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## 1. Purpose of this Guidance Note

This information is to assist employees and employers to understand how long service leave accrues, and how long service leave is accessed under the Scheme.

The Scheme applies to employees who are 'eligible employees' under the [Coal Mining Industry \(Long Service Leave\) Administration Act 1992](#) (*the Admin Act*), and to their employers.

The examples given in this information are indicative only and intended as illustrations of how, in the opinion of Coal LSL, the relevant concepts in *the Admin Act* are to be applied.

**NOTE:** Reference to a 'mine' or 'coal mine' in this information refers to a black coal mine.

## 2. Entitlement to long service leave

Eligible employees are entitled to take long service leave after completing 8 years of qualifying service. Section 39A(2) of *the Admin Act* defines qualifying service as a period where an employee is an eligible employee of one or more employers, with certain specified exclusions including unpaid or unauthorised leave.

As of 1 Jan 2024, new sections 39A(3A), 39A(3B) and 39A(3C) of *the Admin Act* expand the meaning of qualifying service for a casual employee (see below).

### Full-time employees

Eligible employees who have 8 years' qualifying service as a full-time employee are entitled 455 hours of long service leave.

Full-time eligible employees will accrue long service leave for each week of qualifying service as prescribed in section 39AA of *the Admin Act* [accrued LSL hours =  $13/416 \times 35$  hours].

### Part-time employees

Part-time eligible employees are entitled to long service leave after 8 years' qualifying service. The amount of long service leave available to access is the total of the long service leave hours accrued over the 8 years of qualifying service.

Eligible employees who are part-time accrue long service leave for each week of qualifying service as calculated by the formula set out in s39AA of *the Admin Act*. Effectively, for each week the part-time employee works, they will accrue a proportion of the equivalent full-time employees long service leave accrual, which reflects the number of ordinary hours worked as a proportion of 35 hours. For example, if the part-time employee worked 17.5 hours in the week, they will accrue half the full-time equivalent long service leave credit.



## Casual employees

Eligible employees who are casual employees accrue one week of qualifying service for each week in which they undertake any eligible employment. If a casual employee is an eligible employee at any time during a week, the employee is taken to have been an eligible employee for that week. From 1 January 2024, casual eligible employees also accrue a week of qualifying service for a week in which no eligible employment is undertaken, but only where that week falls between two weeks where eligible employment is carried out. The weeks where eligible employment is carried out, as well as the weeks between two weeks of eligible employment, are referred to as 'applicable weeks'.

From 1 January 2024, eligible employees that are casual employees accrue long service leave based on the total amount of eligible hours worked over a calendar quarter. For the quarter, the total amount of eligible hours worked is divided by the number of 'applicable weeks' in the quarter. This number, or 35 hours (whichever is the lesser) is then applied to the formula as 'working hours' set out in s39AA of *the Admin Act* [accrued LSL hours =  $13/416 \times$  Working Hours] to determine the hours of long service leave accrual for each of the applicable weeks.

Casual eligible employees are entitled to long service leave after 8 years' qualifying service. The amount of long service leave available to access is the total of the long service leave hours accrued over the 8 years of qualifying service.

### 3. How is an employee's long service leave accessed?

Section 39AB of *the Admin 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 must respond to the application.

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 of *the Admin Act*).

### 4. How will an employee's long service leave be debited from the employee's Coal LSL record?

Section 39AB of *the Admin Act* deals with how long service leave can be taken.

In the usual course, 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.

An employee's ordinary hours of work are those specified in an industrial instrument that covers and applies to the employee 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.



It may be that the employee and employer agree on a different number of long service leave hours to be debited (see example five). Any agreement between the employer and employee regarding the number of hours of long service leave to be debited, as permitted under section 39AB(2)(a), must be consistent with the terms and conditions of the employee's employment. 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 the basis for calculating the equivalent number of long service leave hours to be debited by Coal LSL.

When adjusting the record of an eligible employee's long service leave, Coal LSL will subtract from the employee's long service leave credit the number of hours of long service leave as agreed between the employee and the employer under s39AB of *the Admin Act*, as notified by the employer and endorsed by the employee.

## 5. Examples of the calculation of long service leave hours to be accessed

### 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 long service leave 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 to Friday) and has no rostered overtime. He applies to access all his accrued long service leave 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 Coal LSL that his long service leave 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 a full-time basis at a coal mine. He has done this type of work for 8 years and has accrued 455 hours of leave credit. He 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, he applies to access all his accrued long service leave credit based on his ordinary hours (35 hours per week) 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 Coal LSL that his long service leave 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 hours to be debited from his long service leave credit, as agreed between Steve and his employer.

### **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 long service leave credit. She works a 7-day 12-hour roster, and the ordinary hours 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. Carol and DEF Pty Ltd agree that Carol will take her long service leave based on her ordinary hours of 10 hours per shift.

### **Conclusion:**

- Carol will be away for 2 weeks and DEF Pty Ltd should notify Coal LSL to debit her long service leave 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 long service leave; the rostered overtime per week is not included in the number of hours to be debited from her long service leave credit, as agreed between Carol and her employer.

### **EXAMPLE 4:**

## **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 to Friday) of 20 ordinary hours per week. Prior to working for 456 Pty Ltd, he worked for ABC Pty Ltd as a full-time employee for 8 years. He has qualified for long service leave and has 500 hours of long service leave credit accrued.

Dennis and 456 Pty Ltd have agreed that he can take most of his long service leave based on his ordinary hours 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 Coal LSL to debit 440 hours (22 weeks x 20 ordinary hours per week) from his record of long service leave credit held by Coal LSL.

### **EXAMPLE 5:**

## **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 12.5 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 long service leave 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 Coal LSL that Sandy's long service leave 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 12.5 hours per week.
- Sandy returns to her part-time shift cycle at GHI Pty Ltd on completion of her term of study.

### **EXAMPLE 6:**

## **A casual employee**

Ashleigh has been employed as an eligible employee by a number of employers and has accrued, over a total of 8 years of eligible service, 180 hours of long service leave 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 ceasing employment and asks to be paid for all of her long service leave credit under s39C of *the Admin Act*.

### **Conclusion:**

- JKL Pty Ltd notifies Coal LSL to debit Ashleigh's long service leave record for the whole 180 hours of long service leave credit.
- JKL Pty Ltd must pay Ashleigh no less than the amount that would have been payable to her had she taken the 180 hours long service leave immediately before ceasing her employment with JKL Pty Ltd.

## EXAMPLE 7:

### 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 long service leave credit. He plans to take 2 weeks of his long service leave (14 continuous days).

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 King's Birthday public holiday.

#### 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 second week of long service leave.
- As the public holiday occurs during his break from work, Lachlan will not be on long service leave for that day and will only be debited for 63 hours of long service leave 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.
- 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 Scheme.

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