

## Long Service Leave - What you need to know



**Fair Work**  
OMBUDSMAN

### LONG SERVICE LEAVE AND THE NATIONAL EMPLOYMENT STANDARDS

#### Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, help to resolve workplace complaints, conduct investigations, and enforce relevant Commonwealth workplace laws.

Long service leave forms part of the National Employment Standards (NES). As of 1 January 2010, the NES apply to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment.

Terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than the NES, and those that do have no effect. An employer must not contravene a provision of the NES. A contravention of a provision of the NES may result in penalties of up to \$10,200 for an individual and \$51,000 for a corporation.

In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement. All references to an award or agreement in this fact sheet includes modern awards, enterprise agreements, and award or agreement-based transitional instruments.

#### What entitlements to long service leave will apply?

Under the NES, an employee is entitled to long service leave in accordance with their applicable pre-modernized award. Modern awards (from 1 January 2010) cannot include terms dealing with long service leave.

However, an employee's long service leave entitlement derived from a pre-modernized award does not apply where:

- a collective agreement, an Australian Workplace Agreement (AWA) made after 26 March 2006, or an Individual Transitional Employment Agreement (ITEA) came into operation before the commencement of the NES, and applies to the employee or
- one of the following kinds of instruments came into operation before the commencement of the NES, applies to the employee, and expressly deals with long service leave:
  - an enterprise agreement – agreements made after 1 July 2009 and approved by the Fair Work Commission
  - a preserved State agreement – an agreement made in the State system before 26 March 2006
  - a workplace determination – made by the Fair Work Commission
  - a certified agreement – an agreement made before 26 March 2006
  - an AWA – made before 26 March 2006
  - an old IR agreement – an agreement approved by the AIRC before December 1996.
  - a section 170MX award – an award made by the Australian Industrial Relations Commission (AIRC) before 26 March 2006 after terminating a bargaining period

When one of the above specified instruments ceases to operate, an employee is entitled to long service leave in accordance with an applicable pre-modernized award.

## ATO Key Lodgement Dates

These dates are from the ATO website and do not take into account possible extensions. Contact us to establish when your information is required for lodgement. You remain responsible for ensuring that the necessary information is with us in time.

### BAS/IAS Monthly

Lodgement – February Activity Statement: 21<sup>st</sup> Mar 2013 final date for lodgement and payment

### BAS/IAS Monthly

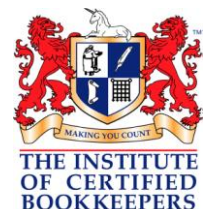
Lodgement - March Activity Statement: 21<sup>st</sup> Apr13 final date for lodgement and payment

3rd Quarter of FY2013: **BAS lodgement – March Quarter (including PAYGI) 28<sup>th</sup> April13** final date for lodgement and payment.

Superannuation – 3rd Quarter of FY2013: **SGC March Quarter 28<sup>th</sup> April 2013** final date for lodgement and payment.

Refer to the ATO for details regarding the Superannuation guarantee Charge applicable. If you do not pay the SGC by this date the SGC is not tax deductible.

Where a due date falls on a day that is not a business day (that is, the due date is a Saturday, Sunday or public holiday), lodgement or payment may be made on the first business day after the due date without incurring a penalty or general interest charge(GIC).



## Long Service Leave - What you need to know..... continued



### What if there are no applicable award or agreement-derived long service leave entitlements?

If there are no award or agreement terms regarding long service leave as set out above, the entitlement to long service leave comes from State and Territory laws. These laws are subject to the interaction with any transitional instrument that applies to the employees. Generally, these transitional instruments prevail to the extent of any inconsistency over any State or Territory long service leave laws.

### What are the minimum long service leave entitlements?

Depending on the relevant State/Territory law or industrial instrument (such as an award or agreement), an employee may be entitled to long service leave after a period of continuous service ranging from seven to fifteen years with the same or a related employer.

Untaken long service leave is usually paid on termination, although this can depend on the circumstances of termination. Depending on the relevant law or instrument, an employee may be eligible for a pro-rata payment on termination after a minimum period of five years continuous service.

### Can an enterprise agreement discount periods of service for long service leave?

Where an enterprise agreement replaces a collective or individual agreement or other specified instrument (such as a workplace determination) that operated before the commencement of the NES, and stated the employee was not entitled to long service leave, an employee's service under the former agreement can be discounted for the purpose of long service leave.

The enterprise agreement may include terms that an employee's service with the employer during a specified period does not count as service for determining long service leave entitlements under either the NES or a State or Territory law. The period is some or all of the period when an employee was covered by the collective or individual agreement or other specified instrument (such as a workplace determination).

If the enterprise agreement includes terms excluding prior service, it does not count as service for determining long service leave entitlements under either the NES or a State or Territory law. However, the period for long service leave entitlement purposes can be reinstated by a later agreement, either through an enterprise agreement or a contract of employment.

### Further Information

The Fair Work Ombudsman has published a fact sheet on each NES entitlement. For further information on a specific NES entitlement, please see the relevant fact sheets at [www.fairwork.gov.au](http://www.fairwork.gov.au).

The Fair Work website also provides templates for long service leave application forms and an employee leave records template.

Long service leave is provided for by section 113 of the *Fair Work Act 2009*.

For further information, visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Info line on **131394**.

### Related publications

Introduction to the NES Maximum weekly hours and the NES Requests for flexible working arrangements and the NES Parental leave and related entitlements and the NES Annual leave and the NES Personal/Carer's leave and compassionate leave and the NES Community service leave and the NES Public holidays and the NES Notice of termination and redundancy pay and the NES Fair Work Information Statement and the NES

Fair Work Ombudsman is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. It is your responsibility to comply with workplace laws that apply to you.

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The information contained in this publication is: © Copyright Fair Work Ombudsman general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered.

#### Disclaimer:

**All or any advice contained in this newsletter is of a general nature only and may not apply to your individual business circumstances. For specific advice relating to your specific situation, please contact your accountant or contact me for further discussion.**

## Budgets and Cash flows – explaining the difference Information supplied by Calxa

The difference between a budget and a cash flow forecast can sometimes be confusing. They can seem to show similar information yet both are very different and have different uses. Both are essential for the accurate financial management of your organization.

**A budget details what you plan to do with your finances for the relevant period of time.** This is usually over 12 months, and focuses on profit. In addition:

- Accruals and other non-cash adjustments such as depreciation are often included
- A Budget also reflects the planned objectives of what the organization is trying to achieve and is linked to the strategic and business plans.
- A budget also provides a benchmark to then monitor performance. After each month you can compare what actually occurred against what was budgeted or planned to occur.
- Usually the full year budget is broken down into months

A budget is **NOT** used to monitor the amount of cash in the bank accounts. That is where the cash flow forecast comes in.

**A cash flow forecast details when the actual receipts and payments are likely to occur.**

- A cash flow forecast reflects when the actual income and expenditure is transacted into/from the actual bank account
- It is not based on accrual accounting and adjustments, such as, depreciation are excluded
- The full year cash flow forecast is mostly broken down into a month by month basis. But in some instances it can be further broken down into fortnightly or even week by week depending on the circumstances

The main difference between a budget and a cash flow forecast is based on:

1. The type of the transaction and;
2. The timing when receipts and payments will occur

As a simple example: a budget will record the income when you have sent out the invoice whereas your cash flow will record it when you actually receive the amount into your bank account.

One point worth mentioning is not to assume that debtors will pay the following month. Often it may be later which is why it is important to know your average debtor days which may show that payment occurs typically 64 days after sending out the invoice.

This also highlights the value of knowing some important Key Performance Indicators (KPI's) such as:

- Debtor Days
- Creditor Days
- Inventory turnover days
- Working capital ratio

Understand the difference between a budget and a cash flow forecast and you will be well on the way to managing your finances.

This information can be found on the Calxa website: [www.calxa.com.au](http://www.calxa.com.au)

### Fringe Benefit Tax – End of Year is 31<sup>st</sup> March:

Make sure that you spoke to your Tax Agent before the 31<sup>st</sup> March regarding Fringe Benefits Tax and how your business is affected.  
Then review your records so you are able to give the accountant everything they need.

Motor Vehicles are the most common FBT issue within a business.  
Take odometer readings at 31<sup>st</sup> March and review your log books for each car.