



**Sleepover Wages (Settlement)  
(BUPA Care Services NZ Limited)  
Order 2014**

Jerry Mateparae, Governor-General

**Order in Council**

At Wellington this 24th day of March 2014

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 and the Minister for ACC (made after consultation with the Minister of Labour), makes the following order.

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## Order

- 1 **Title**  
This order is the Sleepover Wages (Settlement) (BUPA Care Services NZ Limited) Order 2014.
- 2 **Commencement**  
This order comes into force on 28 March 2014.

## 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 BUPA Care Services NZ Limited.

## **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 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) BUPA Care Services NZ Limited.”.

**6 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 BUPA Care Services NZ Limited” were inserted after “Timata Hou”.

#### Subpart 2—Settlement relating to specified employer

**7 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.

**8 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.

**9 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.

**10 Section 21 does not apply (entitlements for sleepovers performed immediately before 18 October 2011)**

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

**11 Section 22 does not apply (entitlement to be paid minimum hourly rates for sleepovers performed on and after 18 October 2011)**

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

Michael Webster,  
Clerk of the Executive Council.

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**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 28 March 2014, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between BUPA Care Services NZ Limited (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—

- 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 that were not lodged by 5 pm on 2 September 2011 (section 10):
- prevents employees to whom that 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 ACC. *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 employees of the specified employer irrespective of the source of funding for the sleepovers performed by those employees.

Section 9 of the Act extinguishes claims by employees of Idea Services Limited and Timata Hou Limited for sleepover wages in respect of sleepovers performed before the commencement of the Act, including those that would otherwise have been preserved. *Clause 6* extends the effect of section 9 of the Act to employees of the specified employer.

*Subpart 2 of Part 2 of Act: settlement relating  
to specified employer*

*Clause 7* 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 the modifications set out in *clauses 8 to 11*.

*Clause 8* 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 8 to represent the number of hours of a sleepover performed by employees of the specified employer.

*Clause 9* 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 10 and 11* 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.

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Services NZ Limited) Order 2014**

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 27 March 2014.  
This order is administered by the Ministry of Health.

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