



Sleepover Wages (Settlement) (Community Living Limited) Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 22nd day of April 2013

Present:

The Right Hon John Key presiding 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.

Contents

| | | Page |
|-------------------------------|----------------|------|
| 1 | Title | 2 |
| 2 | Commencement | 2 |
| 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 |
| | 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 20 (when back wages must be paid) | 3 |
| 8 | Modification of section 21 (entitlements for sleepovers performed immediately before 18 October 2011) | 3 |
| 9 | 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) (Community Living Limited) Order 2013.
- 2 Commencement**
This order comes into force on 29 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 Community Living Limited.

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 Community Living
Limited” 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 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 sleep-
over that are payable to a qualifying employee no later than 2
months after the date of commencement of this order.
- 8 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.

9 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:

| 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 29 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 Community Living 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 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 9*.

Clause 7 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.

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 8* 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 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 8(3)*. The formula in *clause 8(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 the 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 9 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. The effect of *clause 9* is to modify the staged progression set out in the Act in 2 respects as follows:

- the period of time during which an employee of the specified employer must be paid at least 75% of the applicable minimum hourly rate is extended to the close of 30 June 2013;
- if an employee of the specified employer 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.

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

Date of notification in *Gazette*: 26 April 2013.

This order is administered by the Ministry of Health.
