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| FactSheet  Mental Health and Addiction Support Worker (Pay Equity) Settlement Agreement | Dec 2018 |

## Background

## On 19 June 2018, the Government announced a settlement with unions and employers to extend the 2017 Care and Support Workers (Pay Equity) Settlement Act to 5,000 mental health and addiction support workers.

## The settlement agreement means that workers will receive new minimum wage rates and improved access to training and will help ensure we have a stable workforce to look after some of the most vulnerable New Zealanders.

## Workers’ wages will increase to between $19 and $27 per hour over five years. The new wage rates will also be back-dated to 1 July 2017, when the Act came into effect.

## Wage rates for current workers employed before 1 July 2017

All mental health and addiction support workers employed before 1 July 2017 (current workers), move on to the following scale, either at the step that recognises their qualifications or their service with their employer, whichever is the most advantageous to the employee. The pay rates for year one are for back-pay only.

**Pay scale 1: Transition rates for workers employed before 1 July 2017**

| **Qualification or length of service** | **1 July 2017 -**  **30 June 2018 Year 1** | **1 July 2018 -**  **30 June 2019 Year 2** | **1 July 2019 -**  **30 June 2021 Year 3/4** | **1 July 2021 -**  **30 June 2022 Year 5** |
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| **L0 or <3 years’ service** | $19.00 | $19.80 | $20.50 | $21.50 |
| **L2 or 3+ years’ service** | $20.00 | $21.00 | $21.50 | $23.00 |
| **L3 or 8+ years’ service** | $21.00 | $22.50 | $23.00 | $25.00 |
| **L4 or 12+ years’ service** | $23.50 | $24.50 | $25.50 | $27.00 |

The qualification must be, or assessed by Careerforce as equivalent to, Level 2, 3 or 4 on the New Zealand Certificate in Health and Wellbeing from an NZQA-accredited provider.

All current mental health and addiction support workers who reach 12 years’ current continuous service with their employer after 1 July 2017 and who have not achieved a Level 4 qualification, will move on to the following rates unless there are genuine reasons, based on reasonable grounds, that the employee’s employer did not provide the support necessary for the employee to achieve the Level 4 qualification. In which case, the employee will be entitled to move to the Level 4 step above. Any dispute about the provision of the necessary support will be dealt with through employment dispute resolution processes.

**Pay scale 2: Workers with greater than 12 years’ service *without* a Level 4 qualification**

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| **Qualifications and length of service** | **After 1 July 2017 Year 1** | **On or after 1 July 2018 Year 2** | **On or after 1 July 2019 Year 3/4** | **On or after 1 July 2021 Year 5 on** |
| **Less than L4 and 12+ years’ service** | $22.50 | $23.50 | $24.50 | $26.00 |

**Translation for workers employed on or after 1 July 2017**

The minimum rates and progression for mental health and addiction support workers employed on or after 1 July 2017 are:

| **Qualification** | **1 July 2017 -**  **30 June 2018 Year 1** | **1 July 2018 -**  **30 June 2019 Year 2** | **1 July 2019 -**  **30 June 2021 Year 3/4** | **1 July 2021 -**  **30 June 2022 Year 5** |
| --- | --- | --- | --- | --- |
| **L0** | $19.00 | $19.80 | $20.50 | $21.50 |
| **L2** | $20.00 | $21.00 | $21.50 | $23.00 |
| **L3** | $21.00 | $22.50 | $23.00 | $25.00 |
| **L4** | $23.50 | $24.50 | $25.50 | $27.00 |

## Current continuous service

The definition of current continuous service for mental health and addiction workers is different than that for those workers covered by the 2017 settlement. This recognises that some workers may have moved between sectors and/or employers due to their exclusion from the 2017 settlement.

For the period from 1 July 2017 to 30 June 2018 current continuous service includes:

1. Service recognised as continuous for the purpose of transferring workers (under the provisions of the Employment Relations Act 2000);
2. Where an employee was a mental health and addiction support worker between 1 July 2017 and 30 June 2018 and:
3. left their employment and the sector; or
4. transferred to another employer and is performing mental health and addiction services; or
5. transferred to another employer as defined in the 2017 settlement agreement; or
6. changed roles with their current employer to a non support worker role; or
7. transferred to a non-funded service.

## Qualifications

## In accordance with the settlement agreement, the qualification must be a:

1. Level 2, 3 or 4 New Zealand Certificate in Health and Wellbeing issued by NZQA; or
2. A qualification that is recognised by Careerforce (the relevant industry training organisation) as being equivalent to the New Zealand Certificate in Health and Wellbeing; or
3. an overseas qualification that is equivalent to a qualification described in paragraph a) or b).

## It is the role of Careerforce, the Industry Training Organisation, to assess domestic and international qualifications for equivalence to the NZ Certificate in Health and Wellbeing (Levels 2, 3 and 4). As workers’ qualifications are assessed as equivalent, the qualification is posted on the Careerforce website (www.careerforce.org.nz/pay-equity/equivalencies). The qualifications under review include those forwarded by providers and employees.

## For any questions about qualification equivalency, please contact Careerforce on 0800 277 486 or email [info@careerforce.org.nz](file:///C:\Users\epiui001\Objective\objective.ssi.govt.nz-8000-epiui001\Objects\WinTalk\f9334898-0c40-44f7-88be-9a9380bdbc69\info@careerforce.org.nz) with ‘Pay Equity Qualification Query’ in the subject line.

## Eligibility

## Assessment

Follow the three-step process to assess the eligibility of a worker:

1. **Determine whether the service is funded by one of the settlement parties** - the Ministry of Health, District Health Boards, the Accident Compensation Corporation, the Department of Corrections, Oranga Tamariki, and the Ministry of Social Development.
2. **Determine whether the service is covered by the settlement agreement** (see definition below).

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| **Services** means:   1. Mental health and addiction support services; 2. Does not include: 3. other services; 4. services provided directly by Employees of DHBs under a Crown Funding Agreement; 5. private services to a client, by a person whether or not they are performing those services as an Employee.   **Mental health and addiction support services** means services funded under a funding agreement that are performed in a person’s home, or home-like setting or workplace, or in a provider or Employer facility or in a community facility for the purpose of —   1. assisting a person who has a mental health or addiction need to achieve their goals to: 2. continue to live in the person’s home or in the community (such as personal care and household management services); or 3. work in the community; or 4. participate in activities in their communities of interest to them; or 5. contribute to their communities in ways valued by them and their communities; or 6. learn new skills to help them manage their lives and overall well-being, and to participate and work in their communities; or 7. maintain and develop social and support networks 8. supporting a person’s rehabilitation from a mental injury covered by the [Accident Compensation Act 2001](http://www.legislation.govt.nz/act/public/2017/0024/latest/link.aspx?id=DLM99493#DLM99493) and to achieve and sustain the person’s maximum level of participation in everyday life |

1. **Determine whether the employee is within scope of the proposed settlement agreement** (see definition below).

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| **Employee —**   1. means a mental health and addiction support worker, employed by an Employer who performs the Services; 2. includes any person who has been employed by an Employer as an Employee who has, between the Application date and the day before Settlement Date: 3. exited their employment with an Employer and exited the sector; 4. transferred to another Employer and is performing the Services; 5. transferred to another Employer as defined in the 2017 Settlement Agreement; 6. changed roles with their current or former Employer to a non-Care and Support Worker role; 7. transferred to a non-funded service, but still employed by an Employer. 8. does not include employees who do not perform the Services. |

### Services that are not eligible

* Mental health and addiction services provided by DHB employees
* Behavioural support services
* Caregiver support
* Child development services
* Environmental support
* Sleep-over payments
* In-between travel payments
* Funded family care
* Services provided to private payers

### Workers that are not eligible

* Care support workers covered by the covered by the Care and Support Workers (Pay Equity) Act
* Counsellors
* Occupational therapists
* Team leaders and staff supervisors
* Enrolled/registered nurses
* Cooks
* Cleaners
* Managers
* Social workers
* Finance, marketing, and business enterprises workers
* Health practitioners registered under and in accordance with the Health Practitioners Competence Assurance Act 2003, and working in a role that required the employee to be a health practitioner
* An employee whose primary work purpose is not support even if support is incidental to their primary work
* Workers supporting employment where the services primarily involve management, supervision, marketing, finance, negotiating/finding a job on behalf of a person or people and general job search, finding jobs, networking with employers, negotiating a placement with employers or labour market research.

**Casual employees**

A ‘casual employee’ isn’t specifically defined in employment legislation, but the term is used to refer to a situation where the employee has no guaranteed hours of work, no regular pattern of work, and no ongoing expectation of employment.

Casual employees are eligible for the new pay rates, however they do not have continuous employment under the settlement agreement and so minimum hourly wage pay rates will be calculated on the basis of qualification alone.

If an employer believes that some of their casual employees are permanent part-time employees with continuous service (including getting professional employment relations advice), the employer needs to document the decision and support it with documentation that covers legitimate expectation of work, absence or presence of predictability and regularity, length of the arrangement, payment of holidays, and the date on which each employee’s status changed from casual to permanent part-time.

Guidance on what is casual employment can be found on the [Ministry of Business Innovation and Employment website](https://www.employment.govt.nz/starting-employment/who-is-an-employee/types-of-employee/).

**Individualised funding**

Mental health and addiction support workers providing support under Individualised Funding or Enhanced Individualised Funding as employees (in qualifying services) are eligible.

### Union membership

Eligible mental health and addiction support workers receive the new wage rates whether or not they belong to a union.

## Funding

### On-costs

On-cost funding is to cover statutory minimum costs in addition to wages. These include annual leave, statutory holidays, sick days, time and a half for work on public holidays, ACC levies, and KiwiSaver. Funding to support training is also included.

The total on-costs providers will be funded for is 21.7 percent. This includes:

* 20 days annual leave
* 11 days statutory holidays
* 5.5 days (time and a half for time worked on statutory holidays)
* 5 days sick leave
* 0.8 percent contribution to training
* 3 percent KiwiSaver employer contribution
* 2 percent for ACC levies.

### Retrospective funding

Retrospective funding is to enable employers to pay their workers back-pay from 1 July 2017 – 30 June 2018.

The funding is for the difference between each employee’s hourly pay rate on 30 June 2017 and their appropriate pay rate on 1 July 2017, plus on-costs.

### Contribution to leave liability

Funding to cover the increase in leave liability is a one-off payment of the difference between the cost of leave liability on 30 June 2017 and 1 July 2017, up to a maximum of 160 hours per full-time employee.

### Advance funding

Three months’ advance funding (July –Dec 2018) will be made at the same time as the retrospective funding and the one-off funding for increased leave liability to ensure providers have sufficient funding to cover payment of the new rates to workers.

### Wash-up and future funding

The workforce data provided by employers in May 2018 enabled MSD to estimate the additional cost of the settlement agreement to employers. A wash-up process will occur later this calendar year to adjust the estimate to the actual costs.

## Training

The Mental Health and Addiction Support Worker (Pay Equity) Settlement Act requires employers to provide support to enable workers covered by the settlement to reach the following levels on the NZ Qualifications Authority Health and Wellbeing Certificate (or its equivalent):

* Level 2 NZ Certificate – within 12 months of employment,
* Level 3 NZ Certificate – within 3 years of employment,
* Level 4 NZ Certificate – within 6 years of employment.

The Act states that providers must “take all reasonably practical steps to ensure a care and support worker is able to attain" the NZQA Health and Wellbeing Certificate Level 2, 3 or 4 qualifications.

What is “reasonably practical” depends on the circumstances. A flexible approach suited to the needs of the workers and the clients is expected. It includes facilitating online and on-the-job training, time off for training and examinations, course fees, and the like.

## Implementation

### Employees’ other conditions of employment

Generally, all other conditions of employment remain the same. However, service and qualification allowances have been extinguished because they have been replaced by the new qualifications-based pay structure. Weekend and penal rates in employment agreements remain but those that are calculated as a percentage of base pay have been converted to allowances.

The Mental Health and Addiction Support Worker (Pay Equity) Settlement Act provides that weekend and night penal rates that were expressed as a percentage prior to the commencement of the Act must be converted to a flat rate dollar value. For example, if the base hourly rate prior to pay equity was $18 and the penal rate was an additional 50 percent, then the penal rate after 1 July 2017 is $9.

For employees who commenced after 1 July 2017, providers need to make a business decision about weekend and night penal rates. Factors to consider may include, any business imperatives, fairness and equity considerations, and any relevant contractual and statutory obligations. Potential options include paying a dollar value penal rate based on the base hourly rate that would have applied to that employee prior to 1 July 2017, or some other option that meets all statutory and contractual obligations.

### Pay rates for employees who perform both elibible and ineligible services

## Employees can receive more than one pay rate. Employers must pay the in-scope services at the appropriate pay band when work is performed on these services. Out of scope services pay rates are a business decision for the provider. If these are at a separate rate, then this should be reflected by dual rates in the worker’s employment contract.

## More information

### Sleepover rates

## There have been a number of government initiaties in recent years that have resulted in payments based on minimum wage rates, in circumstances where there had previously been no payments.

## These include funded family care, sleep-over payments, and in-between travel payments. All of these initiatives have been confirmed and protected by legislation. The legislation and funding arrangements for payment of sleepovers, in-between travel, and funded family care have not been changed by the settlement and payment must continue at a minimum of the minimum wage.

### Supervisor or manager pay rates

The settlement covers support workers. Supervisors are outside of the scope of this settlement. The pay rates supervisors and managers receive are a business decision for the provider and are not claimable under this agreement.