

South Australia

# Construction Industry Long Service Leave Regulations 2003

under the *Construction Industry Long Service Leave Act 1987*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Construction Industry Long Service Leave Regulations 2003*.

### 3—Interpretation

In these regulations—

*Act* means the *Construction Industry Long Service Leave Act 1987*.

### 4—Allowable absence

- (1) For the purposes of the definition of *allowable absence* in section 4 of the Act, the absence of a worker from work by reason of any of the following is an allowable absence:
- (a) a public holiday;
  - (b) —
    - (i) paid annual leave; or
    - (ii) if the worker is paid an allowance instead of being entitled to paid annual leave—a period that is represented by the allowance (but, in this case, only up to 20 working days per year);
  - (c) —
    - (i) paid sick leave; or

- (ii) if the worker is paid an allowance instead of being entitled to paid sick leave—an injury or illness to which the allowance may be related (but, in this case, only up to 10 working days per year);
  - (d) long service leave (whether under the Act or the *Long Service Leave Act 1987*);
  - (e) any injury suffered during the course of employment.
- (2) If a worker suffers an injury in the course of employment and is entitled to compensation by way of income maintenance in respect of the injury under the *Workers Rehabilitation and Compensation Act 1986*, the absence of the worker from work because of the injury is an allowable absence under subregulation (1)(e) but only until the worker has received compensation by way of income maintenance for a period of 2 years or for separate periods that when aggregated amount to 2 years.

## **5—Corresponding law**

For the purposes of the definition of *corresponding law* in section 4 of the Act, each of the following is a corresponding law:

- (a) *Long Service Leave (Building and Construction Industry) Act 1981* of the Australian Capital Territory;
- (b) *Construction Industry Long Service Leave Act 1997* of Victoria;
- (c) *Long Service Leave (Construction Industry) Act 1971* of Tasmania;
- (d) *Construction Industry Portable Paid Long Service Leave Act 1985* of Western Australia;
- (e) *Building and Construction Industry Long Service Payments Act 1986* of New South Wales;
- (f) *Building and Construction Industry (Portable Long Service Leave) Act 1991* of Queensland;
- (g) *Construction Industry Long Service Leave and Benefits Act 2005* of the Northern Territory.

## **6—Ordinary weekly pay**

Pursuant to section 4(3)(d) of the Act—

- (a) the following payments made to or for the benefit of a construction worker must be included for the purposes of a determination or calculation under section 4(3):
  - (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
  - (ii) any payment related to sick leave;
  - (iii) any payment related to a day off work for a public holiday;
  - (iv) any payment related to a rostered day off work;
  - (v) any industry allowance or tool allowance;

- (vi) any compensation by way of income maintenance paid in respect of a compensable disability under the *Workers Rehabilitation and Compensation Act 1986* (but not if the period, or the aggregate of separate periods, for which the compensation has already been paid exceeds 2 years); and
- (b) the following payments made to or for the benefit of a construction worker must be excluded for the purposes of a determination or calculation under section 4(3):
  - (i) any payment in the nature of an annual leave loading;
  - (ii) any payment in respect of overtime;
  - (iii) any payment in the nature of a bonus;
  - (iv) any site allowance;
  - (v) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back-pay;
  - (vi) any payment in respect of fares or in the nature of a travelling allowance;
  - (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

## **7—Registration as an employer**

- (1) A person who becomes an employer must register as an employer within 1 month of the date on which he or she becomes an employer.
- (2) In order to register as an employer, a person must post or deliver to the Board an application in writing that is signed by or on behalf of the applicant and which sets out the following:
  - (a) the name of the applicant, including—
    - (i) if the employer is a partnership—the full name of each partner; or
    - (ii) if the employer is a body corporate—the full name of each director;
  - (b) any business name used by the employer;
  - (c) the postal address of the business;
  - (d) in the case of a body corporate—the address of its registered office (if that address is different from the postal address);
  - (e) the address at which business records are kept (if that address is different from the postal address);
  - (f) the date on which wages were first paid in South Australia to a construction worker;
  - (g) the number of construction workers employed.
- (3) A person who fails to comply with this regulation is guilty of an offence.  
Maximum penalty: \$1 000.

## 8—Notice of work as a supervisor

- (1) In order to give notice under section 18 of the Act, a person must post or deliver to the Board a notice in writing that sets out the following:
  - (a) the person's full name and address;
  - (b) the date on which he or she ceased to work as a construction worker;
  - (c) the date on which he or she commenced work as a supervisor in the construction industry, and the full name and address of his or her employer.
- (2) A notice under subregulation (1) must be verified by a statutory declaration made by the person giving the notice.

## 9—Services

- (2) Pursuant to section 26(6) of the Act, but without derogating from the general meaning of *remuneration*—
  - (a) the following payments made to or for the benefit of a construction worker will be taken as constituting remuneration for the purposes of section 26 of the Act:
    - (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
    - (ii) any payment related to sick leave;
    - (iii) any payment related to a day off work for a public holiday;
    - (iv) any payment related to a rostered day off work;
    - (v) any industry allowance or tool allowance;
    - (vi) any compensation by way of income maintenance paid in respect of a compensable disability under the *Workers Rehabilitation and Compensation Act 1986* (but not if the period, or the aggregate of separate periods, for which the compensation has already been paid exceeds 2 years); and
  - (b) the following payments made to or for the benefit of a construction worker will not be taken as constituting remuneration for the purposes of section 26 of the Act:
    - (i) any payment in the nature of an annual leave loading;
    - (ii) any payment in respect of overtime;
    - (iii) any payment in the nature of a bonus;
    - (iv) any site allowance;
    - (v) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back-pay;
    - (vi) any payment in respect of fares or in the nature of a travelling allowance;

- (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

## **10—Return period**

For the purposes of section 27(1) of the Act, the following periods in each financial year are prescribed as return periods:

- July/August
- September/October
- November/December
- January/February
- March/April
- May/June.

## **11—Penalty for late payment**

- (1) For the purposes of section 29(1)(a) of the Act, the prescribed rate of interest is 20 per cent per annum.
- (2) For the purposes of section 29(1)(b) of the Act, the prescribed amount is \$75.

## **16—Self-employed contractors and working directors**

- (1) For the purposes of section 37A(4)(b) of the Act, the following periods in respect of each financial year are prescribed:
  - July/August
  - September/October
  - November/December
  - January/February
  - March/April
  - May/June.
- (2) For the purposes of section 37A(4)(c)(i) of the Act, the prescribed number of days of effective service entitlement to be credited by the Board in respect of each period prescribed under subregulation (1) for which a payment is made under section 37A of the Act is the number of days of effective service entitlement that would be credited to the person under the Act for that period if he or she were working full-time in the construction industry as a construction worker.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Revocation of regulations

The *Construction Industry Long Service Leave Regulations 2003* were revoked by Sch 1 of the *Construction Industry Long Service Leave Regulations 2018* on 30.8.2018.

### Legislation revoked by principal regulations

The *Construction Industry Long Service Leave Regulations 2003* revoked the following:

*Construction Industry Long Service Leave Regulations 1988*

### Principal regulations and variations

Year	No	Reference	Commencement
2003	179	<i>Gazette 21.8.2003 p3337</i>	1.9.2003: r 2
2006	35	<i>Gazette 16.2.2006 p614</i>	16.2.2006: r 2
2007	305	<i>Gazette 13.12.2007 p4843</i>	1.1.2008: r 2
2013	245	<i>Gazette 24.10.2013 p4097</i>	1.11.2013: r 2
2017	41	<i>Gazette 16.5.2017 p1263</i>	1.7.2017: r 2

### Provisions varied

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>16.2.2006</i>
r 5	varied by 35/2006 r 4	16.2.2006
r 9		
<i>r 9(1)</i>	<i>varied by 305/2007 r 4</i>	<i>1.1.2008</i>
	<i>deleted by 245/2013 r 4</i>	<i>1.11.2013</i>
<i>rr 12—15</i>	<i>deleted by 41/2017 r 4</i>	<i>1.7.2017</i>
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>16.2.2006</i>

## Historical versions

16.2.2006

1.1.2008

1.11.2013