

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (Spectrum Care Trust Board) Order 2012 (SR 2012/266)

Sleepover Wages (Settlement) (Spectrum Care Trust Board) Order 2012: revoked, on the close of 18 October 2016, pursuant to section 7(2) of the Sleepover Wages (Settlement) Act 2011 (2011 No 98).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of September 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 of Health (made after consultation with the Minister of Social Development and the Minister of Labour), makes the following order.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Health.

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Order

- 1 Title**
This order is the Sleepover Wages (Settlement) (Spectrum Care Trust Board) Order 2012.
- 2 Commencement**
This order comes into force on 10 September 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

agreed transitional formula has the meaning given to it by clause 14(4)

current employee, in relation to Spectrum Care Trust Board, means an employee who is employed by Spectrum Care Trust Board on the commencement of this order

qualifying employee means each employee of Spectrum Care Trust Board who—

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

recent employee, in relation to Spectrum Care Trust Board, means an employee who ceased employment with Spectrum Care Trust Board at any time during the period beginning on 1 July 2005 and ending with the close of the day before the 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 Spectrum Care Trust Board

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

(ia) Spectrum Care Trust Board:

6 Extension of section 9 to employees of Spectrum Care Trust Board (certain claims for sleepover wages extinguished)

Section 9 of the Act must be read as if “or Spectrum Care Trust Board” were inserted after “Timata Hou”.

Subpart 2—Settlement relating to Spectrum Care Trust Board

7 Extension of subpart 2 of Part 2 to Spectrum Care Trust Board

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

- (a) Spectrum Care Trust Board (as employer); and
- (b) each employee of Spectrum Care Trust Board 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 Spectrum Care Trust Board 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 Spectrum Care Trust Board 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 Spectrum Care Trust Board, section 16(1) of the Act must be read as if subsection (1) were substituted by the following:

- (1) A historic employee of Spectrum Care Trust Board 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)

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) Spectrum Care Trust Board 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 (entitlement of employees for sleepovers performed immediately before commencement of Act)

- (1) This clause applies instead of section 21 of the Act in relation to the entitlements of employees of Spectrum Care Trust Board.
- (2) In relation to a sleepover performed by an employee in the period beginning on 1 July 2011 and ending with the close of 17 October 2011, Spectrum Care Trust Board must pay an employee the greater of—
 - (a) the amount calculated in accordance with the agreed transitional formula specified in clause 14(4); or
 - (b) the amount that the employee would have received for that sleepover immediately before the date of commencement of this order.

- (3) Spectrum Care Trust Board 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 after commencement of Act)

- (1) This clause applies instead of section 22(1) of the Act in relation to the entitlements of employees of Spectrum Care Trust Board.
- (2) In relation to a sleepover performed by an employee on or after 18 October 2011, Spectrum Care Trust Board must pay the employee the greater of—
- (a) the amount specified in subclause (3); or
 - (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 performs 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 18 October 2011 and ending with the close of 30 June 2012	The amount calculated in accordance with the agreed transitional formula
Period beginning on 1 July 2012 and ending with the close of 30 June 2013	75% of the applicable minimum hourly rate, for each hour of sleepover performed

- (4) In this order,—

agreed transitional formula means:

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

where—

- a is the applicable minimum hourly rate
- b is the number of hours in the sleepover
- c in relation to the sleepover, is the difference between—
 - (a) the amount Spectrum Care Trust Board 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 Spectrum Care Trust Board to the employee in respect of annual holidays taken by the employee
- d is the amount of taxable allowances for a sleepover that was actually payable by Spectrum Care Trust Board to the employee to whom this subpart applies at the time the employee performed the sleepover
- e is the amount payable for the sleepover

applicable minimum hourly rate has the meaning given to it by section 19(2) of the Act.

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 10 September 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement of litigation between Spectrum Care Trust Board 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: 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 Heath 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 Spectrum Care Trust Board and its employees.

Subpart 1 of Part 2 of the Act already applies to employees of Spectrum Care Trust Board, to the extent that it applies to employees of all employers in the health and disability sector funded through Vote Health. However, Spectrum Care Trust Board employees also perform sleepovers that are funded through Vote Social Development. *Clause 5* requires section 8 of the Act to be read as if Spectrum Care Trust Board 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 Spectrum Care Trust Board 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. *Clause 6* extends the effect of section 9 of the Act to employees of Spectrum Care Trust Board.

Subpart 2 of Part 2: Settlement relating to Spectrum Care Trust Board

Clause 7 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to Spectrum Care Trust Board 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 Spectrum Care Trust Board. 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 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 Spectrum Care Trust Board.

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 Spectrum Care Trust Board 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 commencement of the Act), and when those entitlements must be paid. The modification provides that the amount due to employees of Spectrum Care Trust Board for sleepovers performed during this time must be calculated in accordance with the formula specified in *clause 14(4)*, and 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 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 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. The modification set out in *clause 14* provides that employees of Spectrum Care Trust Board will be entitled to be paid, for sleepovers

performed in the period beginning on 18 October 2011 and ending with the close of 30 June 2012, an amount calculated in accordance with the agreed transitional formula set out in *clause 14(4)*. This formula differs from that in the Act. For sleepovers performed in the period beginning on 1 July 2012 and ending with the close of 30 June 2013, employees of Spectrum Care Trust Board will be entitled to be paid 75% of the applicable minimum hourly rate, for each hour of sleepover performed. After 30 June 2013, employees will be entitled to be paid the full minimum wage for each hour of a sleepover.

The details of the staged progression towards full payment of the minimum wage set out in *clauses 13 and 14* reflect the settlement agreed between Spectrum Care Trust Board and its employees.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 6 September 2012.

Reprints notes

1 *General*

This is a reprint of the Sleepover Wages (Settlement) (Spectrum Care Trust Board) Order 2012 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Sleepover Wages (Settlement) Act 2011 (2011 No 98): section 7(2)