

# Long Service Leave Regulation 2021

[2021-293]



New South Wales

## Status Information

### Currency of version

Current version for 13 January 2023 to date (accessed 27 June 2024 at 19:01)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 January 2023

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## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Long Service Leave Regulation 2021*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note—**

This Regulation repeals and replaces the *Long Service Leave Regulation 2016*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definition

In this Regulation—

**the Act** means the *Long Service Leave Act 1955*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

### 4 Calculating ordinary pay for payment of leave—bonuses

For the purposes of section 3(2C) of the Act, the prescribed annual amount of a worker's ordinary pay is the greater of the following—

(a) \$144,000,

(b) the amount calculated, from time to time, in accordance with Chapter 2, regulation 2.13 of the *Fair Work Regulations 2009* of the Commonwealth.

**Note—**

Section 3(2C) of the Act provides that, for the purpose of paying long service leave, bonuses do not form part of

a worker's ordinary pay if the worker's annual ordinary pay exceeds the amount prescribed by the regulations. This clause prescribes that amount.

## 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.

## **Part 4 Repeal and savings**

### **5 Repeal and savings**

- (1) The *Long Service Leave Regulation 2016* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Long Service Leave Regulation 2016*, had effect under that Regulation continues to have effect under this Regulation.