



New South Wales

Long Service Leave Amendment (Regulatory Reform) Regulation 2022

under the

Long Service Leave Act 1955

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Long Service Leave Act 1955*.

DAMIEN TUDEHOPE, MP
Minister for Employee Relations

Explanatory note

The object of this Regulation is to prescribe the way in which an employer must keep long service leave records for workers employed by the employer.

This regulation is made under the *Long Service Leave Act 1955*, sections 8 and 15 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Long Service Leave Amendment (Regulatory Reform) Regulation 2022*.

2 Commencement

This Regulation commences on 20 May 2022 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Long Service Leave Regulation 2021

[1] Part 1, heading

Insert before clause 1—

Part 1 Preliminary

[2] Part 2, heading

Insert before clause 4—

Part 2 Prescribed annual amount of a worker's ordinary pay

[3] Part 3

Insert after clause 4—

Part 3 Long service leave records

4A Application

This Part prescribes, for the Act, section 8—

- (a) the way in which an employer must keep the long service leave records in relation to workers employed by the employer, and
- (b) matters about the transfer of the long service leave record in relation to workers, or copies of the long service leave records, to the successor of an employer.

Note. The Act, section 8(3) provides that the employer must keep the records for a period of at least 6 years after the day on which the worker ceases to be employed by the employer.

4B Content of records—general

- (1) The long service leave record relating to a worker must include the following particulars—
 - (a) the name of the employer,
 - (b) the Australian Business Number of the employer,
 - (c) the name of the worker to whom the record relates,
 - (d) if any conditions of employment of the worker are set by an industrial instrument—the classification of the worker under the instrument,
 - (e) if the worker is employed full-time or part-time,
 - (f) if the worker is employed on a permanent, temporary or casual basis,
 - (g) if the worker is an apprentice or trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*—the date the worker became an apprentice or trainee,
 - (h) the date the worker was first employed with the employer,
 - (i) if the worker's employment is terminated—the date of termination.
- (2) In this clause—
industrial instrument means any of the following—

- (a) a state award,
- (b) a state enterprise agreement,
- (c) a public sector industrial agreement,
- (d) a contract determination,
- (e) a contract agreement,
- (f) a modern federal award,
- (g) a federal enterprise agreement.

4C Content of records—leave

The long service leave record relating to a worker must include the following particulars about long service leave to which the worker is entitled under the Act—

- (a) any long service leave taken by the worker, including—
 - (i) the dates on which the long service leave was taken, and
 - (ii) the gross amount paid to the worker in relation to the long service leave,
- (b) the worker's entitlement to long service leave—
 - (i) on the date when the worker completes 10 years of service with the employer, and
 - (ii) on the date when the worker completes each subsequent 5 years of service with the employer,
- (c) the amount of any bonuses, within the meaning of the Act, section 3(2)(c), included in the calculation of the worker's ordinary pay for the purposes of the Act,
- (d) any payment to the worker relating to long service leave on termination of the worker's employment,
- (e) a copy of any application made by the worker to take long service leave,
- (f) a copy or record of any agreement between the employer and worker to the worker taking long service leave under the Act, section 4(3AA) or (3A).

4D Keeping records

- (1) The long service leave record relating to a worker must be—
 - (a) in a legible form in the English language, or
 - (b) in an electronic or other form that is—
 - (i) readily accessible, and
 - (ii) convertible into a legible form in the English language.
- (2) An employer must make the long service leave records relating to workers available, in a legible form in the English language, to the following—
 - (a) an inspector or other person authorised to exercise a power under the Act to inspect records,
 - (b) the worker to whom the long service leave record relates.

4E Transfer of records to successor employers

- (1) This clause applies to the transfer from an employer (the *former employer*) to the successor of the employer (the *new employer*) of records kept by the former employer relating to transferred workers.

- (2) The former employer must transfer to the new employer all records relating to the transferred employee that, at the date of transfer, the former employer is required to keep under the Act, section 8.
- (3) The new employer must keep the transferred records as if the records had been made by the new employer at the time the records were made by the former employer.
- (4) The former employer is required to keep a copy of the transferred records for a period of at least 6 years after the records were made.
- (5) The new employer is not required to make records of anything occurring in the course of the transferred employee's employment with the former employer.
- (6) In this clause—
transfer of business means the transfer, transmission, conveyance, assignment or succession, whether by agreement or by operation of law, of the whole or any part of a business, undertaking or establishment.
transferred worker means a person who becomes a worker employed by a new employer as a result of the transfer of business to the new employer from a former employer.

[4] Part 4, heading

Insert before clause 5—

Part 4 Repeal and savings