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## How is payment for long service leave calculated?

The calculation is the total number of weeks' employment divided by 60 and multiplied by the ordinary weekly rate of pay at the time the leave is taken, or the employee ceases employment.

### Example

*My Linh has worked continuously for 11 years and decides to resign from employment.*

*My Linh's long service leave entitlement is calculated as follows:*

- 11 years multiplied by 52 weeks = 572 weeks.*
- We then need to divide the total weeks by 60, as My Linh will receive one week of long service leave for each 60 weeks of service. 572 weeks divided by 60 = 9.33 weeks.*
- At the time of resignation, My Linh's ordinary pay is \$500.00 per week gross.*
- 9.33 weeks multiplied by \$500.00 per week is \$4,665.00 gross.*

*My Linh is therefore entitled to a payment of \$4,665.00 (gross and subject to statutory taxation) on the day her employment ends.*

### How is ordinary pay calculated?

Ordinary pay is the pay received for working their normal weekly hours at the time the employee takes long service leave (or ceases employment and has their long service leave paid out). It does not include penalty or overtime rates but is the actual rate received even if the employee is a casual employee (note that a casual employee's ordinary rate includes a loading). Ordinary pay includes the cash value of any board or lodging that the employee receives from his or her employer.

### What happens if there is a pay increase while an employee is on long service leave?

If an employee's rate of pay increases while the employee is on long service leave, then the employer must make up the difference between the amount paid and the new, higher rate.

### How is long service leave calculated if the employee's hours vary from week to week?

An employee's long service leave entitlement is based on his or her normal weekly hours at the time the leave falls due or is to be paid out. However, in some cases, an employee's hours may vary from week to week. This may occur, in particular, for casual employees.

Before 1 January 2006, where an employee's hours vary from week to week, the employee's hours for calculating long service leave will be averaged over the preceding 12 months.

After 1 January 2006, where an employee's hours vary from week to week, the employee's hours for calculating long service leave will be averaged over the preceding 12 months, or the preceding five years, whichever average hours are the greater.

### Example

*Melinda has worked at a shoe shop as a casual for the past 22 years. She works according to a roster but depending on how busy the shop is, she works a different amount of hours week to week. Melinda has not taken any long service leave before, but would like to do so now.*

*Melinda's hours over the past five years have been as follows:*

Year	Hours worked	Average number of hours worked per week (number of hours divided by 52)
2001	220	4.23
2002	200	3.8
2003	240	4.6
2004	210	4.0
2005	230	4.4
Average over 5 years	220 (total hours worked over 5 years divided by 5)	4.2 (total average hours divided by 5)



*If Melinda's hours are averaged over the last 12 months of employment, her long service leave would be calculated at 4.4 hours per week. However, if her hours are averaged over the previous five years, her entitlement would be to long service leave based on 4.2 hours per week.*

*Melinda's long service leave should therefore be calculated based on the average weekly rate over the past 12 months, and she will be entitled to long service leave based on 4.4 ordinary hours per week.*

**How is long service leave calculated if the employee's fixed hours of employment have changed during the course of employment – for example, the employee has moved from full to part time employment?**

An employee's long service leave entitlement is based on his or her normal weekly hours at the time the leave is taken or is to be paid out. However, in some cases, an employee's fixed hours of employment may alter. For example, an employee may move from full time to part time employment, or vice versa.

Before 1 January 2006, where an employee's fixed hours have changed during the course of employment, the employee's hours for calculating long service leave are those normal hours worked at the time the leave is taken or is paid.

After 1 January 2006, where an employee's fixed hours have changed in the 12 months immediately before the employee takes long service leave, the employee's hours for calculating long service leave will be averaged over the preceding 12 months or five years, whichever average hours are the greater.

**Example**

*Danielle has been continuously employed for 16 years. However, she worked full time (38 hours) for the first 15 years of employment, and then part time for 20 hours per week in the 16th year.*

*Danielle's fixed hours over the past five years have been as follows:*

Year	Hours worked per week
2001	38
2002	38
2003	38
2004	38
2005	20
Average over 5 years	30.8 (calculated by adding up the hours worked each week for the past 5 years and dividing by 5)

*If Danielle's hours are averaged over the last 12 months of employment, her long service leave would be calculated at 20 hours per week. However, if her hours are averaged over the previous five years, her entitlement would be to long service leave based on 30.8 hours per week.*

*Danielle's long service leave should therefore be calculated based on the average weekly rate over the past 5 years and she will be entitled to long service leave based on 30.8 hours per week.*



### How is long service leave calculated if there is no fixed ordinary time rate of pay?

An employee's long service leave entitlement is based on his or her ordinary time rate of pay at the time the leave is taken or is to be paid out. However, in some cases (where this is permitted by the relevant Award or agreement) an employee may not have a fixed ordinary time rate of pay. For example, the employee may be paid per piece of work, per delivery, or on commission.

Non-discretionary commissions and regular bonuses (for example, those based on sales targets) may be counted as part of ordinary pay if they are included in the employee's oral or written contract of employment.

Before 1 January 2006, where an employee's rate of pay varies from week to week, the employee's rate of pay for calculating long service leave will be averaged over the preceding 12 months.

After 1 January 2006, where an employee's rate of pay varies from week to week, the employee's rate of pay for calculating long service leave will be averaged over the preceding 12 months or five years, whichever average rate is the greater.

#### Example

*Dragan is a Real Estate agent who has worked for the same agency for 11 years. Dragan has resigned from his employment. He did not take any long service leave during the course of his employment. Dragan's contract of employment specifies he is paid a retainer of \$25,000 per annum, plus commission for sales he has written for the company. In the last 5 years, Dragan's retainer did not alter but commission was variable.*

*Dragan's ordinary pay over the past five years has varied as follows:*

Year	\$ Commission	\$ Retainer	\$ Total p.a.	Average weekly rate per year (total income divided by 52)
2001	12,000	25,000	37,000	\$711.54
2002	10,000	25,000	35,000	\$673.08
2003	15,000	25,000	40,000	\$769.23
2004	8,000	25,000	33,000	\$634.62
2005	6,000	25,000	31,000	\$596.15
Total average yearly pay for last 5 years				\$676.92 (calculated by first adding together the average weekly rate for the past 5 years (which totals \$3,384.62), and then dividing that number by 5.



*If Dragan's ordinary weekly rate of pay is averaged over the last 12 months of employment, his long service leave would be calculated on the basis of his ordinary weekly pay being \$596.15. However, if his ordinary weekly rate of pay is averaged over the previous five years, his entitlement would be to long service leave based on an ordinary weekly rate of pay of \$676.92.*

*Dragan's long service leave should therefore be calculated based on the average weekly rate over the past 5 years, and he will be entitled to long service leave based on an ordinary weekly rate of \$676.92.*

### **Does ordinary pay include the value of items such as mobile phones and cars?**

Yes, if the value of the item forms part of salary and is included in the contract of employment (oral or written).

#### **Example**

*Frank is a nurse working in a rural town. His contract of employment states that his total salary is \$40,000.00 per year, packaged to include part cash payment, part the value of private use of an employer-provided mobile phone and part the value of private use of an employer-provided vehicle.*

*As the value of the vehicle and mobile phone form part of Frank's salary and are included in his contract of employment, the value of the items would form part of ordinary pay for long service leave purposes.*

### **How is ordinary pay calculated when an employee is, or has been, on WorkCover?**

Before 1 January 2006, if an employee is receiving WorkCover benefits and returns to work on a return to work plan (as defined in the *Accident Compensation Act 1985*), the employee's long service leave entitlement will be calculated on their pre-injury pay rate. This also applies where an employee has not yet returned to work but wishes to take leave, or the employee's employment is ended by termination or resignation.

After 1 January 2006, if an employee is receiving WorkCover benefits and returns to work on a return to work plan, the employee's long service leave entitlement will be calculated on either their pre-injury pay rate or their pay rate at the time leave is taken, whichever is the greater. This also applies where an employee has not yet returned to work but wishes to take leave, or the employee's employment is ended by termination or resignation.