

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (Hamilton Residential Trust) Order 2012

(SR 2012/383)

Sleepover Wages (Settlement) (Hamilton Residential Trust) Order 2012: revoked, on the close of 18 October 2016, pursuant to section 7(2) of the Sleepover Wages (Settlement) Act 2011 (2011 No 98).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 10th day of December 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 24 of the Sleepover Wages (Settlement) Act 2011, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Health (made after consultation with the Minister of Labour), makes the following order.

Contents

		Page
1	Title	2
2	Commencement	2

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Health.

Part 1
Preliminary provisions

3	Effect	2
4	Interpretation	2

Part 2
Modifications and extensions of Part 2 of Act

Subpart 1—Extinguishing claims for sleepover wages

5	Extension of section 9 to employees of Hamilton Residential Trust (certain claims for sleepover wages extinguished)	3
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Subpart 2—Settlement relating to Hamilton Residential Trust

6	Extension of subpart 2 of Part 2 to Hamilton Residential Trust	3
7	Modification of section 20 (when back wages must be paid)	3
8	Modification of section 21 (entitlements for sleepovers performed immediately before 18 October 2011)	3
9	Modification of section 22(1) (entitlement to be paid minimum hourly rates for sleepovers performed on and after 18 October 2011)	4

Order

1 Title

This order is the Sleepover Wages (Settlement) (Hamilton Residential Trust) Order 2012.

2 Commencement

This order comes into force on 14 December 2012.

Part 1
Preliminary provisions

3 Effect

The modifications and extensions of the Sleepover Wages (Settlement) Act 2011 made by this order do not affect the text of the Act but require it to be read as if it had been amended in the manner indicated in this order.

4 Interpretation

In this order,—

Act means the Sleepover Wages (Settlement) Act 2011

qualifying employee means each employee of Hamilton Residential Trust who lodged a claim for sleeper wages by 5 pm on 2 September 2011 in respect of a sleeper performed before 18 October 2011.

Part 2

Modifications and extensions of Part 2 of Act

Subpart 1—Extinguishing claims for sleeper wages

5 Extension of section 9 to employees of Hamilton Residential Trust (certain claims for sleeper wages extinguished)

Section 9 of the Act must be read as if “or Hamilton Residential Trust” were inserted after “Timata Hou”.

Subpart 2—Settlement relating to Hamilton Residential Trust

6 Extension of subpart 2 of Part 2 to Hamilton Residential Trust

Subpart 2 of Part 2 of the Act, as modified and extended by this subpart, applies to—

- (a) Hamilton Residential Trust (as employer); and
- (b) each employee of Hamilton Residential Trust who performs or performed a sleeper.

7 Modification of section 20 (when back wages must be paid)

- (1) This clause applies instead of section 20 of the Act in relation to the entitlements of qualifying employees for back wages.
- (2) Hamilton Residential Trust must pay any back wages for a sleeper that are payable to a qualifying employee no later than 2 months after the date of commencement of this order.

8 Modification of section 21 (entitlements for sleepovers performed immediately before 18 October 2011)

- (1) This clause applies instead of section 21 of the Act in relation to the entitlements of employees of Hamilton Residential Trust for sleepovers performed immediately before 18 October 2011.
- (2) In relation to a sleeper performed by an employee during the period beginning on 1 July 2011 and ending with the close of 17 October 2011, Hamilton Residential Trust must pay the employee the greater of—
 - (a) the amount calculated in accordance with the agreed transitional formula set out in subclause (3);
 - (b) the amount the employee would have received for that sleeper immediately before the date of commencement of this order.

(3) In this order,—

agreed transitional formula means:

$$(((a \times b) + c) \times 0.50) - d = e$$

where—

- a is the applicable minimum hourly rate
- b is the number of hours in the sleepover
- c in relation to the sleepover, is the difference between—
 - (a) the amount Hamilton Residential Trust would have paid in respect of annual holidays taken by the employee had the applicable minimum hourly rate been paid for the sleepover; and
 - (b) the amount actually paid by Hamilton Residential Trust to the employee in respect of annual holidays taken by the employee
- d is the amount of taxable allowances for the sleepover that was actually payable by Hamilton Residential Trust to the employee at the time the employee performed the sleepover
- e is the amount payable for the sleepover

applicable minimum hourly rate has the meaning given to it by section 19(2) of the Act.

(4) Hamilton Residential Trust must pay any amount payable to an employee under subclause (2) no later than 2 months after the date of commencement of this order.

9 Modification of section 22(1) (entitlement to be paid minimum hourly rates for sleepovers performed on and after 18 October 2011)

- (1) This clause applies instead of section 22(1) of the Act in relation to the entitlements of employees of Hamilton Residential Trust for sleepovers performed on and after 18 October 2011.
- (2) In relation to a sleepover performed by an employee on or after 18 October 2011, Hamilton Residential Trust must pay the employee the greater of—
 - (a) the amount specified in subclause (3);
 - (b) the amount the employee would have received for that sleepover immediately before the date of commencement of this order.
- (3) The amount payable for each sleepover that an employee performs during the period specified in the first column of the following table is the amount calculated in accordance with the method set out opposite that period in the second column of the following table:

Specified period	Amount payable
Period beginning on 18 October 2011 and ending with the close of 30 June 2012	The amount calculated in accordance with the agreed transitional formula set out in clause 8(3)

Specified period	Amount payable
Period beginning on 1 July 2012 and ending with the close of 30 June 2013	75% of the applicable minimum hourly rate for each hour of the sleepover

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 14 December 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement agreement reached between Hamilton Residential Trust and certain of its employees. The settlement relates to the payment of wages to employees who are permitted to sleep overnight at their workplace while on duty (**sleepover wages**).

The Act implements a settlement of litigation between Idea Services Limited and Timata Hou Limited and their employees (the **Idea settlement**) relating to the payment of sleepover wages. Subpart 1 of Part 2 of the Act extinguishes certain claims for sleepover wages in the health and disability sector, and subpart 2 of Part 2 of the Act implements the terms of the Idea settlement.

Subpart 1 of Part 2 of Act: Extinguishing claims for sleepover wages

Subpart 1 of Part 2 of the Act already applies to Hamilton Residential Trust, because it applies to all employers in the health and disability sector funded through Vote Health. It extinguishes claims relating to sleepovers performed before the Act commenced, if those claims were lodged after 5 pm on 2 September 2011. Claims filed before that time are preserved. Section 9 of the Act extinguishes claims by employees of Idea Services Limited and Timata Hou Limited for sleepover wages. *Clause 5* extends the effect of section 9 of the Act to employees of Hamilton Residential Trust and will have the effect of extinguishing existing claims for sleepover wages that were lodged by its employees before 5 pm on 2 September 2011.

Subpart 2 of Part 2 of Act: Settlement relating to Hamilton Residential Trust

Clause 6 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to Hamilton Residential Trust and its employees, but with certain modifications that are set out in *clauses 7 to 9*.

Clause 7 modifies section 20 of the Act, which sets out when back wages must be paid to qualifying employees (being employees who filed claims with the Employment Relations Authority before 5 pm on 2 September 2011). It provides that back wages due to qualifying employees of Hamilton Residential Trust must be paid no later than 2 months after the date of commencement of this order.

Sections 21 and 22 of the Act provide for a staged progression towards the minimum hourly wage payable under the Minimum Wage Act 1983. *Clause 8* modifies section 21 of the Act, which sets out an employee's entitlements for sleepovers performed between 1 July 2011 and 17 October 2011 (being the date immediately before commencement of the Act), and when those entitlements must be paid. The modification provides that the amount payable to employees of Hamilton Residential Trust for sleepovers performed during this time is either an amount calculated in accordance with the formula specified in *clause 8(3)* or the amount the employee would have received immediately before the date of commencement of this order (whichever is greater). The formula in *clause 8(3)* reflects the agreement reached between the parties. The formula differs from the formula set out in the Act for calculating the wages payable for sleepovers performed during the same period in 2 ways—

- it uses a variable to reflect the number of hours in the sleepover;
- the order in which the operations are performed produces a lower result.

Clause 8(4) provides that the amount payable for sleepovers performed between 1 July 2011 and 17 October 2011 must be paid no later than 2 months after the date of commencement of this order. Section 28(c) of the Act permits this modification of the date on which payment is due only if the relevant Minister is satisfied that the proposed period has been agreed to by a simple majority of the employer's employees. The Minister has indicated that he is so satisfied.

Clause 9 modifies section 22(1) of the Act, which sets out how sleepover wages are to be calculated for sleepovers performed after commencement of the Act by those employees to whom subpart 2 of Part 2 of the Act applies. The section implements a staged progression towards payment of the full minimum hourly wage payable under the Minimum Wage Act 1983. The effect of *clause 9* is to modify the staged progression set out in the Act in 3 respects—

- for the period from 18 October 2011 to 30 June 2012, instead of requiring payment of 50% of the applicable minimum hourly rate, the order requires the amount payable to be calculated in accordance with the agreed transitional formula set out in *clause 8(3)*;
- the period of time during which an employee of Hamilton Residential Trust must be paid at least 75% of the applicable minimum hourly rate is extended to the close of 30 June 2013;
- if an employee would have received a greater amount immediately before the date of commencement of this order, he or she will be entitled to be paid that greater amount.

Reprints notes

1 *General*

This is a reprint of the Sleepover Wages (Settlement) (Hamilton Residential Trust) Order 2012 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Sleepover Wages (Settlement) Act 2011 (2011 No 98): section 7(2)