

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (The Wellink Trust) Order 2013 (SR 2013/91)

Sleepover Wages (Settlement) (The Wellink Trust) 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.

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 specified employer (certain claims for sleepover wages extinguished)	3
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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 19 (calculation of back wages)	3
8	Modification of section 20 (when back wages must be paid)	3
9	Section 21 does not apply (entitlements for sleepovers performed immediately before commencement of Act)	3
10	Section 22 does not apply (entitlements for sleepovers performed after commencement of Act)	3

Order

1 Title

This order is the Sleepover Wages (Settlement) (The Wellink Trust) 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 The Wellink Trust.

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 specified employer (certain claims for sleepover wages extinguished)

Section 9 of the Act must be read as if “or The Wellink Trust” 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 purposes 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 “8” 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 qualifying employees 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 Section 21 does not apply (entitlements for sleepovers performed immediately before commencement of Act)

Section 21 of the Act does not apply to employees of the specified employer.

10 Section 22 does not apply (entitlements for sleepovers performed after commencement of Act)

Section 22 of the Act does not apply to employees of the specified employer.

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 The Wellink Trust (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 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 modified so that the applicable minimum hourly rate will instead be multiplied by 8 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.

Clauses 9 and 10 exclude sections 21 and 22 of the Act from applying to employees of the specified employer. Those sections facilitate a staged progression to payment of the minimum wage for sleepovers performed in the period beginning on 1 July 2011 and ending with the close of 30 June 2013. The effect of excluding the application of these sections is that employees of the specified employer who perform or performed sleepovers in that period are entitled to be paid the applicable minimum wage for each hour of the sleepover.

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 Wellink Trust) 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)