



# WHAT AN EMPLOYER NEEDS TO KNOW.

BUILDING & CONSTRUCTION INDUSTRY

## EMPLOYER GUIDE

THE BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS ACT 1986



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CORPORATION

**THIS GUIDE IS CURRENT AT APRIL 2017**

It is not a substitute for the Act and regulations. For more information on any of the topics covered contact the Corporation.



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## OVERVIEW

# LONG SERVICE CORPORATION

The Building and Construction Industry Long Service Payments Act 1986 (the Act) provides for long service payments for workers in the NSW building and construction industry. The Long Service Corporation is responsible for administering the Act.

Payments are for length of service to the industry rather than continuous employment with an individual employer.

Individual workers have periods of employment in the industry recorded by the Corporation from information provided by their employers.

Employers are required to register with the Corporation and then advise the Corporation any time they start and end workers' employment. At the end of each financial year the Corporation will provide employers with a list of all workers that are registered as working for them. The employer must check the list, confirm the details online or return paper forms to the Corporation.

All reporting obligations can be done online.

There is no cost for employers or workers to belong to the scheme. The scheme is funded by a levy on building projects in NSW.

The building applicant, or the person for whom the work is being done, is liable to pay the levy. For information on the current levy rate, go to our website.

## WHO IS COVERED BY THE ACT?

### Employers

Employers covered by the Act are those who carry out construction, reconstruction, renovation, alteration, demolition, maintenance or repairs of or to any of the following:

*Airfields, aqueducts, breakwaters, bridges, buildings, chimney stacks, cooling towers, docks, drilling rigs, fences, gas holders, works for water supply or storage, harbour/river or water course improvements for the purpose of navigation, jetties, irrigation works, navigational lights/beacons or markers, piers, pile driving, pipelines, railways, roads, sewerage works, silos, swimming pools, transmission of electric power, transmission of wireless or telegraphic communications, tunnels, viaducts and wharves.*

It includes structures, fixtures or works for use in, or in conjunction with, any of the above and site preparation. Work is not restricted to onsite work, it also includes some offsite work, eg joinery workshop making custom kitchen cabinets. You should contact our Helpline to find out if your offsite work is covered.

### Workers

Workers covered by the Act are employees who perform building and construction work. Subcontractors are responsible for lodging their own service. The following are the types of work classification covered by the scheme:

*Bricklayer, builder's labourer, carpenter, concreter, construction labourer, drainer, electrician, gas fitter, glazier, joiner, painter, plant operator, plasterer, plumber, roof tiler, scaffolder, tiler.*

Foremen, leading hands, and apprentices may also be covered. For more information on the types of work covered by the Act, go to [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au)



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## WHO IS NOT COVERED BY THE ACT?

State, local and commonwealth government employees are not covered by the Act, nor are clerical or administration staff, surveyors, estimators, project managers, architects, and any other workers who do not physically perform building and construction work.

Employers of metal workers are only eligible to register with the scheme for periods when their employees work on a construction site.

Metal trades work performed in an offsite workshop or factory is not covered by the scheme.

## ARE YOU REGISTERED AS AN EMPLOYER?

If you employ workers on wages to do building and construction work, you must register with the Corporation as an employer.

This includes sole traders or members of partnerships who employ workers on wages. If you are not currently registered as an employer you can do this by:

### **A. The Internet**

Go to [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) and click on 'Information for Employers' under the 'Building and Construction' section of the site (yellow box).

Then, under the heading 'Your Legal Obligations', choose to 'Register as an Employer'.

**or**

### **B. Phone our Helpline on 13 14 41**

And ask for an Employer Registration Application to be mailed to you.

## HOW TO NOTIFY THE CORPORATION YOU ARE STARTING A WORKER

Employers are required to advise the Corporation within 7 days of a worker commencing employment. You must advise us about all newly-employed workers even if they only work for one day.

There are 2 ways to advise us.

### **A. The Internet**

Go to [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au), click on the 'Building and Construction' section of the site (yellow banner), and click on the 'Login' button within the 'For Employers' section. Once logged in select the 'Start New Worker' option and complete the worker's details.

**or**

### **B. Complete and mail a paper Start Notice to the Corporation**

There are penalties for failing to advise the Corporation within 7 days of a worker commencing employment. Refer to page 14.

## HOW TO NOTIFY THE CORPORATION YOU ARE ENDING A WORKER'S EMPLOYMENT

Employers are required to advise the Corporation within 7 days of termination of a worker's employment. You must advise us about all workers even if they only work for one day.

**There are 2 ways to advise us:**

### **A. The Internet**

Go to [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au), click on the 'Building and Construction' section of the site (yellow banner), and click on the 'Login' button within the 'For Employers' section. Once logged in select 'Current Workers' to end a workers employment or confirm a workers ongoing employment.

**or**

### **B. Complete and mail a paper End Notice to the Corporation**

There are penalties for failing to advise the Corporation within 7 days of the termination of a worker's employment. Refer to page 14.

## HOW DO YOU LET THE CORPORATION KNOW ABOUT A WORKER'S SERVICE?

Advising the Corporation about workers start and end employment dates is essential for the recording of accurate worker long service records. You also have to give us details about workers who are employed by you at 30 June each year. This is done by completing an Employer Return.

### Employer Returns

In the first week of July the Corporation will remind employers that their return is due for completion by 31 July. The return is a list of all workers that the Corporation has recorded as being employed by you or your company. This list is compiled from the Start and End Notices lodged. Any workers you lodged an End Notice for prior to 30 June will not appear on your return.

If a worker you employ is not on the return you must notify the Corporation of the date you started the worker. This can be done either online or via a paper form.

If you have employed a worker who has worked occasional days during the whole year, the return can show the whole financial year as the period of employment but the part-time box must be crossed. You must then provide the actual number of days worked during the year.

### **There are 2 ways to complete an Employer Return:**

#### **A. The Internet**

A letter will be sent to you in the first week of July advising that your Employer Return is available to complete online.

To complete your Employer Return go to [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au), click on the 'Building and Construction' section of the site (yellow banner), and click on the 'Login' button within the 'For Employers' section. Once logged in select the 'Employer Return' option and complete.

**or**

#### **B. A paper return**

A paper return will be posted to the mailing address you provided in the first week of July. If you do not receive an Employer Return and would like to request one phone our Helpline on 13 14 41.

There are penalties for failing to complete an Employer Return by 31 July. Refer to page 14.



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## WHAT YOU NEED TO DO IF YOUR COMPANY OR BUSINESS CEASES TRADING

Make sure you have lodged all Start Notices and End Notices with the Corporation, either through Online Services or via paper forms.

Advise the Corporation so we can update our records to ensure that you do not continue receiving mail from us.

## CHANGED YOUR ADDRESS OR CONTACT DETAILS?

Make sure you notify the Corporation if you change your address, contact details or business information. You can do this through the 'Employer Information' page of Online Services, or by phoning our Helpline on 13 14 41.

## WHAT IF YOU HAVE YOUR OWN COMPANY?

If you are a director of your own company and perform building and construction work, you may be entitled to record service with the Corporation.

The company should lodge all documents for you the same as for any other workers on wages.

In this case you would have 2 registration numbers: 1 for the company (employer registration number); and 1 as an individual worker (worker registration number).

## WORKERS WHO DO NOT PERFORM FULL-TIME BUILDING AND CONSTRUCTION WORK

If you employ workers who do some eligible work and some work that is not eligible, those workers can only record service for the days on which they perform eligible work for more than half the day (4 hours). You must keep a record of the days they spend doing eligible work. These workers should be shown as part-time on your Employer Return. You should only provide the actual number of days on which they performed eligible work on the return.

If you employ a part-time worker for a specified number of days per week/month, the worker should be shown as part-time on the Employer Return with the total number of days worked during the period.

In the case of a casual worker who works full-time for a limited period, they should be shown as full-time with the actual period of employment shown.

## WORKING OUTSIDE NSW

If you employ workers who perform building and construction work in another state or territory, you will need to comply with the relevant long service requirements in each of those other states or territories.

You cannot record work performed outside of NSW with the NSW scheme.



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## PAYING LONG SERVICE UNDER THE LONG SERVICE LEAVE ACT 1955

If you employ the same person for long enough they may be entitled to a long service benefit from you under the *Long Service Leave Act 1955*. Where such an entitlement exists the worker may choose to take leave paid by you.

Alternatively the worker may choose to receive a payment from the Corporation without taking time off work. Please be aware this is the worker's choice, not the employer's.

If a worker takes paid leave under the *Long Service Leave Act 1955* the Corporation may repay you for some or all of the payment you make to the worker.

Payments to employers by the Corporation can only be made in relation to registered workers where service is lodged in the required time frames.

If a worker chooses to take a payment from the Corporation under the *Building and Construction Industry Long Service Payments Act 1986* you have no further liability under the *Long Service Leave Act 1955* for that particular period of employment.

Employers must have service reported to the Corporation within 2 years of the date it was due. If you intend on paying your worker long service leave under the *Long Service Leave Act 1955*, you must notify the Corporation before a payment is made. The Corporation will then issue you with an employer claim which is to be completed and returned by you once the worker has received their payment.

For more information on your obligations under the *Long Service Leave Act 1955* phone the New South Wales Office of Industrial Relations on 13 16 28.

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## AUDITING OF YOUR RECORDS

Inspectors from the Corporation have the authority to audit employers' records to check compliance with their obligations. Employers are required to keep various books and records for 6 years.

The requirements for workers under a contract of employment (wages) are:

- (a) time sheets or attendance records showing the attendance at work of the worker
- (b) books and records containing the following particulars:
  - name and address of the worker;
  - registration number of the worker;
  - kind of work performed by the worker;
  - the award under which the worker is paid,
  - details of any payments to the worker under the *Long Service Leave Act 1955*
  - the total number of days (rounded off to the nearest whole number) of building and construction work performed by the worker each week.

If you are asked to produce your books and records for an audit, you will need to show the above records for the periods requested.



## POWERS OF INSPECTORS FROM THE CORPORATION

Inspectors from the Corporation are authorised under the Act to:

1. Enter any premises to determine whether any workers are engaged there and make such examination and enquiry as may be expedient for the purpose of determining whether the provisions of the Act are being complied with.
2. Require an employer to produce at such time and place as the Inspector may specify any books, records or documents that are required to be kept by the employer.
3. Request that an employer who does not retain his books and records in the English language provide at such time and place as the Inspector may specify a copy of those books and records or any part of them translated into English.
4. Require an employer to produce in hard copy, graphic form, any document that is stored electronically.

Corporation Inspectors are provided with a photo ID and on seeking admission to any premises, or requiring production of records, shall produce that authority if requested to do so.

## PENALTIES UNDER THE ACT

1. Failing to register the commencement of employment of a worker within 7 days of employment commencing. Maximum penalty \$2,200.
2. Failing to notify the employment termination of a worker within 7 days of termination. Maximum penalty \$2,200.
3. Failing to confirm by 31 July each year workers employed as at 30 June preceding. Maximum penalty \$2,200 per worker.
4. Failing to notify the Corporation before making a long service benefit available to an employee under the Long Service Leave Act 1955. Maximum penalty \$2,200.
5. Failing to keep required books and records. Maximum penalty \$2,200.
6. A person shall not wilfully delay or obstruct an authorised officer from the Corporation in the performance of their duties. Maximum penalty \$5,500.
7. A person shall not neglect or fail to produce books and records at such time and place as may be directed by the Corporation. Maximum penalty \$5,500.
8. Making a false or misleading statement in any application, certificate, claim, objection, appeal, book or record made, furnished or maintained under this Act. Maximum penalty \$5,500.
9. Making a false or misleading statement in any information furnished in purported compliance with a requirement made under the Act or for the purpose of obtaining any exemption, concession, benefit or advantage under the Act. Maximum penalty \$5,500.





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**CUSTOMER SERVICE**

**13 14 41**

8.30am to 5.00pm Monday to Friday

**[www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au)**

**EMAIL**

[info@longservice.nsw.gov.au](mailto:info@longservice.nsw.gov.au)

**WRITE**

Locked Bag 3000,  
Central Coast MC, NSW 2252

If you require help or information in a language other than English a telephone interpreter service is available.

Written information is available in a number of languages from our website or office locations.