6.1 Ordinary pay

Ordinary pay is defined in s. 3 of the Act, and is made up of:

1. A worker's **ordinary remuneration** (s. 3(1)(a)) (Step 11A) or **average weekly wage** (s. 3(1)(b)) (Step 11B); and
2. **The cash value of any board or lodging received by the worker** (Step 12); and
3. **The average weekly amount of bonuses received by the worker** (Step 13).

The following principles are relevant to ordinary pay calculations under the Act:

- A worker should not have a decrease in pay while on long service leave.
- The worker's entitlement should not be manipulated by the employer before they take long service leave.
- There should not be arbitrary distinctions between workers who have worked and/or earned the same amount during the same period based only on the type of their employment arrangement.

When calculating ordinary pay, only amounts that are paid to a worker for the worker's services as a worker are included. Generally, this will include amounts paid for a worker's ordinary hours of work.

The following categories of payments are **excluded** from ordinary pay calculations:

- Amounts paid for shift-work, overtime, and other penalty rates (though casual loading is included); and
  - Expense-related allowances (including reimbursements) that may be reasonably be expected to be fully expended by a worker to meet costs incurred in the course of their employment.
- Additionally, any period of time when a worker is subject to a JobKeeper enabling direction or a COVID-19 stand down should be excluded from ordinary pay calculations.

**Note:** The exclusion of expense-related allowances and periods of JobKeeper and COVID-19 stand downs is NSW IR's preferred view based on a considered interpretation of the Act. Employers and workers should seek independent legal advice specific to their circumstances.

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### 6.2 Methods of calculating ordinary pay

The Act provides two different methods to calculate ordinary pay.

The first method is for workers who are remunerated '*wholly* in relation to an ordinary time rate of pay fixed' as at the prescribed date. The second method is for workers who are remunerated '*otherwise than wholly* in relation to an ordinary time rate of pay fixed' as at the prescribed date.

Only the way the worker is paid on the prescribed date is relevant. The worker's employment status/type as at the prescribed date is not relevant, nor does it matter if the worker has had different remuneration types or has changed status/type or hours throughout their service.

A worker's ordinary pay can only be calculated using one method (and never by using a combination of the methods set out at Step 11A and Step 11B).

**Note:** The ordinary pay calculations set out in this section are NSW IR's preferred view based on a considered interpretation of the Act. Employers and workers should seek independent legal advice specific to their circumstances.

## 6.3 Step 9: Determine the prescribed date

The prescribed date for a worker depends on whether the worker is a current worker or a former worker.

### Current workers

For current workers, the prescribed date is the date immediately preceding the date on which that worker enters, or is deemed to have entered, upon long service leave or the date of that worker's death. Alternatively, it is the date specified in any agreement between the worker and the employer made under s. 4(2B) of the Act in relation to the taking of long service leave.

### Terminated workers

For workers whose employment has ceased or will cease, the prescribed date is the day before their last day of work (i.e. the date immediately preceding the date on which the worker is deemed to have entered upon long service leave).

## 6.4 Step 10: Determine how the worker is remunerated as at the prescribed date

### Worker is remunerated *wholly* in relation to an ordinary time rate of pay fixed

A worker is remunerated *wholly* in relation to an ordinary time rate of pay fixed if the worker is paid a set amount calculated by reference to the ordinary hours that they are required to work. This includes casual loading.

#### Examples

- A worker remunerated via a salary with standard days and ordinary hours of work.
- A worker paid an hourly rate for ordinary hours worked.
- A casual worker paid a base rate plus loading for ordinary hours worked.

If a worker is remunerated *wholly* by an ordinary time rate of pay fixed, their ordinary pay should be calculated in accordance with Step 11A.

### Worker is remunerated *otherwise than wholly* in relation to an ordinary time rate of pay fixed

A worker is remunerated *otherwise than wholly* by an ordinary time rate of pay fixed if their remuneration is not determined with certainty (i.e. fixed) to an (i.e. singular) ordinary time rate of pay but instead the worker's remuneration is contingent on variable or discretionary factors.

#### Examples

- A worker who is paid by results (i.e. their remuneration is contingent on output).
- A worker remunerated by commission.
- A worker remunerated for different tasks at different rates of pay (i.e. the terms of employment fix multiple different rates of pay).
- A worker remunerated by the same employer by an ordinary time rate of pay (e.g. an hourly rate) in addition to an amount not directly related to the number of ordinary hours worked (e.g. commission).
- A worker who receives discretionary payments.
- A worker who, at the prescribed date, is entitled to receive a bonus or incentive payment(s).

If a worker is remunerated *otherwise than wholly* in relation to an ordinary time rate of pay fixed, their ordinary pay should be calculated in accordance with Step 11B.

## 6.5 Step 11A: Calculating ‘ordinary remuneration’ for workers remunerated wholly in relation to an ordinary time rate of pay fixed

If a worker is remunerated wholly in relation to an ordinary time rate of pay fixed, the Act requires that the employer calculate their ordinary remuneration on the prescribed date in two ways:

1. The worker’s ordinary remuneration as at the prescribed date (s. 3(1)(a)(i) of the Act)
2. The worker’s average weekly ordinary remuneration over the previous 5 years (s. 3(1)(a)(iii) of the Act)

**and then pay the higher result to the worker for their long service leave.**

If two or more industrial instruments apply to the worker’s employment (e.g. an enterprise agreement and a modern award) and they each fix an ordinary time rate of pay in respect of the same work, the highest rate is used for the s. 3(1)(a) calculations.

### Example

*A pharmacist is employed under an employment contract with a pharmacy which fixes an hourly rate of pay of \$60. The Pharmacy Award also applies to the worker’s employment, and the Award fixes an hourly rate of pay of \$46.*

- The rate of \$60 (i.e. the rate the worker is paid when they are working) should be used in the s. 3(1)(a) calculations.

### 6.5.1 Fixed hours vs variable hours

Whether the worker works fixed or variable hours on the prescribed date first needs to be known to calculate their ordinary pay under s. 3(1)(a).

#### Fixed hours

- A worker with fixed hours is usually on a full-time or part-time contract which states their standard days and hours of work.

#### Example

- A full-time worker paid a salary who is contracted to work 38 hours per week.
- A full-time salaried shift worker who is contracted to work 38 hours per week, even if those hours are averaged out over a 4-week period.

#### Variable hours

- A worker with variable hours is usually on a casual or part-time contract and works different days and/or hours each week.

#### Example

- A casual worker who usually works 15 hours per week spread out over Mondays, Wednesdays and Fridays; sometimes they work more or less than 15 hours, sometimes they work 15 hours on different days.
- A part-time worker who is contracted to work 25 hours per week for \$50 per hour; and who regularly works additional hours that are paid at the same rate (i.e. at \$50 per hour and not as overtime or other penalty rate).

## 6.5.2 Calculation 1 – ordinary remuneration at the prescribed date (s. 3(1)(a)(i))

### 6.5.2.1 Workers with fixed hours

Calculation 1 for workers with *fixed* hours as at the prescribed date is:

**Fixed time rate of pay on prescribed date<sup>1</sup> × normal weekly hours<sup>2</sup> = ordinary remuneration on the prescribed date**

There are 2 parts to the calculation:

- Identify the **fixed time rate of pay on the prescribed date** = the rate of pay fixed by the worker's terms of employment, expressed as an hourly rate.
- Identify the **normal weekly hours** = the hours fixed by the worker's terms of employment as at the prescribed date.

### 6.5.2.2 Workers with variable hours

Calculation 1 for workers with *variable* hours as at the prescribed date is:

**Fixed time rate of pay at prescribed date<sup>2</sup> × (total hours<sup>3</sup> over deemed-normal-weekly hours adjusted period<sup>1</sup> ÷ total days in deemed-normal-weekly hours adjusted period<sup>4</sup>) × 7 = ordinary remuneration on the prescribed date**

There are 4 parts to the calculation.

- Identify the **'deemed-normal-weekly hours adjusted period'** = subtract from the total days in the period (365 days or 366 days if it is a leap year):
  - Any day that did not count to the worker's continuous service (see Step 7 at Section 4.5 above).
  - Any day which counted to the worker's continuous service but on which the worker did not work.
- For casuals, subtract any day which counted to the worker's continuous service but on which the worker did not work and which represents a *departure* from the casual's ordinary pattern of service (i.e. unpaid sick leave and other forms of unpaid leave to which the casual is specifically entitled under the terms of their employment such as unpaid carer's leave and unpaid compassionate leave).
- Any day which the worker was subject to a JobKeeper enabling direction under the *Fair Work Act 2009*.
- Any day which the worker was subject to a COVID-19 stand-down without pay under s. 15C of the LSL Act.

No day should be subtracted more than once.

- Identify the **fixed time rate of pay on the prescribed date** = the rate of pay fixed by the worker's terms of employment, expressed as an hourly rate.
- Identify the **total hours over deemed-normal-weekly hours adjusted period** = sum of all the hours worked each week over the period calculated at Step (1).
- Identify the **total days in deemed-normal-weekly hours adjusted period** = 365 days (or 366 days if it is a leap year) as used in Step (1).

### 6.5.3 Calculation 2 – average weekly ordinary remuneration over the previous 5 years (s. 3(1)(a)(ii))

The method for Calculation 2 is the same for workers with fixed hours at the prescribed date and workers with variable hours at the prescribed date.

Calculation 2 is:

**(Total remuneration over fixed-time-rate-of-pay adjusted period<sup>2</sup> ÷ days in the fixed-time-rate-of-pay adjusted period<sup>1</sup>) × 7 = ordinary remuneration over previous 5 years**

There are 2 parts to the calculation.

- Identify the days in the **fixed-time-rate-of-pay adjusted period** = subtract from the total days in the period (1825 days or 1826 days if there is one leap year, or 1827 days if there are two leap years):
  1. Any day that does not count towards the worker's service (see Step 7 at Part 4.5 above).
  2. Any day that the worker was not remunerated.  
For casuals, subtract any day which counted to the worker's continuous service but on which the worker did not work and which represents a *departure* from the casual's ordinary pattern of service (i.e. unpaid sick leave and other forms of unpaid leave to which the casual is specifically entitled under the terms of their employment such as unpaid carer's leave and unpaid compassionate leave).
  3. Any day that the worker was remunerated *otherwise* than wholly in relation to a fixed time rate of pay.
  4. Any day that the worker was subject to a JobKeeper enabling direction under the *Fair Work Act 2009*.
  5. Any day which the worker was subject to a COVID-19 stand-down without pay under s. 15C of the Act.  
No day should be subtracted more than once.
- Identify the **total remuneration over fixed-time-rate-of-pay adjusted period** = sum of all amounts earned by the worker over the period calculated at Step (1), excluding any amounts earned by a worker during any period they were remunerated *otherwise than wholly* in relation to an ordinary time rate of pay fixed.

### 6.6 Step 11B: Calculate 'average weekly wage' for workers remunerated otherwise than wholly in relation to an ordinary time rate of pay fixed

If a worker is remunerated *otherwise than wholly* in relation to ordinary time rate of pay fixed, the Act requires that the employer perform 2 calculations; the average weekly wage earned by the worker during the previous:

1. 12 months (s. 3(1)(b)(i))
2. 5 years (s. 3(1)(b)(ii))

**and then pay the higher result to the worker for their long service leave.**

There is no need to first determine if a worker has fixed hours or variable hours.

#### 6.6.1 Calculation 1 - Average weekly wage over 12 months – s. 3(1)(b)(i)

Calculation 1 is:

**(Total amount paid to the worker over 12 months<sup>1</sup> ÷ average-weekly-wage adjusted period<sup>2</sup>) × 7 = average weekly wage during previous 12 months**

There are 2 parts to the calculation:

1. Identify the **total amount paid to the worker over 12 months** = sum of all amounts earned by the worker over the period (365 days or 366 days if it is a leap year).
2. Identify the **average-weekly-wage adjusted period** = subtract from the total days in the period (365 days or 366 days if it is a leap year):
  - a. Any day that did not count towards the worker's continuous service.
  - b. Any day of unpaid leave that counted towards the worker's continuous service.
  - c. Any day that the worker was subject to a JobKeeper enabling direction under the *Fair Work Act 2009*.
  - d. Any day which the worker was subject to a COVID-19 stand-down without pay under s. 15C of the Act.

## 6.6.2 Calculation 2 – Average weekly wage over 5 years – s. 3(1)(b)(ii)

Calculation 2 is:

**(Total amount paid to the worker over 5 years<sup>1</sup> ÷ average-weekly-wage adjusted period<sup>2</sup>) × 7 = average weekly wage during previous 5 years**

There are 2 parts to the calculation:

1. Identify the **total amount paid to the worker over 5 years** = sum of all amounts earned by the worker each week in the period (1825 days or 1826 days if there is one leap year, or 1827 days if there are two leap years).
2. Identify the **average-weekly-wage adjusted period** = subtract from the total days in the period (1825 days or 1826 days if there is one leap year or 1827 days if there are two leap years in the period):
  - a. Any day that did not count towards the worker's continuous service.
  - b. Any day of unpaid leave that has counted towards the worker's continuous service.
  - c. Any day that the worker was subject to a JobKeeper enabling direction under the *Fair Work Act 2009*.
  - d. Any day which the worker was subject to a COVID-19 stand-down without pay under s. 15C of the Act.

## 6.7 Step 12: Calculate board or lodging cash value

This step is required only for workers who were paid board or lodging immediately before the prescribed date.

The following amount should be added to the worker's ordinary pay calculated in Step 11A or Step 11B above:

- **If the worker's terms of employment fix an amount for board or lodging**, the amount so fixed.
- **If the worker's terms of employment do not fix an amount for board or lodging**, the amount of \$15 per week for board and \$5 per week for lodging (as applicable).

## 6.8 Step 13: Calculate the average weekly bonuses

A bonus or incentive payment is any contingent pay the worker receives based on their results, performance or other matters (and not just for the hours they worked or for their normal work duties).

Entitlement to, or eligibility for, these payments needs to be specified in the worker's terms of employment and under a bonus or incentive scheme. The result of it being included in these two places is: the requirements for, and calculations of, the payments are clearly described; and the worker can therefore reasonably expect the payments if they meet the requirements.

These payments can only be included in the ordinary pay calculation if the worker's annual ordinary pay calculated in Step 11A or Step 11B – excluding bonus or incentive amounts - is less than the high income threshold for the relevant year (see [Fair Work Ombudsman](#) for the thresholds).

Payments that are excluded from the ordinary pay calculation are:

- Genuine *ex gratia* (also known as voluntary or goodwill) payments made at the complete discretion of an employer and without any expectation on the part of the worker.
- Performance-based payments that are the worker's only/main remuneration.

### 6.8.1 Determining whether a worker is eligible for a bonus or incentive as at the prescribed date

How a bonus or incentive payment is included in the ordinary pay calculation depends on whether or not a worker is eligible for, or entitled to receive, a bonus or incentive payment as at the prescribed date.

A worker is eligible for, or entitled to receive, a bonus or incentive payment as at the prescribed date if the terms of the bonus or incentive scheme provide as such. This includes, but is not limited to, situations where a scheme provides:

- A reward/s for individual or group performance over a specified period.
- A bonus payment/s is to occur in the future and is contingent on events that have not yet occurred.

In both of the above situations, potential payment under the scheme forms part of the way the worker is remunerated during the period to which the scheme applies.

### 6.8.2 Calculating ordinary pay if a worker is eligible for a bonus or incentive as at the prescribed date

When a worker is entitled to, or eligible for, a bonus or incentive as at the prescribed date, they are remunerated *otherwise than wholly* in relation to an ordinary time rate of pay fixed. Such a worker is *not* remunerated *wholly* in relation to an ordinary time rate of pay fixed.

The steps to calculate the worker's average weekly bonuses are:

1. Calculate the worker's ordinary pay (average weekly wage) under ss. 3(1)(b)(i) and 3(1)(b)(ii) of the Act (as set out at Step 11B above) and choose the higher.
2. Calculate the worker's annual ordinary pay by applying the formula:

$$\text{(Higher of s. 3(1)(b)(i) or 3(1)(b)(ii) x total days in the 12-month period) } \div 7$$

The total days in period is 365 days or 366 days if it is a leap year.

3. Compare the worker's annual ordinary pay calculated per Step (2) above with the high-income threshold amount for the relevant year. If the worker's annual ordinary pay is below the threshold, proceed with the steps below.
4. If s. 3(1)(b)(i) was the higher result at Step (1) above, calculate the average weekly amount of bonuses earned over the preceding 12 months by applying the following formula:

$$\text{(Total bonuses in the 12-month period } \div \text{ total days in 12-month period) } \times 7$$

The total days in the period is 365 days or 366 days if it is a leap year.

- If s. 3(1)(b)(ii) was the higher result at Step (1) above, calculate the average weekly amount of bonuses earned over the preceding 5 years by applying the following formula:

$$\text{(Total bonuses in the 5-year period} \div \text{total days in 5-year period)} \times 7$$

The total days in the period is 1825 days (or 1826 days if there is one leap year, or 1827 days if there are two leap years).

- Add the result of Step (4) or (5) to the value of the worker's ordinary pay calculated under s. 3(1)(b)(ii) of the Act, together with any board or lodging (per Step 12 at Section 6.7 above).

**Note:** No amount should be double counted in the average weekly wage and average weekly bonus or incentive calculations.

If a worker is not entitled to or eligible for a bonus or incentive as at the prescribed date but they are still remunerated *otherwise than wholly* in relation to an ordinary time rate of pay fixed as at the prescribed date, the above steps should be followed to calculate the worker's past bonuses.

### 6.8.3 Calculating ordinary pay if a worker is not eligible for a bonus or incentive as at the prescribed date

When a worker is not entitled to or eligible for a bonus or incentive payment as at the prescribed date but that worker has received bonuses or incentives in the past, and the worker is remunerated *wholly* in relation to an ordinary time rate of pay fixed as at the prescribed date, the *past* average weekly bonuses received by the worker should be included in the worker's ordinary pay. The steps to calculate the worker's average weekly bonuses are:

- Calculate the worker's ordinary pay (ordinary remuneration) under ss. 3(1)(a)(i) and 3(1)(a)(ii) of the Act (as set out at Step 11A above) and choose the higher.
- Calculate the worker's annual ordinary pay by applying the formula:

$$\text{(Higher of s. 3(1)(a)(i) or 3(1)(a)(ii) x total days in the 12-month period)} \div 7$$

The total days in the period is 365 days or 366 days if it is a leap year.

- Compare the worker's annual ordinary pay as calculated under s. 3(1)(a) with the high-income threshold amount for the relevant year. If the worker's annual ordinary pay is below the threshold, proceed with the steps below.
- If s. 3(1)(a)(i) was the higher result at Step (1) above, calculate the average weekly amount of bonuses earned over the preceding 12 months by applying the following formula:

$$\text{(Total bonuses in the 12-month period} \div \text{total days in 12-month period)} \times 7$$

- If s. 3(1)(a)(ii) was the higher result at Step (1) above, calculate the average weekly amount of bonuses earned over the preceding 5 years by applying the following formula:

$$\text{(Total bonuses in the 5-year period} \div \text{total days in 5-year period)} \times 7$$

The total days in the period is 1825 days (or 1826 days if there is one leap year, or 1827 days if there are two leap years).

- Add the result of Step (4) or (5) to the value of the worker's ordinary pay calculated under s. 3(1)(a) of the Act, together with any board or lodging (per Step 12 at Section 6.7 above).

**Note:** No amount should be double counted in the ordinary remuneration and average weekly bonus or incentive calculations.

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## 7 Determining the entitlement

### 7.1 Step 14: Calculate the entitlement

The following formula is used to calculate the value of a worker's long service leave entitlement:

**Ordinary pay<sup>1</sup> (+ board or lodging<sup>2</sup>) (+ bonuses and incentives<sup>3</sup>) × amount of entitlement (in weeks)**

1. Calculated per Step 11A (Section 6.5 above) or Step 11B (Section 6.6 above)
2. Calculated per Step 12 (Section 6.7 above)
3. Calculated per Step 13 (Section 6.8 above)

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## 8 Taking long service leave

A worker should request and take long service leave as soon as practicable after they accrue their entitlement. The Act does not mandate a specific time when a worker must take their leave.

An employer should grant long service leave to a worker:

- As soon as practicable after the worker becomes entitled to it, considering the employer's needs
- In one continuous period
- With one month's notice to the worker of the date from which the leave is to be taken
- On ordinary pay.

The worker and employer may agree:

- that the worker is to take long service leave at a later date or is to take the leave before they are entitled to it (with any leave taken being subtracted from any entitlement the worker subsequently accrues)
- for the long service leave to be taken in two or more separate periods of at least one day
- on a shorter notice period for the taking of the leave.

An employer can direct a worker to take long service leave by giving the worker at least one month's notice. If the worker agrees, the notice period can be less than one month.

It is best practice for:

- The worker to request leave with at least one month's notice.
- The worker and employer to agree on leave dates that are appropriate for both parties and be reasonable in negotiating changes.
- Both the employer and the worker to keep written records of any agreements made in respect of long service leave. The employer should retain a copy of any agreements with the worker's employment records.
- The employer to not continually deny a worker's long service leave request on operational or business need grounds. If a worker feels that their employer is doing so, they should contact US.

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### 8.1 Public holidays during long service leave

If, under the terms of their employment, a worker is ordinarily paid for a public holiday that occurs while they are on long service leave, a day (or days if there is more than one public holiday) is added to the end of their leave period.

If the worker was not entitled to be paid for that day, their leave is not extended.

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### 8.2 Taking a single day of long service leave

A worker can take long service leave for a single day if their employer agrees. Changes to the Act to allow this occurred during COVID-19 and the purpose of the amendments was to provide for the taking of leave in single days and not the taking of the equivalent of whole weeks or more of leave in single day units.

#### 8.2.1 Calculating ordinary pay for a single day of long service leave

The Act does not set out how a single day of long service leave is to be calculated for all workers. The guiding principle is that a worker should be paid for a single day of leave based on the

proportion of their working week that one day represents. The same proportion is deducted from their leave balance.

Similarly to ordinary pay, these calculations are approached based on how the worker is remunerated as at the prescribed date. Please refer to Section 6 above for information on the different remuneration types and for an explanation of fixed hours vs. variable hours.

## 8.2.1.1 Workers remunerated wholly in relation to an ordinary time rate of pay fixed

### 8.2.1.1.1 Workers with fixed hours

The Act does not set out how a single day of long service leave is to be calculated for these workers. The below examples apply the guiding principle.

#### Examples

*A full-time worker employed to work 5 days per week*

- Pay for one day of long service leave =  $1/5^{\text{th}}$  (0.2) of their ordinary weekly pay
- Debit from leave balance =  $1/5^{\text{th}}$  (or 0.2) of a week

*A part-time worker employed to work 3 days per week*

- Pay for one day of long service leave =  $1/3^{\text{rd}}$  (0.33) of their ordinary weekly pay
- Debit from leave balance =  $1/3^{\text{rd}}$  (or 0.33) of a week

*A full-time shift worker employed on a 40-hour week, worked on average in 4 x 10 hour shifts per week*

- Pay for one day of long service leave =  $1/4^{\text{th}}$  (0.25) of their ordinary weekly pay
- Debit from leave balance =  $1/4^{\text{th}}$  (or 0.25) of a week

*A full-time worker who is eligible for bonuses, and works 5 days per week*

- Pay for one day of long service leave =  $1/5^{\text{th}}$  (0.2) of their ordinary weekly pay
- Debit from leave balance =  $1/5^{\text{th}}$  (or 0.2) of a week

### 8.2.1.1.2 Workers with variable hours

The LSL Act provides a formula to calculate the hours a worker who works variable hours and who is remunerated wholly in relation to an ordinary time rate of pay fixed should be paid for one day of long service leave, to be paid at their ordinary hourly rate.

The calculation is:

**$(A \div B) = \text{hours for a single day of long service leave}$**

where -

**A** is the higher of the average weekly number of hours worked during preceding 12 months<sup>1</sup> OR the average weekly number of hours worked during preceding 5 years<sup>2</sup>

and

**B** is the average number of days worked weekly by the worker during the period used for calculating A<sup>3</sup>

There are 3 parts to the calculation:

1. Identify the **average weekly number of hours worked during the preceding 12 months** = sum of the total hours worked by the worker in the 12-month period divided by 365 days (or 366 days if it is a leap year) x 7.

2. Identify the **average weekly number of hours worked during preceding 5 years** = sum of the total hours worked by the worker in the 5-year period divided by 1825 days (or 1826 days if there is one leap year, or 1827 days if there are two leap years) x 7.  
Choose the higher of (1) or (2).
  3. If the value of (1) was higher, identify the **total number of days worked by the worker** during the 12 months and divide this by 365 days (or 366 days if it is a leap year) x 7.  
If the value of (2) was higher, identify the **total number of days worked by the worker** during the 5 years and divide this by 1825 days (or 1826 days if there is one leap year, or 1827 days if there are two leap years) x 7.
- For casual workers, periods between engagements that fall within a worker's pattern of service should be excluded from these calculations to ensure the amount of ordinary pay for a single day of leave is proportionate to the worker's ordinary weekly pay.

### Examples

A casual worker had a higher average hours over the previous 12 months of 20 hours a week. The average days worked over the previous 12 months was 2 days per week.

- Pay for one day of long service leave = 10 hours (20 ÷ 2).

A casual worker had a higher average hours over the previous 5 years of 15 hours a week. The average days worked over the previous 5 years was 5 days per week.

- Pay for one day of long service leave = 3 hours (15 ÷ 5).

A part-time worker, with variable hours, had a higher average hours over the previous 5 years of 25.8 hours a week. The average days worked over the previous 5 years was 2.5 days per week.

- Pay for one day of long service leave = 10.3 hours (25.8 ÷ 2.5).

The calculation to reduce the worker's long service leave entitlement (balance) is:

### Hours for a single day of long service leave ÷ A = reduction of long service leave entitlement

where –

**A** is the higher of the average weekly number of hours worked during preceding 12 months<sup>1</sup> OR the average weekly number of hours worked during preceding 5 years<sup>2</sup>

### Examples

*A casual worker working an average of 20 hours per week who was paid 10 hours for a single day of long service leave*

- $\frac{1}{2}$  (or 0.5) (10 ÷ 20) of a week should be debited from their leave balance

*A casual worker working an average of 15 hours per week who was paid 3 hours for a single day of long service leave*

- $\frac{1}{2}$  or (0.5) (3 ÷ 15) of a week should be debited from their leave balance.

*A part-time worker, with variable hours, working an average of 25.8 hours per week who was paid 10.3 hours for a single day of long service leave*

- 0.37 (10.3 ÷ 27.8) of a week should be debited from their leave balance.

### 8.2.1.2 Workers remunerated otherwise than wholly in relation to an ordinary time rate of pay fixed

The Act does not set out how a single day of long service leave is to be calculated for these workers. The below calculation applies the guiding principle.

**Ordinary pay  $\times (1 \div A)$  = payment for a single day of long service leave**

where –

**A** is the higher of the average weekly number of days worked during preceding 12 months<sup>1</sup> OR the average weekly number of days worked during preceding 5 years<sup>2</sup>

There are 2 parts to the calculation:

1. Identify the **average weekly number of days worked during the preceding 12 months** = sum of the total days worked by the worker in the 12-month period divided by 365 days (or 366 days if it is a leap year)  $\times 7$ .
  2. Identify the **average weekly number of days worked during preceding 5 years** = sum of the total days worked by the worker in the 5-year period divided by 1825 days (or 1826 days if there is one leap year, or 1827 days if there are two leap years)  $\times 7$ .
- Choose the higher.

#### Examples

*A piece worker worked an average of 5 days per week over the previous 12 months, and 4.5 days over the previous 5 years.*

- Pay for one day of long service leave =  $1/5^{\text{th}}$  (0.2) of their ordinary weekly pay

*A part-time worker is eligible for bonuses at the prescribed date and has worked an average of 3 days per week over the previous 12 months, and 2 days over the previous 5 years.*

- Pay for one day of long service leave =  $1/3^{\text{rd}}$  (0.33) of their ordinary weekly pay

The calculation to reduce the worker's long service leave entitlement (balance) is:

**Proportion of a week for 1 day =  $1 \div A$**

where –

**A** is the higher of the average number of days worked weekly during the preceding 12 months OR 5 years

#### Examples

*A piece worker worked an average of 5 days per week over the previous 12 months, and 4.5 days over the previous 5 years.*

- $1/5^{\text{th}}$  (0.2) of a week should be debited from their leave balance

*A part-time worker is eligible for bonuses at the prescribed date and has worked an average of 3 days per week over the previous 12 months, and 2 days over the previous 5 years.*

- $1/3^{\text{rd}}$  (0.33) of a week is debited from their leave balance

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## 9 Paying long service leave

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### 9.1 Payment when taking leave

Long service leave under the Act cannot be cashed out (i.e. money payment instead of time off) while the worker remains employed. The worker must take the leave.

An employer must pay a worker their long service leave entitlement (ordinary pay) while the worker is on long service leave. Workers can only be paid at the ordinary pay rate calculated on the prescribed date (Section 6). Any increase of pay during their LSL does not apply.

Long service leave payments can be made in a lump sum at the start of the leave, or in the normal schedule of the worker's pay (e.g. weekly, monthly). Different payment schedules can be made if the employer and worker agree.

It is an offence to not pay the worker the full amount of their accrued long service leave when they take the leave. The offence is punishable by a maximum penalty of 20 penalty units.

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### 9.2 Payment upon cessation of employment

When a worker stops working with the employer, the employer must immediately pay the worker their long service leave entitlement (ordinary pay) (including pro-rata long service leave).

If a worker stops working with the employer after more than 5 years' service but before 10 years' service, refer to Section 5.3 above.

It is an offence to not pay a worker their full long service leave entitlement when they stop working with the employer. The offence is punishable by a maximum penalty of 20 penalty units.

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### 9.3 Payment upon death

If a worker dies while employed and they had accrued and untaken long service leave, the employer should make the long service leave payment to the worker's personal representative upon request. The employer may require the personal representative to provide reasonable evidence of their authority to make such a request before making the payment.

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### 9.4 Payment when worker has taken leave in advance

If a worker takes long service leave before they are entitled to it and their employment ends before they are entitled to it the employer can deduct the amount it paid the worker in advance from their final pay.

**Example:**

*A worker started working for their employer on 1 January 2018. In July 2024, the employer agrees to the worker taking 4 weeks' long service leave in advance. The worker is paid \$6,000 ordinary pay for this leave. The worker's employment ends on 1 January 2025 (at 7 years' service) and the worker is not entitled to any pro rata long service leave.*

- The employer may deduct 4 weeks ordinary pay from the worker's final pay.

If a worker takes long service leave before they are entitled to it and their employment ends after they are entitled to it the employer can deduct *only* the excess paid to the worker for that leave.

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**Example:**

A worker started working for their employer on 1 January 2014. In January 2022, the employer agrees to the worker taking 10 weeks' long service leave in advance. The worker's employment ends on 1 January 2024 at 10 years' service.

- The worker is entitled to 8.67 week's long service leave at the time their employment ends.
- The worker has taken 1.33 weeks' excess leave.
- The employer may deduct 1.33 weeks' ordinary pay from the worker's final pay.

In either case, the employer cannot deduct more than the ordinary pay value of the leave at termination, not the rate at which it was originally paid.

## 10 Record keeping

Employers must keep records relating to workers' long service leave entitlements during their employment and for at least 6 years after the worker stops working with the employer. If there is a transmission of business (see Part 4.4.1 above) the employer must give the new employer all the records they have for every transferring employee, and keep a copy of the records for 6 years after they were made.

All employers must keep:

- a Long Service Leave Record for each worker; and
- daily records of remuneration paid and hours worked by the worker; and
- any other prescribed records relating to conditions of employment set by industrial relations legislation or industrial instruments.

The information that must be kept in these records is set out in s. 8 of the LSL Act, cls. 4B and 4C of the *Long Service Leave Regulation 2021*, s. 129 of the *Industrial Relations Act 1996* and cls. 9, 10, 11 and 12 of the *Industrial Relations (General) Regulation 2020*.

In addition to the above, it is best practice for employers to keep:

| ☑ | Records   |
|---|---|
|   | Records of dates of any separate periods of employment with the employer  |
|   | Copies of any employment agreements, contracts, letters of offer etc. that set out the terms of employment and any amendments to those agreements               |
|   | Records of any period of service recognised by the employer served by the worker with a former employer (see <a href="#">Section 4.4</a> above)                 |
|   | Records of the reason for any type of leave or absence of the worker and who initiated the request for leave or absence (see <a href="#">Section 4.5</a> above) |
|   | Records of any agreements made between the worker and the employer in relation to long service leave  |
|   | Records of termination or resignation, including the date and reason for termination or resignation   |
|   | Records of any JobKeeper enabling direction given to the worker or COVID-19 stand down and the relevant dates of the direction or stand down                    |
|   | Copies of contracts for the sale of business (when businesses are transmitted - see <a href="#">Section 4.4.1</a> above)  |

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## 11 Further information

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### 11.1 Resolving disputes

If there is a dispute between a worker and an employer in relation to long service leave, a worker and employer should initially attempt to resolve the dispute together.

If a resolution cannot be reached, the employer or worker can [contact NSW IR](#) or the worker can [lodge a complaint with NSW IR](#).

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### 11.2 NSW IR's jurisdiction in resolving disputes

NSW IR can only answer questions or assist in resolving a complaint in relation to long service leave if the worker is covered by the Act (see Section 3 above).

If a worker's complaint involves other workplace matters (e.g. unpaid wages or superannuation), the worker should first resolve this with the [Fair Work Ombudsman](#).

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### 11.3 Further questions about long service leave

Material is available on the NSW IR website to assist with questions and concerns about a long service leave entitlement including:

- [This Guide](#)
- [Frequently Asked Questions](#)
- [Long Service Leave Accrual Calculator](#)

If questions or concerns remain after reading this guide and the material available on our website, please [contact NSW IR](#).

## 12 Appendix A – Glossary of terms

| Term                                       | Definition  |
|--|---|
| Average weekly wage                        | <p>The primary component of ordinary pay for workers who are remunerated <i>otherwise than wholly</i> in relation to an ordinary time rate of pay fixed as at the prescribed date.</p> <p>It is the higher of a worker’s average weekly wage over the periods of 12 months or 5 years preceding the prescribed date.</p> <p>Refer to s. 3(1)(b) of the Act.</p>   |
| Average-weekly-wage-adjusted-period        | <p>The modified time period used to work out a worker’s average weekly wage under s. 3(1)(b) of the Act.</p>  |
| Break (in service)                         | <p>A break in service occurs whenever there is a gap, absence, or interruption that does <i>not</i> fall within any of the statutory “deemed continuity” categories in section 4(11)(a1) of the Act, meaning the worker’s employment is treated as having been ‘broken’ (ended) for the purpose of accruing long service leave.</p>   |
| Bonus                                      | <p>A payment made under the terms of a worker’s employment and under a bonus, incentive, or similar scheme, where the amount is contingent on performance, results, or other factors not tied solely to hours worked.</p>   |
| Bonus or incentive scheme                  | <p>A structured arrangement that is made and known to workers and that provides a framework for assessing eligibility for, or the amount of, contingent payments such as bonuses or incentives, based on performance, results, or other criteria not solely tied to hours worked.</p>   |
| Continuous service                         | <p>The period of a worker’s service with an employer beginning on the date the worker first commences employment and continuing unless an interruption occurs that <i>breaks</i> continuity.</p>  |
| Deemed-normal-weekly-hours                 | <p>The number of hours per week a worker who is remunerated <i>wholly</i> in relation to an ordinary time rate of pay fixed and who works variable hours is treated (i.e. deemed) as having worked to calculate their ordinary remuneration under s. 3(1)(a) of the Act.</p>  |
| Deemed-normal-weekly-hours-adjusted-period | <p>The modified time period used to work out a worker’s deemed-normal-weekly-hours to calculate ordinary remuneration under s. 3(1)(a)(i) of the Act for workers with variable hours who are remunerated <i>wholly</i> in relation to an ordinary time rate of pay fixed.</p>   |
| Deeming provisions                         | <p>This refers to provisions which mean that continuous service is preserved:</p> <ul style="list-style-type: none"> <li>• The deeming provisions referred to in Step 6 at Section 4.4 above which consider that service provided with a former employer is recognised as service with a subsequent employer for long service leave accrual</li> <li>• The deeming provisions referred to in Step 7 at Section 4.5 above which consider a worker’s service to be continuous despite certain gaps or interruptions to that service.</li> </ul> |

|   |  |
|---|--|
| <b>Employer</b>                               | Any person employing any worker or workers.  |
| <b>End date</b>                               | For current workers who intend to take their long service leave, the day before their long service leave starts.<br>For workers whose employment with the employer has ended, the last day they worked or will work.   |
| <b>Fixed-time-rate-of-pay adjusted period</b> | The modified time period used to work out a worker's average ordinary remuneration over the 5 years preceding the prescribed date under s. 3(1)(a)(ii) of the Act.   |
| <b>High-income threshold</b>                  | An annually indexed earnings figure used under the <i>Fair Work Act 2009</i> (Cth).  |
| <b>Industrial instrument</b>                  | A catch-all term that includes any legally enforceable document that states the employment terms and conditions of workers in an industry or business. For example, a NSW Award, NSW industrial legislation, an enterprise agreement, a former industrial agreement, a contract determination or a contract agreement.<br>Can be found at: <a href="http://www.industrialinstruments.nsw.gov.au">Industrial instruments (nsw.gov.au)</a> |
| <b>Interruption (in service)</b>              | See – “Break (in service)”   |
| <b>Milestone accrual</b>                      | Long service leave that accrues to a worker at 10 years of continuous service and each 5 years thereafter.   |
| <b>Ordinary hours</b>                         | The regular hours a worker is expected to work as part of their job as set by their contract, award or agreement. Ordinary hours do not include overtime, penalty rates or extra hours worked that are paid at a rate different to the rate for the regular (ordinary) hours.  |
| <b>Ordinary pay</b>                           | The amount a worker is entitled to be paid for their long service leave.   |
| <b>Ordinary remuneration</b>                  | The primary component of ordinary pay for workers who are remunerated <i>wholly</i> in relation to an ordinary time rate of pay fixed as at the prescribed date.<br>It is the higher of the worker's ordinary remuneration as at the prescribed date or the average weekly amount of ordinary remuneration earned by the worker over the 5 years preceding the prescribed date.<br>Refer to section 3(1)(a) of the Act.                  |
| <b>Ordinary time rate of pay fixed</b>        | The set pay rate that applies to a worker's ordinary hours under the terms of their employment.  |
| <b>Prescribed date</b>                        | For a worker who is currently employed, the date immediately preceding the date on which that worker enters long service leave.<br>For a worker who has ended their employment, the date before their last day of work.  |
| <b>Pro-rata accrual</b>                       | A payment made to a worker when their employment ends (instead of the worker taking long service leave) for any untaken milestone long service leave they have accrued and a proportionate amount for service completed beyond a milestone period.   |

|                                 |  |
|---------------------------------|--|
| <b>Related corporation</b>      | <p>Two corporations are related if they are linked by ownership and are part of the same corporate group. Corporations are related if any one of these is true:</p> <ol style="list-style-type: none"> <li>1. One corporation owns or controls the other (i.e. there is as holding corporation/subsidiary corporation relationship)</li> <li>2. Both corporations are owned by the same parent corporation (i.e. there is a sister corporation relationship).</li> </ol> |
| <b>Remuneration</b>             | Payment received for work performed by a worker according to the worker's terms of employment.   |
| <b>Start date</b>               | <p>The date a worker starts employment with an employer which marks the beginning of the worker's service period.</p> <p>If a worker has broken service, their new start date is the first date the worker starts with the employer <i>after</i> the break.</p>  |
| <b>Terminate</b>                | <p>The end of a worker's employment.</p> <p>This can occur when an employer terminates a worker's employment or when a worker resigns from their employment (i.e. the worker resigns or shows an unwillingness or inability to perform their obligations under their employment contract).</p>   |
| <b>Terms of employment</b>      | <p>The rights, obligations and conditions governing the employment relationship between an employer and a worker, as agreed or imposed by law.</p> <p>Those terms may arise from multiple sources including employment contracts, awards, enterprise agreements or statute.</p>  |
| <b>Transmission of business</b> | <p>The passing of a business from one employer to another employer.</p> <p>It includes the transfer, conveyance, assignment or succession of a business, undertaking, or establishment.</p> <p>Refer to section 4(11)(c) of the Act.</p>   |
| <b>Variable hours</b>           | A worker who works different hours every week. Also known as fluctuating hours.  |
| <b>Work</b>                     | The performance of labour or services by a worker for an employer under terms of employment, in return for remuneration, and subject to the employer's direction or control.   |
| <b>Worker</b>                   | <p>Someone who performs work for an employer as part of a job whether they are paid a wage, a salary, by commission, or by the amount of work they do.</p> <p>Refer to section 3(1) of the Act.</p>  |
| <b>Worker, casual</b>           | A worker engaged intermittently under individual engagements/contracts rather than one continuous contract.  |
| <b>Worker, current</b>          | A worker who is still working for the employer at the present time. This includes people who are actively working and those who are temporarily away from work, as long as their employment has not ended.   |

|                           |   |
|---------------------------|---|
| <b>Worker, fixed term</b> | A worker employed pursuant to a contract of employment that terminates on an agreed date. |
| <b>Worker, terminated</b> | A worker whose work with an employer has ended.   |

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