



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

GUIDANCE NOTE ON ACCRUING AND DEBITING OF LONG SERVICE LEAVE

THE PURPOSE AND NATURE OF THIS GUIDANCE NOTE

This Guidance Note is provided by the Coal Mining Industry (Long Service Leave Funding) Corporation (the "**Corporation**") to assist employees and employers to understand the Corporation's views as to how long service leave is accrued and how long service leave should be taken and debited under the long service leave scheme which applies in the black coal mining industry (the "**LSL Scheme**"), and which is governed by the *Coal Mining Industry (Long Service Leave) Administration Act 1992* and associated legislation (the "**Act**").

The Corporation acknowledges that there is not a direct correlation between the accruing and debiting of long service leave and the calculation of "eligible wages" and the "amount reimbursed to employers" following a payment of long service leave.

The Corporation is responsible for administering the LSL Scheme and maintaining records of an employee's long service leave credit ("**LSL credit**"). Whilst this Guidance Note represents the opinion of the Corporation, it is not intended as legal advice and is not determinative of legal rights or obligations.

The LSL Scheme applies to employees who are 'eligible employees' under the Act, and to their employers.

The examples given in this Guidance Note are indicative only and intended as illustrations of how, in the opinion of the Corporation, the relevant concepts in the Act are to be applied.

In this Guidance Note any reference to a "mine" or "coal mine" is a reference to a black coal mine.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

THE LONG SERVICE LEAVE SCHEME

The LSL Scheme in the Act reflects agreement between employees and employers in the Australian black coal mining industry about how long service leave should be accrued and recorded.

The approach to the taking, accruing and debiting of long service leave in this Guidance Note is based on the way such leave has customarily been taken in the black coal mining industry.

The Corporation recognises that there have been variations in the way in which long service leave has been recorded by employers and has produced this Guidance Note to promote consistency and transparency across the black coal mining industry.

HOW IS LONG SERVICE LEAVE ACCRUED?

Eligible employees are 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 qualifying service, unless the eligible employee stops 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’.¹

Eligible employees accrue LSL credit hours for each week during which they are employed as an eligible employee based on their working hours.

Employers are required to report to the Corporation the details of the hours worked by part-time and casual employees as part of the “employer monthly levy advice form”.

¹ Where an employee was not an eligible employee at any time during 2012, special transitional provisions apply in respect of service prior to 1 January 2012.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Meaning of working hours for accrual purposes

Full-time employee – 35 hours per week.

Part-time employee – total number of ordinary working hours up to 35.

Casual employee – hours worked during the week up to 35 hours per week.

Long service leave accruals for full-time, part-time and casual employees

Full-time employee

Eligible employees who have eight years qualifying service (continuous or in total) as a full-time employee are entitled 455 hours of LSL, being the equivalent to 13 weeks at 35 hours per week.

Part-time and casual employees

Part-time or casual employees are still entitled to LSL after eight years qualifying service. However, the amount of leave is based on the LSL credits they accrued over the eight years of qualifying service (see below).

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 the part-time employee worked half the hours a full-time employee worked over the same period, ie 17.5 hours per week, they will 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.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

HOW IS LONG SERVICE LEAVE TO BE TAKEN?

Section 39AB of the Act deals with the granting of long service leave to eligible employees. It sets out a statutory right for an employee to apply for long service leave, how that application should be made and how and when an employer should respond to the application.

39AB Grant of long service leave

- (1) An eligible employee may apply, in writing, to his or her employer to take a period of long service leave.
- (2) **The employee may only apply to take a period of long service leave that:**
 - (a) **is a single continuous period of at least 14 days (being equivalent to a number of hours of long service leave as agreed with the employer); and**
 - (b) **does not exceed the employee's LSL credit at the time the leave is to be taken.**

Note: An employee is taken not to be on long service leave on public holidays and during certain other periods of absence (see section 39AE).

- (3) As soon as practicable, but no later than 14 days after the application is made, the employer must give the employee a written response:
 - (a) stating whether or not the employer grants the long service leave; and
 - (b) if the employer refuses to grant the long service leave—giving details of the reasons for the refusal.
- (4) The employer may refuse to grant long service leave only on reasonable business grounds.

Meaning of LSL credit

- (5) For the purposes of this section, the long service leave credit (**LSL credit**) of an eligible employee on a day (the **calculation day**) is the number of hours worked out as follows:
 - (a) first, add together the number of hours of long service leave that the employee is entitled to under section 39AA for each week of qualifying service completed by the employee before the calculation day;
 - (b) then, subtract the number of hours of long service leave (if any) previously granted to the employee under this section.

Note: The number of hours of long service leave that an employee is entitled to in respect of certain qualifying service may be affected by section 39CE.

Civil penalty provisions

- (6) Subsections (3) and (4) are **civil penalty provisions**.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Employees and employers must ensure that applications for long service leave are for at least the minimum duration, being a single continuous period of at least 14 calendar days – this period excludes public holidays and certain other absences (see section 39AE).

At the time of approving an application for long service leave, the employer and employee should agree in respect of the number of LSL hours to be debited for that leave. This agreement may be set out in the employee's industrial instrument or obtained in some other way (such as through the long service leave application form). If there is no express agreement, the employee should be debited on the basis of 35 hours per week, depending of course on whether they are a full-time employee or not.

HOW SHOULD AN EMPLOYEE'S LONG SERVICE LEAVE BE DEBITED?

When adjusting the record of an eligible employee's long service leave, the Corporation will subtract from the employee's LSL credit, the number of hours of long service leave as agreed between the employee and the employer under section 39AB, as notified to it by the employer.

When coming to an agreement about the number of long service leave hours to be debited for the employee's period of absence from the workplace, the employee and employer should take the ordinary hours of work of the employee as a basis for calculating the equivalent number of long service leave hours to be debited by the Corporation.

An employee's ordinary hours of work are those specified in an industrial instrument that covers the employee or, if there is no such instrument, the hours agreed between the employee and employer as being the ordinary hours of work, regardless of the number of hours *actually* worked by the employee.

Under the Black Coal Mining Industry Award 2010, the ordinary hours of work are an average of 35 hours per week.

In the usual case, for each week's absence from the workplace, the equivalent number of long service leave hours would be the employee's ordinary hours of work for a week.

However, it may be that the employee and employer agree on a different number of equivalent long service leave hours (see example 6 below). Such an arrangement must of course be consistent with any industrial agreements that apply to the employer and employee.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Illustrative Examples of the calculation of long service leave hours to be debited

Example 1: A full time employee working a regular roster

Warren is a full time employee of ABC Pty Ltd. He has worked in this role for 8 years and has accrued 455 hours of LSL credit. Under the enterprise agreement made with his employer, Warren's ordinary working hours are 35 hours per week.

Warren currently works a regular roster (Monday – Friday) and has no rostered overtime. Warren applies to take all of his accrued LSL credit and ABC Pty Ltd agrees.

Conclusion:

On taking long service leave, Warren will be absent from the mine for 13 weeks and ABC Pty Ltd will notify the Corporation that his LSL credit should be debited a total of 455 hours (13 weeks x 35 ordinary hours per week).

Example 2: A full time employee working a regular roster with rostered overtime

Steve works for 123 Pty Ltd on full-time work at a coal mine. Steve has done this type of work for 8 years and has accrued 455 hours of LSL credit.

Steve is rostered to work Mondays to Fridays with 35 ordinary hours and an extra 5 hours of rostered overtime each week.

On the birth of his first child, Steve applies to take all of his accrued LSL credit and 123 Pty Ltd agrees.

Conclusion:

On taking long service leave, Steve will be absent from the workplace for 13 weeks and 123 Pty Ltd will notify the Corporation that his LSL credit should be debited a total of 455 hours (13 weeks x 35 ordinary hours per week).

The 5 hours of rostered overtime per week is not included in the number of long service leave hours to be debited from his LSL credit.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Example 3: A full time employee who works a shift roster with rostered overtime

Carol has worked for DEF Pty Ltd as a full time employee for 8 years and has accrued 455 hours of LSL credit. She works a 7 day 12 hour roster, and the ordinary hour's component of each shift is 10 hours with an overtime component of 2 hours.

Carol applies to take 14 days of long service leave where she was rostered on for 5 shifts.

Conclusion:

Carol will be away for 2 weeks and DEF Pty Ltd should notify the Corporation to debit her LSL credit by the number of ordinary hours which, according to her roster, she would have worked during the period of her leave, had she not been on leave.

Carol will be debited 50 hours LSL; the rostered overtime per week is not included in the number of long service leave hours to be debited from her LSL credit.

DEF Pty Ltd agrees that Carol can rejoin her shift on the first working period (a Tuesday night shift) occurring after the completion of her 2 week holiday.

Example 4: A full time employee who works a shift roster with rostered overtime

Carol (from example 3) requests to take additional LSL for a period of 14 consecutive days, where she was rostered on for 9 shifts.

Conclusion:

Carol will be away for 2 weeks and DEF Pty Ltd should notify the Corporation to debit her LSL credit by the number of ordinary hours which, according to her roster, she would have worked during the period of her leave, had she not been on leave.

Carol will be debited 90 hours LSL; the rostered overtime per week is not included in the number of long service leave hours to be debited from her LSL credit.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Example 5: A part time employee working a regular roster

Dennis works for 456 Pty Ltd as a part time employee and works a regular roster (Monday – Friday) of 20 ordinary hours per week. Prior to working for 456 Pty Ltd, Dennis worked for ABC Pty Ltd as a full time employee for 8 years. Dennis has qualified for long service leave and has 455 hours of LSL credit accrued.

Dennis and 456 Pty Ltd have agreed that Dennis can take most of his long service leave so that he can travel around Australia on his motorbike.

Conclusion:

Dennis will be away from work for 22 weeks and 456 Pty Ltd will notify the Corporation to debit 440 hours (22 weeks x 20 ordinary hours per week) from his record of LSL credit held by the Corporation.

Example 6: A part time employee working a shift roster

Sandy works part time for GHI Pty Ltd and over a 4 week shift cycle, works an average of 12 and a half hours a week. Sandy has worked as both a full time and part time employee of GHI Pty Ltd over the last 8 years and has accrued 350 hours of LSL credit in that time.

Although GHI Pty Ltd has agreed Sandy could take her long service leave at her part time hours (i.e. 28 weeks x 12.5 ordinary hours per week), Sandy would like to take them all early so she can attend an on-campus university course for a term. GHI Pty Ltd and Sandy agree to take this approach.

Conclusion:

Sandy enrolls in her course and is away from work for 10 weeks. GHI Pty Ltd notifies the Corporation that Sandy's LSL credit should be debited the whole 350 hours.

Sandy is paid for the 10 weeks she is away, at a rate of 35 hours per week, in contrast to her usual 12 and a half hours per week.

Sandy returns to her part time shift cycle at GHI Pty Ltd on completion of her term of study.



Australian Government

Coal Mining Industry (Long Service Leave Funding) Corporation

Example 7: A casual employee

Ashleigh has been employed by a variety of employers and has accrued, over a total of 8 years of eligible service, 180 hours of LSL credit and is therefore entitled to take, and be paid for, an amount of long service leave.

Ashleigh goes to her last employer (JKL Pty Ltd), 3 months after leaving their employ, and asks to be paid for her long service leave under section 39C of the Act.

Conclusion:

JKL Pty Ltd notifies the Corporation to debit Ashleigh's long service leave record for the whole 180 hours of LSL credit.

JKL Pty Ltd must pay Ashleigh no less than the amount that would have been payable to her under the Act had she taken the 180 hours long service leave immediately before ceasing her employment with JKL Pty Ltd.

Example 8: Long service leave and public holidays

Lachlan works for MNO Pty Ltd in Queensland and has been a full time eligible employee for 8 years and has 455 hours of LSL credit. Lachlan plans to take 2 weeks of his long service leave (14 continuous days) and rebuild his patio.

MNO Pty Ltd and Lachlan have agreed that Lachlan will take his long service leave at 35 hours a week at the beginning of June. The period of leave will take in the Queens Birthday public holiday on 9 June.

Conclusion

Lachlan starts his 2 weeks of long service leave on the Monday of the week before the public holiday. He returns to work on the Monday after his 2nd week of long service leave.

As the public holiday occurs during his break from work, Lachlan will not be considered to be on long service leave for that day and will only be debited for 63 hours of LSL credit for his time away from work. Lachlan is paid for the public holiday as he would normally be had he not been on long service leave.

Nonetheless, the occurrence of the public holiday does not break the minimum 14 continuous days of long service leave that Lachlan is required to take under the LSL Scheme.