



Western Australia

Local Government Act 1995

## **Local Government (Long Service Leave) Regulations 2024**



# Local Government (Long Service Leave) Regulations 2024

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## Local Government (Long Service Leave) Regulations 2024

Made by the Governor in Executive Council.

### Part 1 — Preliminary

**1. Citation**

These regulations are the *Local Government (Long Service Leave) Regulations 2024*.

**2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published on the WA legislation website;
- (b) the rest of the regulations — on 1 September 2024.

**3. Purpose**

These regulations are made for the purposes of section 5.48 of the Act.

**4. Terms used**

In these regulations —

***accrual period*** means the period of an employee's reckonable service in respect of which an entitlement to long service leave arises under regulation 11;

***advance leave*** means a period of long service leave taken before the employee becomes entitled to the leave by completing the accrual period;

**by agreement** has the meaning given in regulation 5;

**commencement day** means the day on which regulation 11 comes into operation;

**Commission** means The Western Australian Industrial Relations Commission continued and constituted by the *Industrial Relations Act 1979* section 8;

**employee** means a person who is —

- (a) employed by a local government under section 5.36 of the Act; or
- (b) employed by WALGA;

**employer** means a local government or WALGA and, in relation to an employee, means the employer by whom the employee is employed;

**industrial instrument** means any of the following —

- (a) an award, employer-employee agreement, industrial agreement or order made under the *Industrial Relations Act 1979*;
- (b) an award, determination, enterprise agreement or order made under the *Fair Work Act 2009* (Commonwealth);
- (c) an award, determination or agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth);
- (d) an award, determination, agreement, order or similar instrument which is made under another law of the State or the Commonwealth dealing with workplace relations;

**long service benefit** has the meaning given in section 5.48(1) of the Act;

**ordinary pay** has the meaning given in regulation 6;

**reckonable service** has the meaning given in regulation 7.

## 5. Meaning of by agreement

Where these regulations provide for a matter to be determined ***by agreement***, the matter may be determined —

- (a) by or under an industrial instrument applying to an employee's employment with an employer; or
- (b) by or under a contract of employment between an employee and an employer; or
- (c) by agreement in writing between an employee and an employer.

Note for this regulation:

Regulation 5 has effect subject to the *Industrial Relations Act 1979* section 114.

## 6. Meaning of ordinary pay

- (1) In this regulation —

***ascertainable hours worked by the employee*** during a period means —

- (a) if complete and accurate records of hours worked are available in relation to the whole of the period, the recorded hours worked by the employee during the period; and
- (b) in any other case, the total hours worked by the employee during the period, calculated by extrapolating from the recorded hours worked during any part or parts of the period for which records are available;

***remuneration*** —

- (a) includes any casual loading payable under an industrial instrument, a contract of employment or an enactment; but
- (b) does not include any shift premium, overtime, penalty rate or allowance.

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- (2) An employee's **ordinary pay** for a week is the employee's normal weekly number of hours of work multiplied by the ordinary time rate of pay applicable to the employee in that week.
- (3) For an employee whose hours of work have varied during the accrual period, the normal weekly number of hours of work is, subject to subregulation (4) —
  - (a) if the whole of the accrual period falls after commencement day — the average weekly hours worked by the employee during the accrual period, calculated by reference to ascertainable hours worked by the employee during that period; or
  - (b) if the whole of the accrual period falls before commencement day — the average weekly hours worked by the employee during the period of 12 months immediately before the period of long service leave, calculated by reference to ascertainable hours worked by the employee during that period; or
  - (c) if part of the accrual period falls before commencement day and part falls after — the higher of the average weekly hours calculated under paragraph (a) and the average weekly hours calculated under paragraph (b).
- (4) If an employee takes advance leave under regulation 13, for the purposes of the period of advance leave the employee's normal weekly number of hours of work is to be calculated as if references in subregulation (3) to the accrual period were references to so much of the accrual period as has elapsed at the date on which the period of advance leave begins.

**7. Reckonable service**

- (1) A reference in these regulations to an employee's **reckonable service** is a reference to a continuous period of the employee's employment with 1 or more employers, measured in accordance with regulations 8 and 9.

- (2) For the purposes of subregulation (1), it does not matter that an employee —
- (a) is employed by an employer under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2; or
  - (b) is employed by an employer under 2 or more contracts of employment; or
  - (c) is also employed by another person during the period of employment with the employer.

**8. Periods included in continuous period of employment**

- (1) For the purposes of regulation 7, the following periods are included in, and count towards, an employee's continuous period of employment —
- (a) a period of leave for which the employee has received payment (including payment under the *Paid Parental Leave Act 2010* (Commonwealth));
  - (b) a period of unpaid family and domestic violence leave (as defined in the *Minimum Conditions of Employment Act 1993* section 39A);
  - (c) any other period or periods of unpaid leave not exceeding in aggregate 90 days in any period of 12 consecutive months;
  - (d) any other period of unpaid leave that by agreement is included as part of a continuous period of employment for the purposes of these regulations;
  - (e) a period of absence from duty for a public holiday or public half-holiday or, where applicable to the employment, a bank holiday;
  - (f) a period of absence from duty arising out of or in connection with the employer's response to —

- (i) a hazard giving rise to a state of emergency declaration (as defined in the *Emergency Management Act 2005* section 3); or
  - (ii) the impact or consequences of such a hazard;
- (g) a period of absence from duty arising out of or in connection with the employer's response to the occurrence of COVID-19, or the impact or consequences of the occurrence of COVID-19, in an area to which a COVID-19 declaration in force under the *Emergency Management Act 2005* Part 6A applies;
- (h) a period of absence from duty at the request or direction of the employer;
- (i) a period of absence from duty arising out of or in connection with the employee having ceased, or refused to carry out, work under the *Work Health and Safety Act 2020* Part 5 Division 6;
- (j) a period for which, under the *Workers Compensation and Injury Management Act 2023* section 61(2)(d), the employee is to accrue entitlements to long service leave;
- (k) in the case of a casual or seasonal employee —
  - (i) a period of absence from duty under the terms of the employment; or
  - (ii) a period of absence from duty caused by seasonal factors; or
  - (iii) any other period of absence from duty throughout which the employee has, due to the regular and systematic nature of the employment, a reasonable expectation of returning to work for the employer;
- (l) a period following termination of the employment by the employer done with the intention of avoiding —
  - (i) obligations under these regulations; or
  - (ii) obligations in respect of employment under —

- (I) an industrial instrument; or
    - (II) the *Minimum Conditions of Employment Act 1993*; or
    - (III) another law of the State or the Commonwealth dealing with workplace relations;
  - (m) a period following the dismissal of the employee, if the Commission —
    - (i) determines that the dismissal was harsh, oppressive or unfair; and
    - (ii) orders the employer to reinstate or re-employ the employee;
  - (n) a period during which the employment is interrupted by service as a member of the naval, military or air forces of the Commonwealth other than as a member of the Permanent Forces (as defined in the *Defence Act 1903* (Commonwealth) section 4(1)) if the employee resumes employment with an employer as soon as practicable after the absence.
- (2) A period included as part of an employee's continuous period of employment under subregulation (1)(l) or (m) —
- (a) begins on the day (***termination day***) on which the employment is terminated or the employee is dismissed; and
  - (b) ends on the earlier of —
    - (i) the day after the period of 6 months beginning on termination day; and
    - (ii) the day on which the employee enters the employment of an employer.

**9. Periods not included in continuous period of employment, but taken not to break it**

For the purposes of regulation 7, the following periods are not included in, and do not count towards, an employee's continuous period of employment, but periods of employment immediately before and immediately after them are taken to be continuous —

- (a) a period of unpaid leave or absence from duty, other than a period mentioned in regulation 8;
- (b) a period, not exceeding 6 months, between the termination of the employment by the employer for slackness of trade and the re-employment of the employee by the same employer, if no payment is made to the employee under regulation 21 in respect of the period;
- (c) a period, not exceeding 2 months, between the termination of the employment by the employer on any ground other than slackness of trade and the re-employment of the employee by the same employer, if no payment is made to the employee under regulation 21 in respect of the period;
- (d) a period between leaving the employment (the *first employment*) of 1 employer and entering the employment of another, if —
  - (i) no payment is made to the employee under regulation 21 on termination of the first employment; and
  - (ii) the period does not exceed 4 weeks, or any longer period of annual leave accrued but not taken in respect of which a payment is made to the employee on termination of the first employment;
- (e) a period between leaving the employment (the *first employment*) of an employer by reason of the expiry of

a fixed term contract of employment and re-entering the employment of the same employer under another contract of employment, if —

- (i) no payment is made to the employee under regulation 21 on termination of the first employment; and
  - (ii) the period does not exceed 3 months, or any longer period of annual leave accrued but not taken in respect of which a payment is made to the employee on termination of the first employment;
- (f) a period, not exceeding 12 months, between the completion of an apprenticeship with an employer and the commencement of employment by the same or another employer, if no payment is made to the employee under regulation 21 in respect of the period;
- (g) a period, not exceeding 3 months, between leaving the employment of a transferor (as defined in regulation 10(2)(a)) and entering the employment of an employer, so long as no payment is made by the transferor to the employee in respect of entitlements to or expectations of long service leave accrued or accruing in respect of the employment with the transferor.

## 10. Transferred employees

- (1) In this regulation —
- transfer of business*** has the meaning given in the *Long Service Leave Act 1958* section 7E;
- transferring employee*** has the meaning given in the *Long Service Leave Act 1958* section 7F.
- (2) This regulation applies if —
- (a) there is a transfer of business from a person (the ***transferor***) who is not an employer to an employer; and

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- (b) an employee is a transferring employee in relation to the transfer.
- (3) Regulations 7, 8 and 9 (other than regulation 9(g)) apply in relation to a transferred employee as if the transferor were an employer.

## Part 2 — Long service leave

### 11. Entitlement to long service leave

Except as provided in regulations 16, 17, 19 and 20, an employee is entitled to 13 weeks of long service leave in respect of each 10 years of reckonable service that the employee completes.

### 12. Taking long service leave

- (1) Subject to subregulations (2) and (3), an employee who is entitled to long service leave must take the leave, and the employer must allow the leave to be taken, at the earliest practicable date after the entitlement arises.
- (2) The employee may take long service leave in 1 continuous period or by agreement in 2 or more separate periods.
- (3) A period of long service leave starts —
  - (a) on a date agreed between the employer and the employee in writing; or
  - (b) on a date, not earlier than 12 months after the date on which the employee becomes entitled to the period of long service leave, of which —
    - (i) the employee gives the employer not less than 2 weeks' written notice; or
    - (ii) the employer gives the employee not less than 2 months' written notice.
- (4) An employee's period of long service leave is increased by 1 day for each public holiday occurring during the period, if the employee would otherwise be entitled to that holiday under the employee's conditions of employment.

**13. Taking advance leave**

- (1) An employee who has completed not less than 7 years of reckonable service may take advance leave by agreement.
- (2) An employee who takes advance leave does not begin to accrue any entitlement to a further period of long service leave until after completing the accrual period relating to the advance leave.
- (3) Where an employee takes advance leave and the employee's employment terminates before the employee has completed the accrual period relating to the advance leave, the employer may recover, by deduction from any amount payable on termination of the employment, an amount equal to any excess of —
  - (a) the amount paid to the employee for the advance leave; over
  - (b) any amount that would have been payable to the employee under regulation 21, had the employee not taken the advance leave.
- (4) The employer must pay a proportionate share of the amount recovered under subregulation (3) to other employers who contributed under regulation 23 towards the cost of the advance leave.

**14. Employer to pay for long service leave**

- (1) The employer in whose employment an employee is at the time the employee starts a period of long service leave must pay the employee for that period at the rate of payment determined under regulation 15.
- (2) Subject to subregulations (3) and (4), the employer must pay the employee in respect of a period of long service leave by periodical payment on the ordinary pay dates for the employee's position.

- (3) If the employer and the employee agree in writing, the employer must pay the employee for a period of long service leave in full before the employee starts the period of leave.
- (4) Where a payment for long service leave includes an amount by reason of an increase in the employee's rate of ordinary pay arising after the start of the period of leave, the employer must pay that amount to the employee not later than the next ordinary pay date for the employee after the end of the period of leave.

**15. Rate of payment for long service leave**

Except as provided in regulations 16 and 17, the rate of payment for each week of a period of long service leave is the employee's ordinary pay for that week.

**16. Long service leave at half pay**

If an employee and an employer agree in writing in respect of a period of long service leave —

- (a) the employee must be paid for each week of the period at half the rate payable under regulation 15; and
- (b) half of the period must be taken into account —
  - (i) in calculating the amount of leave, if any, to which the employee remains entitled; and
  - (ii) for the purpose of applying the formula in regulation 23(4).

**17. Long service leave at double pay**

If an employee and an employer agree in writing in respect of a period of long service leave —

- (a) the employee must be paid for each week of the period at twice the rate payable under regulation 15; and
- (b) twice the period must be taken into account —
  - (i) in calculating the amount of leave, if any, to which the employee remains entitled; and

- (ii) for the purpose of applying the formula in regulation 23(4).

**18. Employee not to take other employment during leave**

An employee taking a period of long service leave must not, except with the written agreement of the employer, engage in any employment for reward in substitution for the employment from which the employee is on leave.

## **Part 3 — Payments in substitution for long service leave**

### **19. While in employment: cashing out of entitlement to long service leave**

- (1) An employee who is entitled to long service leave may forego the leave, or part of the leave, and all associated entitlements under this Part, if —
  - (a) the employee makes a written request to the employer, specifying the period of long service leave (the ***cashed-out leave***) to be foregone; and
  - (b) the employer agrees in writing; and
  - (c) the employer makes an adequate payment to the employee in lieu of the cashed-out leave.
- (2) For the purposes of subregulation (1)(c) a payment is not adequate unless it is at least equal to the payment the employee would have been entitled to under regulation 15 if the employee had taken the cashed-out leave.
- (3) Nothing in this regulation enables an employee to forego a period of long service leave, entitlement to which has not yet accrued under regulation 8.

### **20. On termination of employment: payment in substitution for entitlement to long service leave**

- (1) In this regulation —  
***remaining long service leave entitlement*** of an employee means an amount of long service leave —
  - (a) to which the employee has become entitled under regulation 11; and
  - (b) which the employee has not taken and has not forgone under regulation 19.

- (2) If, on termination of employment with an employer, an employee has a remaining long service leave entitlement —
  - (a) the remaining long service leave entitlement ceases; and
  - (b) the employee is entitled instead to a payment equal to the aggregate amount that would have been payable under regulation 15 if the employee had taken the remaining long service leave entitlement starting immediately prior to the termination of employment.

**21. On termination of employment: payment in substitution for expectation of long service leave**

- (1) In this regulation —  
*incomplete accrual period* means —
  - (a) for an employee who has become entitled to long service leave under regulation 11 — the period of reckonable service completed since the employee most recently became entitled to long service leave under regulation 11; and
  - (b) for an employee who has not become entitled to long service leave under regulation 11 — the period of reckonable service completed.
- (2) This regulation applies to an employee if —
  - (a) the employee has completed at least 7 years' reckonable service; and
  - (b) the employee's employment terminates in any circumstance other than termination by the employer for serious and wilful misconduct; and
  - (c) the employee does not, within the period specified in regulation 9(d)(ii), enter the employment of another employer.

- (3) The employee is entitled to a payment calculated under regulation 15 as if —
  - (a) the employee were entitled to a period of long service leave of one and three-tenths weeks for each year of the employee's incomplete accrual period; and
  - (b) the employee had taken that leave starting immediately prior to the termination of employment.
- (4) Subregulations (5) and (6) apply if, in relation to the termination of employment —
  - (a) the employee's service is terminated by dismissal; and
  - (b) an amount is paid to the employee under subregulation (3); and
  - (c) the Commission —
    - (i) determines that the dismissal was harsh, oppressive or unfair; and
    - (ii) orders the employer to reinstate or re-employ the employee;and
  - (d) the employer reinstates or re-employs the employee.
- (5) The employee may, within 3 months of reinstatement or re-employment, repay the amount paid under subregulation (3).
- (6) If the employee makes repayment under subregulation (5), all benefits and entitlements due or payable under these regulations to or in respect of the employee must be determined, calculated and paid as they would have been if the payment under subregulation (3) had not been made.

**22. On death: payment in respect of entitlement to or expectation of long service leave**

If employment terminates because of the death of an employee, the employer must, on request by the personal representative of

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the employee, pay any amount due under regulation 20 or 21 to the personal representative.

## Part 4 — Miscellaneous

### 23. Contribution towards cost of benefit

- (1) In this regulation —  
**cost** of a long service benefit means —
- (a) in the case of a period of leave taken by an employee — the total amount paid by the employer under regulation 14 in respect of that period; and
  - (b) in the case of a payment made by the employer under Part 3 — the amount of that payment.
- (2) This regulation applies if —
- (a) a long service benefit is taken by or in respect of an employee; and
  - (b) the accrual period for the long service benefit includes periods of reckonable service in the employment of 2 or more employers.
- (3) The employer in whose employment the employee is at the time, or immediately before, the long service benefit is taken —
- (a) must bear the cost of the benefit; and
  - (b) may recover from each other employer in respect of a period of reckonable service in the employment of that employer a contribution of an amount determined under subregulation (4).
- (4) The contribution that an employer may recover from another employer under subregulation (3) is determined by the formula —
- $$C = \frac{(L \times S \times P)}{TS}$$
- where —
- C is the amount of the contribution that may be recovered from that other employer;

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- L is the period of leave for which, or notional period of leave in respect of which, the cost is paid (expressed in weeks);
  - S is the part of the accrual period (expressed in completed weeks) during which the employee was in the employment of that other employer;
  - P is the employee's ordinary pay for the week immediately preceding the end of the employee's employment with that other employer;
  - TS is the total accrual period in respect of which the long service benefit accrued (expressed in completed weeks).
- (5) Where an employee is or was employed jointly and concurrently by 2 or more employers —
- (a) the cost of a long service benefit must be divided equally between those employers unless they agree to meet the cost on some other basis; and
  - (b) in relation to a contribution towards the cost of a long service benefit, the formula set out in subregulation (4) is modified as necessary so that each of those employers contributes equally unless they have agreed to contribute on some other basis.

**24. Records to be kept by employer**

- (1) An employer must, in respect of each employee, keep a record of the following information —
- (a) the employee's name;
  - (b) the employee's usual position and the ordinary time rate, excluding all allowances, applicable to that position from time to time;
  - (c) the hours worked by the employee each week;
  - (d) the dates on which the employee's employment began and terminated;

- (e) any details provided of service with another employer to the employer under regulation 25;
  - (f) details of any absence of the employee from duty;
  - (g) the employee's entitlement to long service leave;
  - (h) details of any long service benefit granted to the employee during, or on termination of, employment;
  - (i) details of any payment recovered from the employee on termination of employment under regulation 13(3).
- (2) The employer must, on written request, make the record available to any of the following —
  - (a) the employee to whom it relates;
  - (b) a person authorised in writing by the employee to inspect the record;
  - (c) another employer of the employee;
  - (d) an industrial inspector (as defined in the *Industrial Relations Act 1979* section 7(1)).
- (3) The employer must keep the record for a period of at least 10 years after the termination of the employee's employment.

## 25. Sharing of employment records

- (1) This regulation applies if an employee who enters the service of an employer (the ***new employer***) informs the new employer that the employee has previously been in the service of another employer (the ***former employer***).
- (2) The new employer may request the former employer, in the approved form, to provide details of the record maintained by the former employer in relation to the employee under regulation 24.
- (3) The former employer must comply with a request under subregulation (2).

- (4) In calculating any benefit or entitlement arising under these regulations the new employer may rely on the details provided by the former employer under this regulation without further investigation.
- (5) The Departmental CEO may approve forms that must be used for making requests under subregulation (2) and for providing details under subregulation (3).
- (6) An approved form —
  - (a) must be consistent with the requirements of regulation 24 and of this regulation; and
  - (b) may otherwise deal only with incidental matters; and
  - (c) may cater for more than 1 request or 1 response to be made on a single form; and
  - (d) must be published on the Department’s website.

**26. Performance of employer’s functions**

- (1) In this regulation —  
**CEO** means, in relation to an employer, the chief executive officer of the employer.
- (2) Subject to and in accordance with any direction given by the employer, the CEO may on the employer’s behalf perform the employer’s functions under these regulations in relation to an employee other than the CEO.

Note for this regulation:

Under section 2.7(1)(b) of the Act the council of a local government is responsible for performing the local government’s functions under these regulations in relation to the CEO.

## **Part 5 — Repeal and saving provision**

### **27. *Local Government (Long Service Leave) Regulations* repealed**

The *Local Government (Long Service Leave) Regulations* are repealed.

### **28. Saving provision**

- (1) This regulation applies to an employee who, immediately before commencement day, was entitled under the *Local Government (Long Service Leave) Regulations* to a long service benefit or part of a long service benefit (the ***accrued benefit***).
- (2) On and after commencement day, the employee —
  - (a) retains an entitlement to the accrued benefit; and
  - (b) may take the accrued benefit as if it had accrued under these regulations.

V. MOLAN, Clerk of the Executive Council

## Defined terms

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined term	Provision(s)
accrual period.....	4
accrued benefit.....	28(1)
advance leave.....	4
ascertainable hours worked by the employee.....	6(1)
by agreement.....	4, 5
cashied-out leave.....	19(1)
CEO .....	26(1)
commencement day .....	4
Commission .....	4
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former employer .....	25(1)
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industrial instrument .....	4
long service benefit.....	4
new employer.....	25(1)
ordinary pay .....	4, 6(2)
reckonable service.....	4, 7(1)
remaining long service leave entitlement.....	20(1)
remuneration .....	6(1)
termination day .....	8(2)
transfer of business .....	10(1)
transferor.....	10(2)
transferring employee .....	10(1)

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