



A-Z OF EMPLOYING

Shop Trading Restrictions

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

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This is only a guide. It should not be a substitute for professional advice.

Please seek advice from our AdviceLine Team if you require specific assistance.

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Use this guide to understand:

- ▶ what the shop trading restrictions are and how they apply to your business;
- ▶ whether your business is exempt from the shop trading restrictions;
- ▶ your obligations on a restricted trading day; and
- ▶ the consequences of breaching the restrictions.

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Introduction

The Shop Trading Hours Act 1990 (“the Act”) restricts most retailers from trading on 3 ½ days each year.

The shop trading restrictions (“the Restrictions”) are subject to exceptions which allow exempted retailers to trade on the restricted days. If your organisation is exempted from the Restrictions then you can open as usual and provide work for your staff.

If you are not exempted from the Restrictions you will need to consider your obligations in respect of your employees before you make any decisions. The Act only limits your ability to trade; it does not limit your ability to provide work for employees. However, with the exception of Easter Sunday, the restricted days are public holidays so employees who work will be entitled to payment for the day in accordance with the Holidays Act 2003.

It is an offence for a retailer that is not exempted from the Restrictions to open for trade on any of the restricted days. Individuals and organisations that breach the law can be fined up to \$1,000 for each offence.

The Act is administered by the Ministry of Business, Innovation and Employment (formerly the Department of Labour) (“the Ministry”).

Restrictions on Trading

Shops are required to be closed for trading on the restricted days. A “shop” is defined as a building, place, or part of a building or place, where goods are kept, sold, or offered for sale, by retail; and includes an auction mart, and a barrow, stall, or other subdivision of a market.

The definition of a shop excludes:

- ▶ a private home where the owner or occupier’s effects are being sold (by auction or otherwise); or
- ▶ a building or place where the only business carried on is that of selling by auction agricultural products, pastoral products, and livestock, or any of them; or
- ▶ a building or place where the only business carried on is that of selling goods to people who are dealers, and buy the goods to sell them again.

The restricted days each year when shops are required to be closed are:

- ▶ Good Friday - all day
- ▶ Easter Sunday - all day
- ▶ Christmas Day- all day
- ▶ ANZAC Day - before 1pm.

In the event that ANZAC Day falls on a weekend and is transferred to Monday, the transfer will have no effect on the shop trading restrictions, which will apply on 25 April.

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Exceptions

Exempted businesses

Your business may trade on the restricted days, as an exempted employer, if the business is:

- ▶ A shop such as a dairy or service station, **IF** most of the goods for sale in the shop are goods that are of a kind that people may reasonably need to be able to buy at any time, **AND**
- ▶ the quantity of goods that are for sale in the shop are no greater than sufficient to meet the demands of the people who are living, staying, or travelling through the area where the shop is, **AND**
- ▶ it sells:
 - Food, drinks, household items, personal items, motor vehicle fuel, oil, parts or accessories; OR
 - A shop that sells mainly: souvenirs, duty-free goods to people intending to take them overseas, food ready to be eaten; OR
 - A book-stall at a public transport terminal; OR
 - A pharmacy; OR
 - A shop at an exhibition or show.

Garden centres are also exempted from the restrictions on trading but only on Easter Sunday.

Trading on Easter Sunday

Your business may also be exempt from the restriction on trading on Easter Sunday if your shops is located in a district, or part of a district, in which a local Easter Sunday shop trading policy operates.

Your territorial authority may have in place, a local Easter Sunday shop trading policy which permits shops to open on Easter Sunday in area comprising the whole or any part or parts of its district. The policy may not permit shops to open only for some purposes, permit only some types of shops in the area to open or specify times at which shops may or may not open.

The Act also provides that any provision in an employment agreement that requires a shop employee to work, or to be available to accept any work that the employer makes available, on Easter Sunday is unenforceable against the shop employee.

Any employee has the right to refuse to work on Easter Sunday and is not required to provide their employer with a reason for refusing.

An employer who wants a shop employee to work on Easter Sunday must give notice in writing to the employee of his or her right to refuse work on that day

- (i) in the case of a shop employee whose employment with the employer started more than 4 weeks before the relevant Easter Sunday, no earlier than 8 weeks and no later than 4 weeks before the relevant Easter Sunday; and
- (ii) in the case of a shop employee whose employment with the employer started 4 weeks or less before the relevant Easter Sunday, as soon as is reasonably practicable after the shop employee's employment with the employer starts.

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The notice in writing must be either delivered in person, sent by email or in a manner of giving notices is specified in the shop employee's employment agreement, given in the manner specified to the employee.

A shop employee who intends to refuse to work on Easter Sunday must give notice to his or her employer of that intention, in writing and be given in the case of a shop employee who started with the employer more than 14 days before the relevant Easter Sunday, no later than 14 days after the date on which the shop employee receives a notice and for those who started 14 days or less, as soon as is reasonably practicable after receiving the notice from the employer. Similarly, it must either be delivered in person, sent by email or in a manner of giving notices is specified in the shop employee's employment agreement, given in the manner specified to the employee.

A shop employee's employer, or a representative of that employer, must not compel a shop employee to work on an Easter Sunday or treat them adversely for refusing to work.

The Act provides that an employer **compels** a shop employee if the employer either makes working on an Easter Sunday a condition of the employer continuing to employ the shop employee, exerts undue influence on the shop employee with a view to inducing the shop employee to work on an Easter Sunday or requires the shop employee to work on Easter Sunday without giving the shop employee notice of their right to refuse.

A shop employee is able to raise a personal grievance under the Employment Relations Act 2000 if an employer has breached the above.

Refer to the **A-Z Guide on Easter Sunday** for more information.

Area exemptions

Your business may also be exempt from the Restrictions if it is located within a particular geographical area if an exemption order applies. The exempted areas tend to be tourist resorts such as Taupo and Queenstown. It is no longer possible for shops covered by area exemptions to change them, or for new exceptions to be granted.

Employer's Obligations

Unrestricted employers

If your organisation is exempted from the Restrictions imposed by the Act then you may trade as usual and provide work for your employees in the normal way. If the day is a public holiday then employees will be entitled to be paid for the day as per the Holidays Act 2003. **Note: Easter Sunday is not a public holiday.**

Refer to the **A-Z Guide on Public Holidays** for more information.

Restricted employers

If you are unable to trade on a day because of the Restrictions but you have employees who would otherwise work on that day, then unless there has been an agreement otherwise, you may have an obligation to provide them with work or pay the employees even if work cannot be provided.

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ANZAC Day, Good Friday, and Christmas Day are public holidays; if one of these public holidays falls on a day that would otherwise be a working day for your employees then generally it will be a holiday on pay for them. If your organisation opens for trading after 1pm on ANZAC Day then you may wish to refer to the **A-Z Guide on ANZAC Day** for information about your options in respect of your employees.

If your organisation is normally open for trading, but because of the Restrictions is unable to trade on Easter Sunday then you may wish to refer to the **A-Z Guide on Easter Sunday** for information about your obligations in respect of your employees.

Offences

The Act renders it an offence for any shop that does not fit into one of the exempted categories to open for trade at any time during the restricted days. The occupier of a shop that is not closed (and therefore open for trade) can be fined on conviction up to \$1,000 in the District Court; it is possible for individual persons and organisations to be fined.

For Your Business

Most organisations are restricted from trading on a restricted trading day, unless the organisation is exempt. Most of those days are also public holidays as per the Holidays Act 2003 therefore employees may have an entitlement to a paid day off to cover this period. If the day is not a public holiday and the employer cannot trade due to the restrictions, other options will need to be considered.

If you have any other question in relation to public holidays, shop trading hours, or whether or not you have an obligation to provide work on a particular day, you can contact one of our employer advisors for telephone advice and assistance: **0800 800 362** or email the AdviceLine at advice@businesscentral.org.nz

Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to Business Central courses and conferences designed for those who manage employees.

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