



Australian Government

Coal Mining Industry

(Long Service Leave Funding) Corporation



COAL LSL

LONG SERVICE LEAVE
IN THE BLACK COAL
MINING INDUSTRY

IT'S YOUR TIME.



INFORMATION FOR EMPLOYERS

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

WHAT WERE THE CHANGES TO LONG SERVICE LEAVE 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 leave entitlements for eligible employees are prescribed in the Act itself. These entitlements substantially mirror past award-based entitlements.
- Eligible employees accrue leave 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.
- Leave credits accrue for qualifying service and are calculated in hours, not days or weeks.
- Coal LSL establishes for each eligible employee a notional account representing the levy paid by their employers after 1 January 2012.
- Eligible employees must take a continuous period of at least 14 days when taking leave.
- 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 leave. There is no longer a three-month waiting period.
- There are new definitions of eligible wages for the calculation of the levy.
- Transitional arrangements apply to convert eligible employees' existing leave into hours for their qualifying service before 1 January 2012.
- Some employees and their employers can make waiver agreements under which, instead of accruing leave, the employee can be paid or salary sacrifice into superannuation the amount of levy which the employer would otherwise pay for them. Waiver agreements must first be approved by Coal LSL.
- Coal LSL 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 working in the black coal mining industry (definitions are on page 10):

- 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 leave 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 services 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

An employee accrues leave 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 leave.

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 leave after eight years' qualifying service. However the amount of leave they get is based on the leave 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 leave 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 per week.
- Casual worker – hours worked during the week up to 35 hours per week.

How leave entitlements accrue

- Full-time employee – 455 hours after eight years' qualifying service.
- Part-time employee – 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, i.e. 17.5 hours per week, they'll accrue half the leave credits, i.e. 6.5 weeks of 35 hours per week.
- Casual employee – 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 you terminate their employment, or they cease to be an eligible employee, they can access their leave entitlement if they have completed at least eight years of qualifying service as an eligible employee.

If they have not yet accrued eight years of qualifying service they will not be able to access their leave entitlement. However, if they recommence work as an eligible employee after a break period of less than eight continuous years, their service from prior to the break period will still be considered qualifying service.

If you make an employee redundant, they can access their leave entitlement if they have completed at least six years' qualifying service.

If employment ceases for other reasons, such as retirement, ill health or death, other provisions exist to enable employees to access their leave entitlement.

WHAT MUST AN EMPLOYEE BE PAID WHEN THEY GO ON LEAVE OR ARE NO LONGER EMPLOYED?

The legislation provides the minimum entitlements for long service leave.

For payments of leave these entitlements are:

- If a person takes leave while employed, they are entitled to be paid at an amount equal to their base rate of pay (including incentive-based payments and bonuses) that would have been payable had they been at work (i.e. not taken the leave).
- If a person is paid out their accrued leave on termination, they're entitled to be paid at a rate as if they had taken the leave immediately before they stopped being employed.

The employment contract or enterprise agreement may provide an employee with an enhanced entitlement, as long as that entitlement is at least as favourable as our legislation.

WAIVER AGREEMENTS

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

The regulations define who can make waiver agreements. These categories of employees are listed at the end of this brochure. The waiver agreement must comply with specific requirements in the Act and be approved by Coal LSL. There are proforma waiver agreements on our website at www.coallsl.com.au

WHAT ARE THE REIMBURSEMENT RULES?

- Employer reimbursement rules outline how Coal LSL calculates reimbursement amounts payable to employers under the Act.
- The current rules became effective on 1 July 2017.
- Under the 2017 rules, on administration approval, an employer will be reimbursed in full for a reimbursement claim.
- Employers are only able to claim and be reimbursed for the actual amount paid to the employee for their long service leave entitlement.

HOW ARE AGGREGATE SERVICE AND LONG SERVICE LEAVE CREDITS RECORDED?

For service after 1 January 2012, an employee's qualifying service and leave credit will be based on the monthly return the employer submits to Coal LSL.

For service between 1 January 2000 and 31 December 2011 Coal LSL calculates the balance of an employee's aggregate qualifying service (if any) and their accrued leave 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, Coal LSL will calculate the amount of continuous service and leave credits (if any) that the employee can still have counted.

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

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

WHAT IS THE LONG SERVICE LEAVE LEVY?

The 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.

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 e.g. in some circumstances an employee's overtime or penalty rates and other allowances are eligible wages.

Other things the legislation covers:

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

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

FORMS AND PROCEDURES

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

All forms for employers and employees are available on our website www.coallsl.com.au

COMPLIANCE AND ENFORCEMENT

Under the Act employers have legal obligations such as:

- Submission of a monthly levy advice and payment for all eligible employees.
- Compliance with minimum leave entitlements and how quickly an employee must be paid following submission of a leave application.
- An annual audit report, within six months of the end of the financial year.

Breach of employer obligations can result in both criminal and civil proceedings against an employer and, in certain circumstances, its officers. Coal LSL has the power to seek civil penalties up to the value of 300 penalty units*. Coal LSL can also require people to produce information or documents relating to the employment of an eligible employee or which Coal LSL 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.

**The penalty unit amount is defined by the Crimes Act 1914 (Cth) and is subject to change.*

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 purpose 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 aged at least 55 and has no qualifying service.
- Who is aged at least 55 and has at least 8 years' qualifying service.
- Who is a manager of a corporation that employs eligible employees in the black coal mining industry.
- Who is a senior professional employee engaged in the management of a corporation that employs eligible employees in the black coal mining industry.
- Whose annual salary (including allowances) is at least the minimum specified in the current version of the Coal Mining Industry (Long Service Leave) Administration Regulations.
- Who is employed under an undergraduate placement or a work training placement.

MORE INFORMATION

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