

Reprint  
as at 19 October 2016



## **Sleepover Wages (Settlement) (The Open Home Foundation of New Zealand) Order 2013** (SR 2013/88)

Sleepover Wages (Settlement) (The Open Home Foundation of New Zealand) 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 for Social Development and 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 subpart 1 of Part 2 of Act to employees of specified employer	3
Subpart 2—Settlement relating to specified employer		
6	Extension of subpart 2 of Part 2 of Act to specified employer	3
7	Modification of section 21 (entitlements for sleepovers performed immediately before 18 October 2011)	3
8	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) (The Open Home Foundation of New Zealand) 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

**specified employer** means The Open Home Foundation of New Zealand.

## **Part 2**

### **Modifications and extensions of Part 2 of Act**

#### Subpart 1—Extinguishing claims for sleepover wages

**5 Extension of subpart 1 of Part 2 of Act to employees of specified employer**

Section 8 of the Act must be read as if the following subparagraph were inserted after subsection (1)(a)(ii):

(ia) The Open Home Foundation of New Zealand:

#### 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 Part, 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 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 an amount calculated in accordance with the formula set out in subclause (3).
- (3) The formula is—

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

where—

- a is the applicable minimum hourly rate
- b is the number of hours in the sleepover
- c 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
- d 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
- e is the amount payable for the sleepover.
- (4) 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.

**8 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) an amount calculated by multiplying the number of hours in the sleepover by the relevant minimum hourly rate 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 hour of sleepover that an employee performs during the period specified in the first column of the following table is the minimum hourly rate specified opposite that period in the second column of the following table:

<b>Specified period</b>	<b>Minimum hourly rate</b>
Period beginning on 18 October 2011 and ending with the close of 30 June 2012	50% of the applicable minimum hourly rate
Period beginning on 1 July 2012 and ending with the close of 24 December 2012	75% of the applicable minimum hourly rate
Period beginning on 25 December 2012 and ending with the close of 30 June 2013	100% of the applicable minimum hourly rate

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 agreement reached between The Open Home Foundation of New Zealand (the **specified employer**) 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—

- extinguishes the following claims for sleepover wages in respect of sleepovers performed before the Act commenced:
  - claims by employees of Idea Services Limited or Timata Hou Limited (section 9):
  - claims by employees of other employers in the health and disability sector funded through Vote Health, if those claims were not lodged by 5 pm on 2 September 2011 (section 10):
- prevents employees to whom the subpart applies bringing new proceedings for sleepover wages in respect of sleepovers that were or could have been the subject of a claim extinguished under section 9 or 10 (section 11).

Claims by employees of employers funded through a Vote other than Vote Health are not extinguished by the provisions in subpart 1 of Part 2 of the Act.

*Clause 5* extends the application of subpart 1 of Part 2 of the Act to the specified employer and its employees. Subpart 1 of Part 2 of the Act already applies to employees of the specified employer, to the extent that it applies to employees of all employers in the health and disability sector funded through Vote Health. However, employees of the specified employer also perform sleepovers that are funded through Vote Social Development. *Clause 5* requires section 8 of the Act to be read as if the specified employer were specifically named in that section. This is designed to ensure the provisions in subpart 1 of Part 2 of the Act apply to all employees of the specified employer irrespective of the source of funding for the sleepovers performed by those employees.

It is not necessary to extend the application of section 9 of the Act to the specified employer and its employees, because no employees lodged claims regarding sleepover wages by the cut-off time.

*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 and 8*.

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 7* 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 com-

mencement 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 the amount calculated in accordance with the formula specified in *clause 7(3)*. The formula in *clause 7(3)* is the same as the formula set out in the Act for calculating the wages payable for sleepovers performed during this period, except that it includes a variable to represent the number of hours in the sleepover.

The modification also provides that the amount payable for sleepovers performed in this period 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 8* 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. Under *clause 8*, for sleepovers performed on or after 18 October 2011, an employee of the specified employer will be entitled to be paid either the rate that is specified in the Act for the relevant period of time or the amount the employee would have received immediately before the date of commencement of this order, whichever is greater.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 4 April 2013.

## **Reprints notes**

### **1    *General***

This is a reprint of the Sleepover Wages (Settlement) (The Open Home Foundation of New Zealand) 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)