

Coal mining industry
(Long Service Leave Funding)
Corporation

Long service leave in the black coal mining industry

Information for employers

This brochure explains the long service leave (LSL) entitlements for people working in the black coal mining industry. It takes account of changes starting 1 January 2012.



This brochure contains information about long service leave, effective 1 January 2012. It takes into account changes that were made to long service leave from this date.

What were the changes to long service leave (LSL) from 1 January 2012?

These changes are outlined in the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (**the Act**). The key changes are:

- Minimum LSL entitlements for **eligible employees** are prescribed in the Act itself. These entitlements substantially mirror past award-based entitlements.
- Eligible employees accrue LSL for their **aggregate service** rather than continuous service for all **qualifying service** after 1 January 2000. For service before 1 January 2000 only 'continuous service' counts.
- **LSL credits** accrue for qualifying service and are calculated in hours, not days or weeks.
- The Coal Mining Industry (Long Service Leave Funding) Corporation (**the Corporation**) establishes for each eligible employee a **notional account** representing the LSL levy paid by their employers **after 1 January 2012** plus earnings. Administration costs are deducted.
- Eligible employees must take a continuous period of at least 14 days when taking LSL.
- Where an employee is made redundant and has more than six years but less than eight years qualifying service, the employee is immediately entitled to be paid LSL. There is no longer a three month waiting period.
- There are new rules to calculate the reimbursement to employers of LSL payments:
 - > For LSL accrued before 1 January 2012, the old rules still apply.
 - > For LSL accrued after 1 January 2012, the reimbursement is based on a new formula and the amount in the employee's notional account.
- There are new definitions of **eligible wages** for the calculation of the LSL levy.
- Transitional arrangements apply to convert eligible employees' existing LSL into hours for their qualifying service before 1 January 2012.

- Some employees and their employers can make **waiver agreements** under which, instead of accruing LSL, the employee can be paid or salary sacrifice into super the amount of levy which the employer would otherwise pay for them. Waiver agreements must first be approved by the LSL Corporation.
- The LSL Corporation has stronger policing and enforcement powers to ensure that all employers of eligible employees comply with the Act.
- Breaches of the Act can lead to criminal or civil penalties.

Who's eligible for long service leave in the black coal mining industry?

All **eligible employees** (a definition is on page 10) working in the **black coal mining industry** (a definition is on page 10). This includes people:

- working full-time, part time or casual
- working for contractors
- working for job agencies

When is an eligible employee entitled to long service leave?

An eligible employee is entitled to take LSL after eight years of qualifying service. **Qualifying service** is service as an eligible employee of one or more employers. It does not include certain absences.

For service since 1 January 2000, all service as an eligible employee counts towards their qualifying service, unless they stopped being an eligible employee for eight continuous years or more (a break period). In most cases, any service before a break period will stop being counted as qualifying service.

For service prior to 1 January 2000 to count towards qualifying service, it must be 'continuous service'.

An employee accrues LSL credits for each week during which they are an eligible employee. This means if they are a full-time or part-time employee, each week they work in the black coal mining industry as an eligible employee counts towards their qualifying service. If they're a casual employee, they accrue qualifying service in each week they're employed at any time as an eligible employee.

How much long service leave is an eligible employee entitled to?

Full-time workers

If an employee has eight years qualifying service (continuous or in total) as a full-time worker they're entitled to 455 hours LSL.

Part-time and casual workers

If an employee's service (or part of it) was as a part-time or casual worker, they're still entitled to LSL after eight years qualifying service. However, the amount of leave they get is based on the LSL credits they've accrued over their eight years of qualifying service (see below).

How much long service leave accrues for each week of qualifying service?

An employee's LSL credits accrue in hours using this formula:

$$\frac{13}{416} \times \text{working hours}$$

- 13 is the number of weeks of long service leave entitlement
- 416 is the number of weeks in eight years of qualifying service

A definition of working hours

- Full-time employee – 35 hours per week
- Part-time employee – total number of ordinary working hours up to 35
- Casual worker – hours worked during the week up to 35 hours per week

How LSL entitlements accrue for full-time, part-time and casual employees

- Full-time employee – 455 hours after eight years qualifying service
- Part-time employee – LSL accrues at a rate which reflects the number of ordinary hours worked each week as a proportion of 35 hours. If an employee worked half the hours a full-time worker worked over the same period, ie 17.5 hours per week, they'll accrue half the LSL credits, ie 6.5 weeks of 35 hours per week
- Casual employee – LSL accrues at a rate which reflects the number of hours they worked in the week as a proportion of 35 hours, up to a maximum of 35

What happens when employment changes?

If an employee resigns or their employer terminates their employment, the employee may choose to keep their qualifying service and LSL credits and be paid for that LSL at a later date.

If a person stops being an eligible employee and at that time they're entitled to take LSL, they can ask their employer to pay them for their LSL not taken.

If a person stops being an eligible employee because of ill health or retirement on or after age 60, and has any period of qualifying service, they can ask their employer to pay them for their LSL.

If a person is made redundant and at that time has at least six years qualifying service, they can ask their employer to pay them for their LSL. There is no longer a three month waiting period.

If a person dies and has qualifying service, their LSL can be paid to their estate.

What must an employee be paid when they go on LSL or are no longer employed?

If a person takes LSL while employed, they're entitled to be paid at their base rate of pay (including incentive-based payments) that would have been payable during their LSL.

If they're paid for their accrued LSL, they're entitled to be paid as if they had taken the LSL immediately before they stopped being employed.

An employment contract or enterprise agreement may also outline how a person is paid LSL as long as it is no less favourable than the above.

How is LSL recorded for an employee?

The LSL Corporation will create a notional account for each employee. It comprises the total LSL levy paid for the employee for service on or after 1 January 2012, including earnings and after deductions for costs.

The account is referred to as a 'notional account' because the employee is not directly entitled to the amount in the account. The amount in the account is used to calculate the reimbursement to employers for LSL payments they've made for an employee for LSL accruing after 1 January 2012 (see the reimbursement rules below).

While employees are notified of their qualifying service and LSL credits, they are not provided with the amount in their notional account.

Waiver agreements

Some employees can choose to make a 'waiver agreement' with their employer and, instead of accruing LSL, can be paid, or salary sacrifice into super, the 'LSL levy' that their employer would have paid for them. This agreement must be approved by the LSL Corporation.

The regulations define who can make waiver agreements. These categories of employees are listed at the end of this brochure.

The waiver agreements must comply with specific requirements in the Act and be approved by the LSL Corporation. There are pro-forma waiver agreements on the LSL Corporation's website, www.coallslcorp.com.au

What are the reimbursement rules?

- For LSL which accrued before 1 January 2012, the reimbursement rules have not changed.
- For LSL accrued after 1 January 2012, the employer will be reimbursed an amount based on the employee's notional account, eg if an employee takes all their LSL accrued after 1 January 2012, the amount available for reimbursement will be up to the full amount in the employee's notional account. If the employee takes a percentage of their LSL accrued since 1 January 2012, the employer will be reimbursed the same percentage of the amount in the employee's notional account.
- Employers will not be able to be reimbursed an amount more than the amount paid to an employee for their LSL.



How are aggregate service and long service leave credits recorded?

For service after 1 January 2012, an employee's qualifying service and LSL credits will be based on the monthly returns the employer submits to the LSL Corporation.

For service between 1 January 2000 and 31 December 2011 the LSL Corporation calculates the balance of an employee's aggregate qualifying service (if any) and their accrued LSL credits, taking into account any leave that they have already been paid for.

If an employee had continuous service before 1 January 2000, and before 1 January 2010 was covered by a black coal mining industry award, the LSL Corporation will calculate the amount of continuous service and LSL credits (if any) that the employee can still have counted.

The LSL Corporation provides current and former workers with details of their qualifying service and LSL credits. If the person thinks the information is incorrect or incomplete they must provide evidence to the LSL Corporation.

Employers should keep records of employment for the period up to 1 January 2012 to help the LSL Corporation verify its qualifying service information.

What is the LSL levy?

The LSL levy is based on your employee's eligible wages. What makes up each employee's eligible wages is defined in section 3B of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*. The levy is payable monthly. You can find the levy percentage at www.coallslcorp.com.au

Eligible wages

The definition of eligible wages in section 3B of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* has changed and is now more specific about what amounts are included eg. in some circumstances an employee's overtime or penalty rates and other allowances are eligible wages.

Other things the LSL law covers

- How an employee applies and obtains approval for LSL.
- The minimum amount of LSL that an employee can take at one time.
- When an employer must pay for LSL that is taken.
- Making sure there is no double counting of service or LSL.

Fair Work Australia has power to deal with certain disputes between an employer and an eligible employee in relation to LSL.

Forms and procedures

The LSL Corporation has standard forms and procedures that must be adhered to.

All forms for employers and employees are available on the LSL Corporations website www.coallslcorp.com.au.

Compliance and enforcement

Under the Act employers must provide the LSL Corporation with a report from an auditor stating whether, in the auditor's opinion, the employer has paid all levy amounts required to be paid, including additional levy amounts, and that the correct reimbursement payments have been made to the employer.

Breach of employers' obligations can result in both criminal and civil proceedings against an employer and in certain circumstances its officers. The LSL Corporation also has the power to seek civil penalties up to \$33,000 and require people to produce information or documents relating to the employment of an eligible employee or which the LSL Corporation needs to perform its functions.

Civil proceedings may also be brought by an employee, employee organisation or industrial association for breaches or potential breaches of the Act. The Court may order compensation, injunctions or other orders.

Definitions

Eligible employee is a person:

- employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of black coal mining; or
- employed in the black coal mining industry, whose duties are carried out at or about a place where black coal is mined and are directly connected with the day to day operation of a black coal mine; or
- permanently employed with a mine rescue service for the purposes of the black coal mining industry.

The black coal mining industry includes:

- the extraction or mining of black coal on a coal mining lease by means of underground or surface mining methods
- the processing of black coal at a coal handling or coal processing plant on or adjacent to a coal mining lease
- the transportation of black coal on a coal mining lease
- other work on a coal mining lease directly connected with the extraction, mining and processing of black coal.

The black coal mining industry doesn't include:

- the mining of brown coal in conjunction with the operation of a power station
- the work of employees employed in head offices or corporate administration offices of employers engaged in the black coal mining industry (but does include work in town offices associated with the day-to-day operation of a local black coal mine or mines)
- the operation of a coal export terminal
- construction work on or adjacent to a coal mine site
- catering and other domestic services
- haulage of coal off a coal mining lease unless such haulage is to a wash plant or char plant in the vicinity of the mine
- the supply of shotfiring or other explosive services by an employer not otherwise engaged in the black coal mining industry.

Employees who can make waiver agreements include an eligible employee:

- who is at least 55 and has no qualifying service or at least eight years qualifying service
- who is a manager of a corporation that is an employer of eligible employees in the black coal mining industry
- who is a senior professional employee engaged in the management of a corporation that is an employer of eligible employees in the black coal mining industry
- whose annual salary (including allowances) is at least \$162,000 in 2012 or as adjusted by the annual rate of the Consumer Price Index for subsequent years
- who is employed under an under-graduate placement or a work training placement.



More information

Including viewing your long service leave entitlement

Visit the long service leave website
www.coallslcorp.com.au

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Important information: The information in this brochure is of a general nature. You should consider seeking advice before acting on any of this information. For more information contact the LSL Administrator on toll free 1300 852 625 or by email at lsl@coallslcorp.com.au. This publication is issued by Coal Mining Industry (Long Service Leave Funding) Corporation ABN 12 039 670 644. June 2015.