



Sleepover Wages (Settlement) (Te Rori a Mua Trust) Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 15th day of July 2013

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) (Te Rori a Mua Trust) Order 2013.
- 2 Commencement**
This order comes into force on 19 July 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 Te Rori a Mua Trust

transitional formula means—

$$((a \times 8.36) - b) + c = d$$

where—

- a is the applicable minimum hourly rate
- b 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
- c 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
- d is the gross amount payable for the sleepover before tax is withheld.

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 Te Rori a Mua 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 “8.6” 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 Modification of sections 21 and 22(1)

- (1) This clause applies instead of sections 21 and 22(1) of the Act in relation to the entitlements of employees of the specified employer for sleepovers performed on and after 1 July 2011.
- (2) In relation to a sleepover performed by an employee on or after 1 July 2011, the specified employer must pay the employee the greater of—
 - (a) the amount 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 sleepover that an employee performed during the period specified in the first column of the following table is the amount calculated in accordance with the method set out opposite that period in the second column of the following table:

Specified period	Amount payable
Period beginning on 1 July 2011 and ending with the close of 30 June 2012	50% of the amount calculated in accordance with the transitional formula
Period beginning on 1 July 2012 and ending with the close of 30 April 2013	75% of the amount calculated in accordance with the transitional formula
(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.	

Rebecca Kitteridge,
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 19 July 2013, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between Te Rori a Mua 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 (**sleep-over 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 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 8.6 to represent the number of hours of a sleepover performed by employees of the specified employer during the period for which back wages are payable.

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.

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 sections 21 and 22(1) of the Act, which set out an employee's entitlements for sleepovers performed after 1 July 2011. The amount due to employees of the specified employer for sleepovers performed between 1 July 2011 and 30 April 2013 is based on percentages of the amount derived from the transitional formula. It reflects the agreement reached between the parties and recorded in the settlement agreement. In accordance with the Act, if an employee would have received more for a sleepover be-

fore this Order comes into force, he or she will be entitled to that greater amount. On and after 1 May 2013, the specified employer must pay an employee at not less than the rate of minimum hourly wage that applies under the Minimum Wage Act 1983 for each hour of a sleepover performed.

The modification also provides that the amount due to employees of the specified employer for sleepovers performed during this time 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.

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

Date of notification in *Gazette*: 18 July 2013.

This order is administered by the Ministry of Health.
