

Reprint
as at 19 October 2016



Sleepover Wages (Settlement) (Ministry of Social Development) Order 2012 (SR 2012/267)

Sleepover Wages (Settlement) (Ministry of Social Development) 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 for Social Development (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 Social Development.

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Order

1 Title

This order is the Sleepover Wages (Settlement) (Ministry of Social Development) 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

current employee, in relation to the Ministry of Social Development, means an employee who is employed by the Ministry of Social Development on the commencement of this order

Ministry of Social Development means the Sovereign in right of New Zealand acting by and through the chief executive of the Ministry of Social Development

qualifying employee means each employee of the Ministry of Social Development who made a claim for sleepover wages by 5 pm on 31 January 2012 in respect of a sleepover performed before that date

recent employee, in relation to the Ministry of Social Development, means an employee who ceased employment with the Ministry of Social Development 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 Ministry of Social Development (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) the Ministry of Social Development:

6 Extension of section 9 to extinguish certain claims for sleepover wages by employees of Ministry of Social Development

Section 9 of the Act must be read as if “or the Ministry of Social Development” were inserted after “Timata Hou”.

Subpart 2—Settlement relating to Ministry of Social Development

7 Extension of subpart 2 of Part 2 to Ministry of Social Development

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

- (a) the Ministry of Social Development (as employer); and

- (b) each employee of the Ministry of Social Development 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 Ministry of Social Development 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 January 2012; and
- (b) made a claim for sleepover wages by 5 pm on 31 January 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 Ministry of Social Development 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 January 2012; and
- (b) made a claim for sleepover wages by 5 pm on 31 January 2012.

10 Modification of section 16 (entitlement of historic employees)

For the purposes of the settlement with historic employees of the Ministry of Social Development, section 16(1) of the Act must be read as if paragraph (b) were substituted by the following:

- (b) made a claim for sleepover wages by 5 pm on 31 January 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 must be calculated in accordance with the following formula:

$$((a \times 8) + b) \times 0.50 = c$$

where—

- a is the applicable minimum hourly rate
- b in relation to the sleepover, is the amount the Ministry of Social Development would have paid in respect of annual holidays taken by the employee at the time the employee performed the sleepover
- c is the gross amount of back wages payable to an employee to whom this subpart applies 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 Ministry of Social Development 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 after 31 January 2012)

- (1) This clause applies instead of section 21 of the Act in relation to the entitlements of employees of the Ministry of Social Development for sleepovers performed immediately after 31 January 2012.
- (2) For the period beginning on 1 February 2012 and ending with the close of 31 March 2012, the Ministry of Social Development must pay an employee to whom subpart 2 of Part 2 of the Act applies an amount calculated in accordance with the formula set out in section 19(1) of the Act (as amended by clause 11 of this order) for each sleepover that the employee performed during that period.
- (3) The Ministry of Social Development 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 1 April 2012)

- (1) This clause applies instead of section 22(1) of the Act in relation to the entitlements of employees of the Ministry of Social Development.
- (2) In relation to a sleepover performed by an employee on or after 1 April 2012, the Ministry of Social Development 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); 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 hour of 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:

Specified period	Minimum hourly rate
Period beginning on 1 April 2012 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

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 the Ministry of Social Development 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 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

Clause 5 extends the application of subpart 1 of Part 2 of the Act to the Ministry of Social Development. The Ministry directly employs people to provide services for the purposes of the Children, Young Persons, and Their Families Act 1989, using funding from Vote Social Development. 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 Ministry of Social Development. (Further orders are expected to be made to settle claims for sleepover wages by employees of Child, Youth and Family-related service providers who operate under contracts with the Ministry of Social Development.)

Subpart 2 of Part 2: Settlement relating to Ministry of Social Development

Clause 7 extends the application of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to the Ministry of Social Development 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 Ministry of Social Development. 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 recent employees of the Ministry of Social Development is extended to the close of 31 January 2012; and
- employees will be entitled to back wages for sleepovers if they made a claim by 5 pm on 31 January 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 of the Act 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 resulting sum is then adjusted by deducting the amount actually paid, adjusting for holiday pay, and multiplying by 0.5. *Clause 11* modifies the formula in section 19 to reflect the manner in which Ministry of Social Development employees were paid when performing sleepover work. Ministry of Social Development employees were historically paid on a 24-hour basis. The amount paid for 24 hours equated to payment of the applicable minimum hourly rate for 16 hours. If the remaining 8 hours are treated as the hours of the sleepover, for the purposes of calculating back pay, this means Ministry of Social Development employees did not receive any payment for those sleepover hours. To reflect this, *clause 11* includes a formula that is modified in the following respects:

- the applicable minimum hourly rate must be multiplied by 8, not 9 (because it is only 8 hours for which no payment was received);
- those aspects of the formula that relate to deducting amounts actually paid are omitted (because no payment was made in respect of the 8 hours that are being treated as the hours of 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 Ministry of Social Development 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 when 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) must be paid. The modifications—

- amend the period of time to which the section relates to cover the period between 1 February 2012 and 31 March 2012; and
- provide that the amount due to employees of the Ministry of Social Development for sleepovers performed during this time must be paid no later than 2 months after the date of commencement of this order.

Clause 14 modifies section 22(1) of the Act, which sets out how sleepover wages are to be calculated for sleepovers performed after the 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 1 April 2012, an employee of the Ministry of Social Development will be entitled to be paid either the applicable rate specified in the Act, or the amount the employee would have received immediately before the date of commencement of this order, whichever is greater.

Reprints notes

1 *General*

This is a reprint of the Sleepover Wages (Settlement) (Ministry of Social Development) 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)