

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (Hohepa Homes Trust Board) Order 2013 (SR 2013/72)

Sleepover Wages (Settlement) (Hohepa Homes Trust Board) Order 2013: revoked, on the close of 18 October 2016, pursuant to section 7(2) of the Sleepover Wages (Settlement) Act 2011 (2011 No 98).

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 2nd day of April 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 24 of the Sleepover Wages (Settlement) Act 2011, Her Excellency the Administrator of the Government, 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.

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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.

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Order

1 Title

This order is the Sleepover Wages (Settlement) (Hohepa Homes Trust Board) Order 2013.

2 Commencement

This order comes into force on 5 April 2013.

**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 the specified employer who lodged a claim for sleepover wages by 5 pm on 2 September 2011 in respect of a sleepover performed before 18 October 2011

specified employer means Hohepa Homes Trust Board

transitional formula 1 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 the specified employer 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 the specified employer 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 the specified employer to the employee at the time the employee performed the sleepover
- e is the amount payable for the sleepover

transitional formula 2 means—

$$(((a \times b) + c) \times 0.75) - d = e$$

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 the specified employer 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 the specified employer 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 the specified employer to the employee at the time the employee performed the sleepover
- e is the amount payable for the sleepover.

Part 2

Modifications and extensions of Part 2 of Act

Subpart 1—Modifications and extensions of Part 2 of Act

5 Extension of section 9 to employees of specified employer (certain claims for sleepover wages extinguished)

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

Subpart 2—Settlement relating to specified employer

6 Extension of subpart 2 of Part 2 of Act to specified employer

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

- (a) the specified employer (as employer); and
- (b) each employee of the specified employer who performs or performed a sleepover.

7 Modification of section 19 (calculation of back wages)

For the purpose of calculating the back wages payable to each qualifying employee, the formula in section 19(1) of the Act is modified by replacing “9” with “10” as the multiplier for variable a.

8 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 a qualifying employee for back wages.
- (2) The specified employer must pay any back wages for a sleepover that are payable to a qualifying employee no later than 2 months after the date of commencement of this order.

9 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 the specified employer for sleepovers performed immediately before 18 October 2011.
- (2) In relation to a sleepover performed by an employee during the period beginning on 1 July 2011 and ending with the close of 17 October 2011, the specified employer must pay the employee the greater of—
 - (a) an amount calculated in accordance with transitional formula 1; and
 - (b) the amount the employee would have received for that sleepover immediately before the date of commencement of this order.

- (3) The specified employer must pay any amount payable to an employee under subclause (2) no later than 2 months after the date of commencement of this order.

10 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 the specified employer 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, the specified employer must pay the employee the greater of—
- (a) the amount specified in subclause (3); and
 - (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 transitional formula 1
Period beginning on 1 July 2012 and ending with the close of the day before the date that is 2 months from the date on which this order comes into force	The amount calculated in accordance with transitional formula 2
Period beginning on the date that is 2 months from the date on which this order comes into force 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 5 April 2013, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between Hohepa Homes Trust Board (the **specified employer**) and certain of its employees. The litigation relates to the payment of wages to employees who were permitted to sleep overnight at their workplace while on duty (**sleepover wages**).

The Act implements a settlement of similar litigation between Idea Services Limited and Timata Hou Limited and their employees (the **Idea settlement**). 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 the specified employer, 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, including those that would otherwise have been preserved. *Clause 5* extends the effect of section 9 of the Act to employees of the specified employer 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 specified employer

Clause 6 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to the specified employer and its employees, but with certain modifications that are set out in *clauses 7 to 10*.

Clause 7 modifies section 19 of the Act, which sets out how back wages for sleepovers must be calculated. The formula in section 19 involves multiplying the applicable minimum hourly rate by 9, which represents the number of hours of a sleepover performed by employees of Idea Services Limited and Timata Hou Limited. The formula in section 19 is amended so that the applicable minimum hourly rate will instead be multiplied by 10 to represent the number of hours of a sleepover performed by employees of the specified employer.

Clause 8 modifies section 20 of the Act, which sets out when back wages must be paid. It provides that back wages due to employees of the specified employer 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 9* 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 the specified employer for sleepovers performed during this time is either an amount calculated in accordance with transitional formula 1 (defined in *clause 4*) or the amount the employee would have received immediately before the date of commencement of this order, whichever is greater. Transitional formula 1 reflects the agreement reached between the parties. It

differs from the formula set out in the Act for calculating the wages payable for sleepovers performed during this period in 2 respects as follows:

- 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 9(3) provides that the amount payable for sleepovers performed in the period 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 10 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 10* is to modify the staged progression set out in the Act in the following ways:

- the period of time during which an employee of the specified employer may be paid at less than 100% of the applicable minimum hourly rate is extended to the close of 30 June 2013;
- for sleepovers performed in the period from 18 October 2011 to 30 June 2012, an employee of the specified employer must be paid an amount calculated in accordance with transitional formula 1 (defined in *clause 4*), rather than in accordance with the Act;
- for sleepovers performed in the period from 1 July 2012 to the day before the date that is 2 months from the date on which this order comes into force, an employee of the specified employer must be paid an amount calculated in accordance with transitional formula 2 (defined in *clause 4*), rather than in accordance with the Act;
- for sleepovers performed between the date that is 2 months from the date on which this order comes into force and the close of 30 June 2013, an employee of the specified employer must be paid 75% of the applicable minimum hourly rate;
- if, before the commencement of this order, an employee of the specified employer would have received an amount greater than that specified in 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) (Hohepa Homes Trust Board) Order 2013 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)