



Sleepover Wages (Settlement) (Richmond Services Limited) Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 29th day of October 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 and 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) (Richmond Services Limited) Order 2013.

2 Commencement

This order comes into force on 1 November 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 17 October 2011 in accordance with sections 14, 15, and 16 of the Act (as modified by this order)

qualifying employee means each employee of the specified employer who—

- (a) made a claim for sleepover wages by 5 pm on 2 September 2011 in respect of a sleepover performed before 18 October 2011 and funded through Vote Health; or
- (b) made a claim for sleepover wages before 17 February 2012 in respect of a sleepover performed before 18 October 2011 and funded through Vote Social Development

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 30 June 2011

specified employer means Richmond Services Limited.

(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) Richmond Services Limited.”.

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 Richmond Services Limited” 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 substituted by the following:

“(1) A current employee of the specified employer is entitled to be paid back wages,—

- “(a) in relation to a sleepover funded through Vote Health, if the employee—

- “(i) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
- “(ii) made a claim for sleepover wages by 5 pm on 2 September 2011:
- “(b) in relation to a sleepover funded through Vote Social Development, if the employee—
 - “(i) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
 - “(ii) made a claim for sleepover wages before 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 substituted by the following:

- “(1) A recent employee of the specified employer is entitled to be paid back wages,—
 - “(a) in relation to a sleepover funded through Vote Health, if the employee—
 - “(i) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
 - “(ii) made a claim for sleepover wages by 5 pm on 2 September 2011:
 - “(b) in relation to a sleepover funded through Vote Social Development, if the employee—
 - “(i) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
 - “(ii) made a claim for sleepover wages before 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 of the Act must be read as if subsection (1) were substituted by the following:

- “(1) A historic employee of the specified employer is entitled to be paid back wages,—
- “(a) in relation to a sleepover funded through Vote Health, if the employee—
 - “(i) performed the sleepover no earlier than 1 June 2004 during the 6-year period immediately before the date on which the employee made a claim for sleepover wages; and
 - “(ii) made that claim by 5 pm on 2 September 2011:
 - “(b) in relation to a sleepover funded through Vote Social Development, if the employee—
 - “(i) performed the sleepover no earlier than 1 June 2004 during the 6-year period immediately before the date on which the employee made a claim for sleepover wages; and
 - “(ii) made that claim before 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 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 section 19(1) of the Act (as modified by clause 11).
- (3) 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.

14 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 performed 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 24 December 2012	75% of the applicable minimum hourly rate
Period beginning on 25 December 2012 and ending with the close of 30 June 2013	100% of the applicable minimum hourly rate

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 1 November 2013, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between Richmond Services 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—

- extinguishes the following claims for sleepover wages in respect of sleepovers performed before the Act commenced:
 - claims by employees of Idea Services Limited or Timata Hou Limited (section 9):
 - claims by employees of other employers in the health and disability sector funded through Vote Health that were not lodged by 5 pm on 2 September 2011 (section 10):
- prevents employees to whom the subpart applies bringing new proceedings for sleepover wages in respect of sleepovers that were or could have been the subject of a claim extinguished under section 9 or 10 (section 11).

Claims by employees of employers funded through a Vote other than Vote Health are not extinguished by the provisions in subpart 1 of Part 2 of the Act.

Clause 5 extends the application of subpart 1 of Part 2 of the Act to the specified employer and its employees.

Subpart 1 of Part 2 of the Act already applies to employees of the specified employer, to the extent that it applies to employees of all employers in the health and disability sector funded through Vote Health. However, employees of the specified employer also perform sleepovers that are funded through Vote Social Development. *Clause 5* requires section 8 of the Act to be read as if the specified employer were specifically named in that section. This is designed to ensure the provisions in subpart 1 of Part 2 of the Act apply to employees of the specified employer irrespective of the source of funding for the sleepovers performed by those employees.

Section 9 of the Act extinguishes claims by employees of Idea Services Limited and Timata Hou Limited for sleepover wages in respect of sleepovers performed before the commencement of the Act, including those that would otherwise have been preserved. *Clause 6*

extends the effect of section 9 of the Act to employees of the specified employer.

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

Clause 7 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 8 to 14*.

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, in the case of claims for sleepovers funded through Vote Social Development, employees will be entitled to back wages if they made a claim by 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 to insert a variable that will result in the applicable minimum hourly rate being multiplied by the number of hours in a sleepover performed by an employee of the specified employer.

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 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 the commencement of the Act) and when those entitlements must be paid. The amount due to employees of the specified employer for sleepovers performed during this time must be calculated in accord-

ance with the formula in section 19 of the Act (as modified by *clause 11*).

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.

Clause 14 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. Under *clause 14*, for sleepovers performed on or after 18 October 2011, an employee of the specified employer will be entitled to be paid either the rate that is specified in the Act for the relevant period of time or the amount the employee would have received immediately before the date of commencement of this order, whichever is greater.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 31 October 2013.

This order is administered by the Ministry of Health.
