



Sleepover Wages (Settlement) (Dunedin Community Care Trust) Order 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of September 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.

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Order

- 1 Title**
This order is the Sleepover Wages (Settlement) (Dunedin Community Care Trust) Order 2012.
- 2 Commencement**
This order comes into force on 10 September 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 Dunedin Community Care Trust who lodged a claim for sleepover wages by 5 pm on 2 September 2011 in respect of a sleepover performed before 18 October 2011.

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 Dunedin
Community Care Trust (certain claims for sleepover
wages extinguished)**

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

**Subpart 2—Settlement relating to Dunedin
Community Care Trust****6 Extension of subpart 2 of Part 2 to Dunedin Community
Care Trust**

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

- (a) Dunedin Community Care Trust (as employer); and
- (b) each employee of Dunedin Community Care Trust 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) Dunedin Community Care Trust 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 (entitlement of employees 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 Dunedin Community Care Trust.
- (2) In relation to a sleepover performed by an employee in the period beginning on 1 July 2011 and ending with the close of 17 October 2011, Dunedin Community Care Trust must pay the employee the greater of—
 - (a) 50% of the applicable minimum hourly rate for each hour of the sleepover:
 - (b) the amount that the employee would have received for that sleepover immediately before the date of commencement of this order.
- (3) Dunedin Community Care 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.

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 Dunedin Community Care Trust.
- (2) In relation to a sleepover performed by an employee on or after 18 October 2011, Dunedin Community Care Trust 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):
- (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 the employee performs during a period specified in the first column of the following table is the minimum hourly rate opposite that period specified in the second column of the following table:

Specified period	Minimum hourly rate
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 30 June 2013	75% 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 10 September 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between Dunedin Community Care Trust 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: Extinguishing claims for
sleepover wages*

Subpart 1 of Part 2 of the Act already applies to Dunedin Community Care 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 Dunedin Community Care 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: Settlement relating to
Dunedin Community Care Trust*

Clause 6 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to Dunedin Community Care Trust 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 8 to represent the number of hours of a sleepover performed by employees of Dunedin Community Care Trust.

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 Dunedin Community Care 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 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 wages must be paid. The modification provides that the amount payable to employees of Dunedin Community Care Trust for sleepovers performed during this time is either 50% of the applicable minimum hourly rate for each hour of the sleepover, or the amount the employee would have received immediately before the date of commencement of this order (whichever is greater). This differs from the formula set out in the Act for calculating the wages payable to an employee for performing sleepovers during this period. *Clause 9* 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 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 the 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 2 respects. First, the period of time during which an employee of Dunedin Community Care Trust must be paid at least 75% of the applicable minimum hourly rate is extended to the close of 30 June 2013. Secondly, the clause provides that if an employee of Dunedin Community Care Trust would have received an amount greater than that specified in the Act before the commencement of this order, he or she will be entitled to be paid that greater amount.

**Sleepover Wages (Settlement) (Dunedin
Community Care Trust) Order 2012**

2012/261

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This order is administered by the Ministry of Health.
