

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (The Essenic Trust Incorporated) Order 2012 (SR 2012/376)

Sleepover Wages (Settlement) (The Essenic Trust Incorporated) 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 10th day of December 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 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) (The Essenic Trust Incorporated) Order 2012.

2 Commencement

This order comes into force on 14 December 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

In this order, **Act** means the Sleepover Wages (Settlement) Act 2011.

Part 2
Modifications and extensions of Part 2 of Act

Settlement relating to The Essenic Trust Incorporated

5 Extension of subpart 2 of Part 2 to The Essenic Trust Incorporated

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

- (a) The Essenic Trust Incorporated (as employer); and
- (b) each employee of The Essenic Trust Incorporated who performs or performed a sleepover.

6 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 Essenic Trust Incorporated 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 Essenic Trust Incorporated must pay the employee the greater of—
 - (a) 50% of the applicable minimum hourly rate for each hour of the sleepover;
 - (b) the amount the employee would have received for that sleepover immediately before the date of commencement of this order.
- (3) The Essenic Trust Incorporated must pay any amount payable to an employee under subclause (2) no later than 2 months after the date of commencement of this order.

7 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 Essenic Trust Incorporated 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 Essenic Trust Incorporated 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 sleepover that the employee performs during a period specified in the first column of the following table is the min-

imum hourly rate opposite that period specified 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 14 December 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement agreement reached between The Essenic Trust Incorporated and certain of its employees. The settlement relates to the payment of wages to employees who are 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**) relating to the payment of sleepover wages. 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 Essenic Trust Incorporated, 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. It is not necessary to extend the application of section 9 to The Essenic Trust Incorporated and its employees, as no employees lodged claims regarding sleepover wages before the specified time.

Subpart 2 of Part 2 of Act: Settlement relating to The Essenic Trust Incorporated

Clause 5 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to The Essenic Trust Incorporated and its employees, but with certain modifications that are set out in *clauses 6 and 7*.

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 6* 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 Essenic Trust Incorporated for sleepovers performed during this time is either 50% of the applicable minimum hourly rate for each hour of the sleepover or the amount the employee would have received immediately before the date of commencement of this order (whichever is greater). This differs from the formula set out in the Act for calculating the wages payable to an employee for performing sleepovers during this period. *Clause 6* provides that the amount payable for sleepovers performed in this period 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 7 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 7* is to modify the staged progression set out in the Act in 2 respects. First, the period of time during which an employee of The Essenic Trust Incorporated must be paid at least 75% of the applicable minimum hourly rate is extended to the close of 30 June 2013. Secondly, the clause provides that, if an employee of The Essenic Trust Incorporated 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 Legislation Act 2012.
Date of notification in *Gazette*: 13 December 2012.

Reprints notes

1 *General*

This is a reprint of the Sleepover Wages (Settlement) (The Essenic Trust Incorporated) 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)