

NORTHERN TERRITORY OF AUSTRALIA

LONG SERVICE LEAVE ACT
No. 72 of 1981
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NORTHERN TERRITORY OF AUSTRALIA

No. 72 of 1981

AN ACT

To provide for the grant to certain employees of long service leave, and for other purposes

[Assented to 18 September 1981]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Long Service Leave Act 1981.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

3. REPEAL

The Long Service Leave Ordinance 1965 (No. 67 of 1965), the Long Service Leave Ordinance 1970 (No. 18 of 1970) and the Long Service Leave Ordinance 1974 (No. 52 of 1974) are repealed.

4. SAVINGS

(1) The repeal of the Ordinances specified in section 3 does not affect a grant under those Ordinances of long service leave for a period commencing after or extending after the commencement of this Act, and this Act applies to and in relation to any long service leave so granted that occurs after that commencement as if it had been granted under this Act.

(2) Notwithstanding the repeal of the Ordinances specified in section 3, where an employee was, on the day before the date of commencement of this Act, entitled to a period of long service leave, the employee shall be entitled to a credit of long service leave equal to that period.

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5. TRANSITIONAL

(1) This Act does not apply to and in relation to a period of employment performed before the date of commencement of this Act if, before that date, the employment of the employee was terminated otherwise than for the purpose of avoiding the grant of long service leave.

(2) Long service leave granted, or payment in lieu of long service leave made, before the commencement of this Act -

- (a) shall be deemed to be leave granted, or payment made, under this Act; and
- (b) shall be deducted from any leave or payment to which the employee would be entitled by virtue of this Act.

6. APPLICATION

(1) Subject to this Act, where a person is or has been, on or after the commencement of this Act, employed in the Territory, this Act applies to and in relation to his employment at any time before or after the commencement of this Act.

(2) This Act does not apply to or in relation to -

- (a) a person in respect of whom provision for long service leave is made by another law of the Territory, or of the Commonwealth or of a State;
- (b) a person to whom an award applies making provision for long service leave; or
- (c) a person employed in an honorary capacity.

(3) Nothing in this Act affects the operation of the Workmen's Compensation Act.

7. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"award" means an award, order, industrial agreement or common rule declaration in force at the time of the employment of the employee under the Conciliation and Arbitration Act 1904 of the Commonwealth;

"employee" means a person to whom this Act applies who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract is express or implied, oral or in writing, on salary, wages or piecework rates or as a member of a butty gang, full-time or part-time, or casual, or as an outworker;

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"normal daily number of hours of work" means -

- (a) in the case of an employee who is required by the terms of his employment to work a fixed number of hours (not being hours of overtime) per day - the number of hours so fixed; or
- (b) in the case of any other employee - the average number of hours (not being hours of overtime) per day worked by him in his employment during the 12 months ending on the date when he commences his long service leave, or the date when his employment terminates, or his death, as the case requires;

"normal weekly hours of work" means -

- (a) in the case of an employee who is required by the terms of his employment to work a fixed number of hours (not being hours of overtime) per week - the number of hours so fixed; or
- (b) in the case of any other employee - the average number of hours (not being hours of overtime) per week worked by him in his employment during the 12 months ending on the date when he commences his long service leave, or the date when his employment terminates, or his death, as the case requires;

"ordinary pay", in relation to an employee, means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay of the employee and "ordinary rate of pay" has a corresponding meaning;

"ordinary time rate of pay" means -

- (a) in the case of an employee who is remunerated in relation to an ordinary time rate of pay fixed by the terms of employment of the employee the time rate of pay so fixed; or
- (b) in the case of an employee -
 - (i) who is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner; or
 - (ii) where no ordinary time rate of pay is so fixed for an employee's work under the terms of the employment,

the average time rate of pay earned by the employee during the period actually worked by the employee in the service of the employer during the period of 12 months immediately preceding the date when the employee enters

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on leave or preceding the termination of the employment of the employee or the death of the employee, as the case may be;

"pay", in relation to an employee, means his pay, salary, wages or remuneration in respect of his employment;

"public holiday" means a day to be observed as a public holiday under the Public Holidays Act.

(2) A reference in this Act to an employee's pay shall be read as including a reference to -

- (a) an over-award payment, industry, leading hand, skill or qualification allowance or service grant;
- (b) any amounts payable to the employee under a bonus or incentive scheme, being amounts that are usually paid to the employee with his pay for his normal weekly hours of work;
- (c) if the employee is provided with free board or lodging by the employer - an amount equal to the value of that board or lodging fixed by or under the terms of his employment or, if not so fixed, \$15 per week for board or \$5 per week for lodging; and
- (d) any allowance of a specified kind prescribed by the Regulations to be included in an employee's ordinary pay for the purposes of this Act or a provision of this Act,

but not including a reference to district allowance, site allowance, climatic allowance or any other allowance or payment in respect of overtime or penalty rates of pay.

(3) For the purposes of this Act, the fact that -

- (a) some or all of an employee's pay consists of a share of the earnings of the employer; or
- (b) a vehicle, vessel, machine, tool or other article for the performance of his work is obtained by the employee under a contract of hire in consideration of the payment of a fixed sum or a share of the earnings of the employer, or otherwise,

does not in itself prevent the person from being regarded as an employee.

(4) For the purpose of calculating an employee's ordinary rate of pay where, during a year, an employee is remunerated partly by pay and partly by commission, the total of the pay and the commission payable to the employee during the year shall be added together.

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(5) Where, by a provision of a law that governs an award applying to an employee in the Territory, a person is deemed, for the purposes of that law, to be the employer of another person, the person so deemed to be an employer shall, for the purposes of this Act, be deemed to be an employer of that other person.

8. LONG SERVICE LEAVE ENTITLEMENT

(1) Subject to this Act, notwithstanding section 10(1), an employee is entitled to long service leave if he has been employed by an employer for a period of at least 10 years.

(2) Where an employee has been employed by an employer for at least 10 years, the employee is entitled to long service leave on pay at his ordinary rate of pay for a period equal to three-tenths of one month for each completed year of that employment.

(3) Where an employee has been employed by an employer for any further period of 10 years, the employee is entitled to long service leave on pay at his ordinary rate of pay for a period equal to three-tenths of one month for each completed year of that employment.

(4) An employee who is entitled to long service leave under this Act shall not, except in pursuance of an agreement between the employee and his employer approved by the Minister under this section, be entitled to benefits in the nature of long service leave in respect of his employment with that employer otherwise than under this Act.

(5) The Minister may approve an agreement for the purposes of this section if he is satisfied that under the agreement an employee shall be granted by his employer benefits in the nature of long service leave that are more favourable than those under this Act.

(6) Subject to sub-section (7), where an employee is entitled to long service leave under this Act, his employer shall grant and the employee shall take the long service leave to which he is entitled -

- (a) as soon as practicable after the leave has accrued, having regard to the needs of the employer's business, or commencing on and from a date that is agreed upon between the employer and employee; and
- (b) in one continuous period or, where the employer and employee agree, in separate periods not exceeding 3, of not less than one month each.

(7) Unless the employee otherwise agrees, an employer shall give to an employee not less than 2 months notice of the date from which it is proposed that the employee's long service leave shall be granted and taken.

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(8) Where an employee has been granted a period of long service leave in accordance with this section, the amount of long service leave due to that employee is reduced by the period of the leave so granted.

9. PUBLIC HOLIDAYS

Where a public holiday occurs during a period of long service leave granted under this Act, the public holiday shall be deemed to be part of the long service leave and the period of leave shall not be increased because of the holiday.

10. PAYMENT IN LIEU OF LONG SERVICE LEAVE

(1) Where an employee who is entitled to long service leave ceases to be an employee otherwise than by death, the employer shall pay to the employee an amount equal to the pay that would be payable to the employee at his ordinary rate of pay for a period equal to the period of his long service leave credit at the time he ceases that employment.

(2) Where an employee whose period of employment is less than 10 years but not less than 7 years ceases to be an employee of that employer, otherwise than by death -

- (a) on or subsequent to his attaining the age at which he may retire;
- (b) on the termination of his employment by his employer for a reason other than serious misconduct; or
- (c) on account of his illness, incapacity or domestic or other pressing necessity of such a nature as to justify his so ceasing to be an employee,

the employer shall pay to the employee an amount equal to the pay that would be payable to the employee at his ordinary rate of pay for a period equal to three-tenths of one month for each completed year of service of that employment.

(3) Where an employee who would otherwise have been entitled to payment under sub-section (1) or (2) dies, the former employer of that employee shall, on request by the personal representative of that employee, pay to the personal representative the amount that would have been payable to the employee under that sub-section if the employee had ceased to be an employee otherwise than by death on the day on which the employee died.

(4) Except as provided by this section, an employer shall not pay to an employee, and an employee shall not accept, any amount in lieu of long service leave to which the employee is entitled under this Act.

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11. ORDINARY RATE OF PAY FOR LONG SERVICE LEAVE

(1) Where an employee ceases to be an employee on retirement, termination of employment, ill health, death or domestic or other pressing necessity, the amount payable in lieu of long service leave shall be his pay at his ordinary rate of pay on the day immediately preceding the day on which he so ceased to be an employee, and payment shall be made -

- (a) to the employee as soon as practicable after termination of his employment; or
- (b) in the case of a deceased employee, to his personal representative as soon as practicable after the death of the employee, but in any case not later than 12 months after his death.

(2) Where, under section 8(5), an employer and an employee agree to postpone the grant of long service leave or a part of it, the employer and employee may agree that the pay payable in respect of that postponed leave or part shall be at his ordinary rate of pay payable on the date of the agreement, and payment in respect of that postponed leave or part shall be made accordingly.

(3) Subject to sub-section (4), where an employee is to take a period of long service leave, his employer shall pay to the employee his pay at his ordinary rate of pay payable to the employee in respect of the whole of the period -

- (a) on or before the last day on which the employee is required to work before he commences the leave; or
- (b) on the pay day immediately before he commences the leave,

as agreed between the employer and the employee.

(4) Notwithstanding sub-section (3), an employer and employee may agree that payment of his pay in respect of long service leave shall be paid at a time other than a day referred to in that sub-section and may agree whether the payment shall be made by cheque, posted to a specified address or otherwise, and payment may be made accordingly.

12. QUALIFYING SERVICE

(1) The period of qualifying service of an employee with an employer for the purposes of this Act is the period during which he served (including any period that commenced before the commencement of this Act) continuously with the employer.

(2) For the purposes of this Act, an employee shall be deemed not to break, or not to have broken, the continuity of his service by reason of his serving or having served -

- (a) on continuous full-time service in a part of the Reserve Forces or of the Citizen Forces;

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- (b) in a part of those Forces for such period as is or was fixed by or in accordance with regulations under the Defence Act 1903 of the Commonwealth, the Naval Defence Act 1910 of the Commonwealth or the Air Force Act 1923 of the Commonwealth, as in force at the relevant time;
- (c) on national service; or
- (d) as a member of the Civil Construction Corps established under the National Security Act 1939 of the Commonwealth,

and the period of service of the employee referred to in paragraph (a), (b), (c) or (d), whichever is applicable, shall be deemed to be a period of employment by the employee with the employer by whom he was last employed before commencing that service.

(3) Where an employee completes an apprenticeship with an employer and, within a period of 12 months after completing that apprenticeship, the employee is re-employed by the employer, the period of that apprenticeship shall be deemed to be a period of employment by the employer with the employer.

(4) For the purposes of this Act, an employee shall be deemed not to break, or not to have broken, the continuity of his employment by reason of an interruption or determination of that employment -

- (a) brought about by the action of his employer with the intention or result of avoiding an obligation imposed on the employer by this Act;
- (b) arising directly or indirectly out of an industrial dispute where the employee returns to his employment in accordance with the terms of settlement of the dispute;
- (c) arising from the standing down of the employee by the employer for the reason of a slackness of trade;
- (d) after completing a period of apprenticeship with the employer for a period not exceeding 12 months; or
- (e) for any other reason and the employee was re-employed by that employer within 2 months of the interruption or determination.

(5) Where an employee is or was absent otherwise than -

- (a) on leave granted with pay by the employer; or
- (b) by action of his employer with the intention or result of avoiding an obligation imposed on the employer by this Act,

the period of the absence does not form part of the period of his employment with that employer for the purposes of this Act.

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(6) Where an employee is employed in a corporation and, at any time prior to his current period of employment, he has been employed in one or more related corporations and the periods for which he was so employed are continuous with one another within the meaning of this section, the sum of those periods of employment shall, subject to this Act, be included in his period of employment for the purposes of this Act.

(7) For the purposes of sub-section (6), a corporation shall be deemed to be a related corporation if the corporation is a subsidiary, holding or related corporation within the meaning of section 6 of the Companies Act.

(8) Where -

(a) all or part of a business, undertaking or establishment of an employer has, whether before or after the commencement of this Act, been transferred to another employer; and

(b) a person who, at the time of the transfer, was an employee of the first-mentioned employer and transfers his employment to that other employer,

the period of employment with such other employer shall be deemed not to have been broken by reason of the transfer, and the period of employment with the first-mentioned employer shall be deemed to be a period of employment with the other employer.

(9) For the purposes of sub-section (8), "transfer" includes transmission, conveyance, assignment or succession, whether by agreement, under will, in pursuance of letters of administration of a deceased person's estate or by operation of law.

13. EXEMPTIONS

The Minister may, subject to such conditions as he thinks fit, by instrument in writing, exempt an employer or class of employers from the operation of this Act or of a provision of this Act in respect of an employee, or class of employees specified by the Minister, if the Minister is satisfied that the employee or class of employees is entitled to benefits in the nature of long service leave under a scheme conducted by or on behalf of the employer or class of employers not less favourable than those provided by this Act.

14. LEAVE RECORDS

(1) An employer shall, in respect of each of his employees, keep and maintain or cause to be kept and maintained a record showing particulars of -

(a) the name of the employee;

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- (b) the date on which the employee commences employment with the employer, the wages, the periods of prior qualifying service, and the salary or commission paid to such an employee;
 - (c) the accrued long service leave credit of the employee;
 - (d) each period of long service leave, or payment in lieu of long service leave, made to the employee;
 - (e) each other occasion of 2 months or more on which the employee has been absent from that employment; and
 - (f) where the employee ceased to be employed by the employer - the date on which the employee ceased to be so employed.
- (2) An employer shall retain a record referred to in sub-section (1) -
- (a) after the date on which the employee to whom the record relates ceased to be employed by the employer - until the expiration of 2 years; and
 - (b) in the case of an employee whose employment is terminated by death - 6 years after the date on which all moneys owing to his legal personal representative are paid.
- (3) A person shall not make a false or misleading statement in or a material omission from a record that is required to be kept under this section.

15. INVESTIGATION BY AUTHORIZED PERSON

- (1) A person authorized by the Minister may -
 - (a) conduct such investigations as the authorized person thinks fit to ascertain whether provisions of this Act have been complied with; and
 - (b) for that purpose, require an employer to produce, at such reasonable time and place as the authorized person specifies, the records required to be kept under section 14.
- (2) An employer shall not fail to comply with a request given to him under sub-section (1).
- (3) An authorized person shall, if requested so to do by the Minister, as soon as practicable after conducting an investigation under this section, report in writing to the Minister the findings of the investigation.

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16. OTHER EMPLOYMENT DURING LONG SERVICE LEAVE

An employee shall not, during any period when he is on long service leave granted by his employer under this Act, engage in any other remunerative employment with duties of a kind performed by him in his employment from which he was granted that leave.

17. EVASION, &c., OF OBLIGATIONS

(1) This Act has effect notwithstanding any agreement between an employer and his employee that confers on the employee rights that are not as advantageous to the employee as the rights conferred on an employee by this Act.

(2) An employer shall not do any act or thing for the purpose of, or that has the effect of, in any way -

(a) avoiding or evading an obligation imposed on the employer by this Act; or

(b) defeating, evading, avoiding or preventing the operation of this Act.

18. OFFENCES

(1) A person shall not contravene or fail to comply with a provision of this Act applicable to him.

Penalty: \$1,000 or imprisonment for 6 months.

(2) Where a person is convicted of an offence against this Act, the court may, in addition to the imposition of any penalty, make such order with respect to any payment or leave due under this Act to another person in respect of whom the offence was committed as it thinks just in the matter, including an order that the person convicted pay to such other person any sum that the court is satisfied is due from the person convicted to that other person in connection with the employment of that other person by him.

(3) Where a person convicted of an offence against this Act is a body corporate, each person who, at the time of the commission of the offence, was a director or officer of the body corporate shall also be deemed to have committed the like offence and shall be liable to the penalty provided by this Act for the offence unless the court is satisfied that the offence was committed without his knowledge or that he used all diligence to prevent the commission of the offence.

19. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.