



# **Sleepover Wages (Settlement) (Taonga Education Centre Charitable Trust) Order 2013**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 2nd day of September 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 for Social Development (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) (Taonga Education Centre Charitable Trust) Order 2013.
- 2 Commencement**  
This order comes into force on 6 September 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**

(1) In this order,—

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

**back wages** means wages payable by the specified employer to its employees for sleepovers performed during the period beginning on 1 June 2004 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 the specified employer, means an employee who is employed by the specified employer on the commencement of this order

**qualifying employee** means each employee of the specified employer who made a claim for sleepover wages prior to 17 February 2012 in respect of a sleepover performed on or before 31 October 2011

**recent employee**, in relation to the specified employer, means an employee who ceased employment with the specified employer 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

**specified employer** means Taonga Education Centre Charitable Trust.

(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 of Act to employees of specified employer (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) Taonga Education Centre Charitable Trust.”.

- 6 Extension of section 9 to extinguish certain claims for sleepover wages by employees of specified employer**  
Section 9 of the Act must be read as if “or Taonga Education Centre Charitable Trust” 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 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 the specified employer 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 prior to 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 the specified employer 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 prior to 17 February 2012.”

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

For the purposes of the settlement with historic employees of the specified employer, 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 prior to 17 February 2012.”

**11 Modification of section 19 (calculation of back wages)**

- (1) Subclause (2) applies instead of section 19(1) of the Act.
- (2) Any back wages for a sleepover payable under any of sections 14 to 16 of the Act must be calculated in accordance with the following formula:

$$(((a \times b) - c) + d) \times 0.50 = e$$

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 gross amount of back wages payable to the employee before tax is withheld.

**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) 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.

**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 the specified employer for sleepovers performed after 31 October 2011.
- (2) In relation to a sleepover performed by an employee after 31 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):
  - (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) In relation to sleepovers performed by an employee on and after 1 January 2013, the specified employer must pay the 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).

Rebecca Kitteridge,  
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 6 September 2013, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement agreement between Taonga Education Centre Charitable Trust (the **specified employer**) 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 of Act: extinguishing claims for sleepover wages*

The specified employer 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 the specified employer. 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 the specified employer.

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

*Clause 7* extends the application 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 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 the specified employer. 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 the specified employer is extended to the close of 31 October 2011; and
- employees will be entitled to back wages for sleepovers if they made a claim prior to 17 February 2012.

*Clause 11* modifies section 19(1) of the Act, which establishes how back wages must be calculated. The formula in *clause 11* is the same as the formula set out in the Act for calculating back wages, except that it includes a variable to represent the number of hours in the sleepover.

*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 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 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 the specified employer 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 the specified employer 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 for a sleepover performed in the period 1 November 2011 to 31 December 2012 immediately before the date of commencement of this order, he or she will be entitled to that greater amount.

*Clause 13* also provides that after 1 January 2013, an employee of the specified employer will be entitled to be paid 100% of the minimum hourly wage.



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Education Centre Charitable Trust)  
Order 2013**

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 5 September 2013.  
This order is administered by the Ministry of Social Development.

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