



# **Sleepover Wages (Settlement) (Care Solutions NZ Limited) Order 2012**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 10th day of December 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 for Social Development (made after consultation with the Minister of Labour), makes the following order.

### **Contents**

		Page
1	Title	2
2	Commencement	2

#### **Part 1**

#### **Preliminary provisions**

3	Effect	2
4	Interpretation	3

**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 Care Solutions NZ Limited (certain claims for sleepover wages extinguished)	3
6	Extension of section 9 to extinguish certain claims for sleepover wages by employees of Care Solutions NZ Limited	4
	Subpart 2—Settlement relating to Care Solutions NZ Limited	
7	Extension of subpart 2 of Part 2 to Care Solutions NZ Limited	4
8	Modification of section 14 (entitlement of current employees)	4
9	Modification of section 15 (entitlement of recent employees)	4
10	Modification of section 16 (entitlement of historic employees)	5
11	Modification of section 19 (calculation of back wages)	5
12	Modification of section 20 (when back wages must be paid)	5
13	Modification of sections 21 and 22 (entitlements for sleepovers performed after 31 October 2011)	5

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**Order**

- 1 Title**  
This order is the Sleepover Wages (Settlement) (Care Solutions NZ Limited) Order 2012.
- 2 Commencement**  
This order comes into force on 14 December 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**

(1) In this order,—

**Act** means the Sleepover Wages (Settlement) Act 2011

**back wages** means wages payable by Care Solutions NZ Limited to its employees for sleepovers performed during the period beginning on 1 July 2005 and ending with the close of 31 October 2011 in accordance with sections 14, 15, and 16 of the Act (as modified by this order)

**current employee**, in relation to Care Solutions NZ Limited, means an employee who is employed by Care Solutions NZ Limited on the commencement of this order

**qualifying employee** means each employee of Care Solutions NZ Limited who made a claim for sleepover wages by 5 pm on 17 February 2012 in respect of a sleepover performed on or before 31 October 2011

**recent employee**, in relation to Care Solutions NZ Limited, means an employee who ceased employment with Care Solutions NZ Limited at any time during the period beginning on 1 July 2005 and ending with the close of the day before the date of commencement of this order.

(2) Terms defined in subclause (1) that are used in the Act and defined differently in this order have the meanings given by this order.

### **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 Care Solutions NZ Limited (certain claims for sleepover wages extinguished)**

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

“(iia) Care Solutions NZ Limited:”.

**6 Extension of section 9 to extinguish certain claims for sleepover wages by employees of Care Solutions NZ Limited**

Section 9 of the Act must be read as if “or Care Solutions NZ Limited” were inserted after “Timata Hou”.

Subpart 2—Settlement relating to Care  
Solutions NZ Limited

**7 Extension of subpart 2 of Part 2 to Care Solutions NZ Limited**

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

- (a) Care Solutions NZ Limited (as employer); and
- (b) each employee of Care Solutions NZ Limited who performs or performed a sleepover.

**8 Modification of section 14 (entitlement of current employees)**

Section 14 of the Act must be read as if subsection (1) were replaced by the following:

- “(1) A current employee of Care Solutions NZ Limited is entitled to be paid back wages for a sleepover if the employee—
- “(a) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 31 October 2011; and
  - “(b) made a claim for sleepover wages by 5 pm on 17 February 2012.”

**9 Modification of section 15 (entitlement of recent employees)**

Section 15 of the Act must be read as if subsection (1) were replaced by the following:

- “(1) A recent employee of Care Solutions NZ Limited is entitled to be paid back wages for a sleepover if the employee—

- “(a) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 31 October 2011; and
- “(b) made a claim for sleepover wages by 5 pm on 17 February 2012.”

**10 Modification of section 16 (entitlement of historic employees)**

For the purposes of the settlement with historic employees of Care Solutions NZ Limited, section 16(1) of the Act must be read as if paragraph (b) were replaced by the following:

- “(b) made a claim for sleepover wages by 5 pm on 17 February 2012.”

**11 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.

**12 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) Care Solutions NZ Limited 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.

**13 Modification of sections 21 and 22 (entitlements for sleepovers performed after 31 October 2011)**

- (1) This clause applies instead of sections 21 and 22 of the Act in relation to the entitlements of employees of Care Solutions NZ Limited for sleepovers performed after 31 October 2011.
- (2) In relation to a sleepover performed by an employee after 31 October 2011, Care Solutions NZ Limited 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 a 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:
- | <b>Specified period</b>   | <b>Minimum hourly rate</b>                |
|---|---|
| Period beginning on 1 November 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 31 December 2012 | 75% of the applicable minimum hourly rate |
- (4) On and after 1 January 2013, Care Solutions NZ Limited must pay an employee for each hour of a sleepover performed by the employee at not less than the rate of minimum hourly wage that applies under the Minimum Wage Act 1983.
  - (5) To avoid doubt, this clause does not limit or affect any deductions that may lawfully be made to an amount payable under subclause (2) or (4).

Michael Webster,  
for 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 14 December 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement agreement between Care Solutions NZ Limited and certain of its employees relating 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 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*

Care Solutions NZ Limited employs staff to provide certain services, including sleepovers, that are funded by Vote Social Development. *Clause 5* modifies section 8 of the Act to extend the application of subpart 1 of Part 2 of the Act to Care Solutions NZ Limited. The extension will prevent new civil proceedings being commenced relating to sleepover wages that could have been the subject of a claim extinguished under section 9 of the Act. Section 9 of the Act extinguishes claims by employees of Idea Services Limited and Timata Hou Limited for sleepover wages. *Clause 6* extends the effect of section 9 of the Act to also extinguish claims by employees of Care Solutions NZ Limited.

*Subpart 2 of Part 2: Settlement relating to Care  
Solutions NZ Limited*

*Clause 7* extends the application of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to Care Solutions NZ Limited and its employees, but with certain modifications that are set out in the following clauses.

*Clauses 8, 9, and 10* (which modify sections 14, 15, and 16 of the Act respectively) apply to current, recent, and historic employees of Care Solutions NZ Limited. Sections 14, 15, and 16 of the Act relate to the payment of back wages. The modifications ensure that—

- the period of time in relation to which back wages are payable to employees of Care Solutions NZ Limited is extended to the close of 31 October 2011; and
- employees will be entitled to back wages for sleepovers if they made a claim by 5 pm on 17 February 2012.

*Clause 11* 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 Care Solutions NZ Limited.

*Clause 12* modifies section 20 of the Act, which sets out when back wages must be paid. It provides that back wages due to employees of Care Solutions NZ Limited 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 13* modifies those sections to implement the settlement agreed between the parties. The clause provides that,—

- for the period 1 November 2011 to 30 June 2012, an employee of Care Solutions NZ Limited is entitled to be paid 50% of the applicable minimum hourly rate for each hour of a sleepover:
- for the period 1 July 2012 to 31 December 2012, an employee of Care Solutions NZ Limited is entitled to be paid 75% of the applicable minimum hourly rate for each hour of a sleepover:
- if an employee would have received a greater amount immediately before the date of commencement of this order, he or she will be entitled to that greater amount:
- after 1 January 2013, an employee of Care Solutions NZ Limited will be entitled to be paid 100% of the minimum hourly wage.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 13 December 2012.

This order is administered by the Ministry of Social Development.

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