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EMPLOYMENT NEW ZEALAND

Employment NZ, 2020

Restricted shop trading days

There are three and a half days each year when almost all shops are required to be closed. Exceptions are shops which can open with conditions, have area exemptions or Easter Sunday local policies.

There are three and a half days when almost all shops must be closed under the Shop Trading Hours Act 1990. These days are:

- Christmas Day (a public holiday)
- Good Friday (a public holiday)
- ANZAC Day, until 1.00 pm on 25 April (a public holiday)
- Easter Sunday (not a public holiday)

1990

The definitions of 'shop' and 'goods'

"shop" is a building or place where goods are kept or sold by retail. It includes an auction mart, barrow, stall or other parts of a market. It doesn't include:

- A private home, where the owner or occupier's effects are being sold
- A building or place where agricultural products, pastoral products, and livestock are being sold by auction
- A building or place where goods are being sold to wholesalers or dealers, who will sell the goods again.

The definition of "shop" includes cafes, restaurants and bars because they sell goods (food).

"Goods" includes personal items other than alcohol, which is covered by the Sale and Supply of Alcohol Act 2012.

Shops that can open on restricted trading days

There are three types of shops which can open on restricted trading days:

- Shops that can open with conditions and provided they meet certain conditions
- Shops that can open because of an area exemption
- Shops that can open on Easter Sunday because the local territorial authority has adopted a **local Easter Sunday shop trading policy**. Being able to open on Easter Sunday under a local territorial authority policy doesn't mean a shop can open on Christmas Day, Good Friday or Anzac Day before 1pm.

Shops that can open with conditions

Shop owners are responsible for determining if they meet the criteria. If your shop is listed in the following table then you can open, provided your shop meets the required conditions. If your shop isn't listed in the table then you must have an area exemption to open or be opening on Easter Sunday under a local territorial authority Easter Sunday shop trading policy, otherwise you can't open. If your shop is in the premises of a show or exhibition or your shop sells souvenirs, then you're strongly advised to contact us before assuming you can open.

Determining which shops can open with conditions on restricted trading days

Is your shop one of the following?	Then yes, you can open so long as:	
Small grocery shop (eg dairy, superette or fruit and vegetable mart)	The only goods you sell are: <ul style="list-style-type: none"> • Food • Drink • Household items • Personal items 	The goods you sell are items people can't put off buying until the next day, such as baby formula or pet food, and the quantity of goods for sale is no more than needed to meet the needs of people in the area or travelling through.

Service Station	<p>The only goods you sell are:</p> <ul style="list-style-type: none"> • Food • Drink • Household items • Personal items • Petrol, oil, car parts and accessories 	The goods you sell are items people can't put off buying until the next day, such as baby formula or pet food, and the quantity of goods for sale is no more than needed to meet the needs of people in the area or travelling through.
Take away bar, restaurant, cafe	You only sell prepared or cooked food ready to be eaten immediately in the form in which it is sold.	
Duty free store	You are only selling duty free items	
A shop providing services, rather than selling goods, such as a video rental store or hairdresser	You only provide a service, such as renting videos or cutting hair	You don't sell any goods, such as videos or hair products.
Real Estate Agency	No conditions, real estate does not fit within the definition of goods as defined by the Act	
Pharmacies	No conditions	
Garden centres	The only restricted trading day you can open on is Easter Sunday	Your sole or principal business is the supply of plants or garden supplies or both.
A shop at any public transport terminal or station	You only sell books, magazines and newspapers, or duty free items/souvenirs, or food that has been cooked/prepared and is ready to be eaten.	
A shop in a premises where an exhibition or show is taking place. This includes markets, craft shows and stalls at these exhibitions and shows	The shop/stall must be within the premises (this means the building/location but doesn't include, eg a street which has been closed for the event) of an actual exhibition or show.	The exhibition or show must be devoted entirely or primarily to agriculture, art, industry, and science, or any of these. This is quite a strict requirement, and to be considered 'devoted' to a show or exhibition a shop must be selling goods that are connected in some way with the show. For example, arts and crafts at an art and craft show, or farming supplies at an agriculture show, rather than general goods.
A shop primarily selling only souvenirs	The criteria for whether or not an item is considered a souvenir is that it is connected to a New Zealand place or New Zealand culture.	

Shops that can open because they have an area exemption

A limited number of geographical areas, generally tourist resorts such as Taupo and Queenstown, are covered by exemptions to the shop trading restrictions. Some shops in these areas can open on restricted days, but only if the exemption order allows. Shops covered by area exemptions can't change them, and no new exemptions can be granted.

Download [[PDF, 2 MB](#)] copies of the existing Shop Trading Exemption Orders.

Contact us if you have any questions regarding existing area exemptions.

Shops which can open on Easter Sunday under a local council Easter Sunday shop trading policy

From August 2016, territorial authorities (city and district councils) can put in place local policies that allow shops within their area, or parts of it, to trade on Easter Sunday. Once a local council has created a local policy, they must notify the Ministry of Business, Innovation and Employment at contract.account@mbie.govt.nz.

Find out which territorial authorities have local policies in place.

All shop employees have the right to refuse work on Easter Sunday without giving a reason to their employer. There are special responsibilities that employers and employees have to follow if an employer wants a shop employee to work on Easter Sunday. This is not limited to employees in shops open for trading, but includes a situation where the shop is not going to be open for trading, but the employer wants an employee to work (eg doing a stocktake).

A shop opening for business on Easter Sunday in an area where there is no local policy in place (and no exemption from shop trading restrictions or ability to open with conditions) will be in breach of shop trading restrictions even if they have followed the correct process for notifying employees that they have the right to refuse to work.

Visit the [Ministry of Business, Innovation and Employment website](#) for background information about the August 2016 changes to Easter Sunday shop trading.

Easter Sunday employer and shop employee rights and responsibilities

All shop employees have the right to refuse to work on Easter Sunday and they don't have to give their employer a reason for refusing. This applies to all shop employees, eg:

- Working in shops in an area where a local policy is created
- Working in garden centres
- Working in shops that have criteria that exempt them from shopping restrictions, such as dairies and petrol stations
- Doing 'non-trading' work, such as shelf-stacking or stocktaking, on Easter Sunday in or from a shop (in areas with or without local policies or exemptions).

Employers who want a shop employee to work on Easter Sunday and shop employees who don't want to work on Easter Sunday have specific responsibilities to each other and need to follow the required process.

Employer responsibilities

If an employer wants employees to work on Easter Sunday, they must follow a specific process to let their employees know (in writing) that they have a right to refuse to work on Easter Sunday. This process must be completed each year an employer wants an employee to work on Easter Sunday and can't just be written into the employment agreement.

If an employer can't open their shop on Easter Sunday (due to their territorial authority not having a local policy, ability to open with conditions or existing area exemption) but still wants shop employees to work, (eg to stack shelves or do stock taking), they must still follow the same process. This is because the law change gives all shop employees the right to refuse to work on Easter Sunday.

Employers must:

- Notify the employees in writing that they have a right to refuse to work on Easter Sunday.
- Deliver the notice to the employee. This could be in the form of a letter or memo delivered in person, or by email or via group email or in a way that is specified in the employment agreement. This must be done at least four weeks before the relevant Easter Sunday, but no earlier than eight weeks before the Easter Sunday. If an employee has started work within four weeks of the relevant Easter Sunday the employer must give this notice (of the right to refuse) as close to the start date of the employee's employment as possible.

If an employer doesn't follow the notice requirements and requires an employee to work on Easter Sunday, this is considered to be compelling them to work and the employee could bring a personal grievance.

Employers can use our template letter [[PDF, 84 KB](#)] as a guide when informing employees of their right to refuse work on Easter Sunday.

Shop employee responsibilities

Shop employees who are given notice of their right to refuse to work on Easter Sunday and want to refuse to work, must give notice of this to their employer.

If an employee is going to refuse work on Easter Sunday they must:

- let the employer know in writing no later than 14 days from the date they received their employer's notice.
- deliver the notice to the employer. This could be in the form of a letter or memo delivered in person, or by email or in a way that is specified in the employment agreement.

If the employee doesn't follow these notice requirements, and their employment agreement has a clause stating that they can be required to work on Easter Sunday, their employer can require them to work.

Employees intending to refuse to work on Easter Sunday can [use our template letter as a guide \[PDF, 53 KB\]](#).

Employee starts work within 14 days before Easter Sunday

If a shop employee:

- has started work within 14 days before Easter Sunday, and
- has received notice of their right to refuse to work on Easter Sunday, and
- wants to refuse to work,

they must give the employer their notice as soon after receiving the notice from their employer as possible.

Employers can't compel shop employees to work on Easter Sunday or treat them adversely for not working

Employers can't compel their shop employees to work on Easter Sunday or treat them adversely for refusing to work. A provision in an employment agreement which requires a shop employee to work on Easter Sunday is unenforceable.

Compelling an employee to work includes:

- The employer making working on an Easter Sunday a condition of the continuing employment of an employee.
- The employer using unfair influence on the shop employee to try to convince them to work on an Easter Sunday.
- The employer requiring an employee to work on Easter Sunday without giving them the correct notice of the right to refuse.

Treating an employee adversely has the same meaning as under the Employment Relations Act 2000. This covers a range of negative impacts, including not offering an employee the same working conditions compared with another employee in similar circumstances, or dismissing or retiring an employee.

If an employee thinks that they have been compelled to work or treated adversely because they refused to work on Easter Sunday they can [raise a personal grievance](#).

Opening on a restricted trading day is an offence

Shops that don't fit into one of the exemption categories, or are not within an area under which a territorial authority has made a local Easter Sunday shop trading policy, commit an offence if they open and trade on restricted shop trading days. The "occupier" of the shop may be liable for a fine of up to \$1,000. The occupier of a shop includes:

- Any agent, manager, supervisor, person acting or apparently acting in control of the shop;
- Any hawk or person who carries on business by selling goods, or offering goods for sale by retail, or delivering goods to a customer; otherwise than in a shop.

The effect of Mondayisation on shop trading restrictions

Restricted shop trading for ANZAC Day only occurs on 25 April. Restricted shop trading for Christmas Day only occurs on 25 December.

The **Mondayisation** of a public holiday for an employee has no effect on shop trading restrictions. The trading restriction isn't Mondayised and shops don't have to close twice. In the event that ANZAC Day or Christmas Day fall on a Saturday or Sunday:

- Shops must close on the 25 April or 25 December because of restricted trading (unless they can open with conditions or have an area exemption)
- Shops can open with no restrictions on the following Monday (even if the holiday is Mondayised for some or all of the employees).

Opening on a restricted trading day has no effect on ability to sell alcohol

Note that shop trading provisions allowing a bar, cafe or restaurant to open on restricted trading days to sell goods such as food, have no effect on the conditions for the sale and supply of alcohol on these days (including Easter Sunday). The Sale and Supply of Alcohol Act 2012 continues to apply and premises selling and supplying alcohol (such as bars, some cafes and restaurants) must comply with it. This means they are not permitted to sell alcohol on restricted trading days unless this is with a meal. For more information about the Sale and Supply of Alcohol Act 2012, visit [Alcohol.org.nz](https://www.alcohol.org.nz).

Scenarios

Employer who can't open for business on Easter Sunday but wants employees to work

Joyce owns a shop (a supermarket) and employs a large number of staff. The shop can't open for business on Easter Sunday because the local council doesn't have a policy in place for this. Even though the shop won't be open for business, Joyce wants employees who are normally rostered to work on Sundays to come to work on Easter Sunday and do a stocktake. Easter Sunday is not a public holiday so Joyce knows that employees will only receive their normal pay if they work and they won't get an **alternative holiday**.

Even though the shop can't open, the Easter Sunday employer and employee rights and responsibilities still apply. Because she wants them to work on Easter Sunday, Joyce must notify the employees of their right to refuse to work at least four weeks (and no earlier than eight weeks) before Easter Sunday. She can't compel the employees to work or treat them adversely if they refuse. If they want to refuse to work, the employees need to notify Joyce no later than 14 days after they get their notices from her.

Cafe with historic exemption opening on Easter Sunday

A Queenstown cafe will be open for business because of a historic exemption and wants one of its employees to help out on Easter Sunday. Historic exemptions (that were made under the Shop Trading Hours Act 1977) remain valid; therefore a shop covered by an exemption, can still open on Easter Sunday (even in a district without a local policy).

Shop employees now have the right to refuse to work on Easter Sunday and therefore the employer must notify the employee of this right at least four weeks and no earlier than eight weeks before Easter Sunday. The employer can't compel the employee or treat them adversely if they refuse. If they do want to refuse, the employee has to notify the employer no later than 14 days after they get the notice from the employer.

Employee who refuses to work on Easter Sunday and is treated adversely

Geri works in a service station and her employer Greg asks her to work on Easter Sunday. Six weeks before Easter Sunday, Greg gives Geri notice that she can refuse to work. Two days later, Geri gives a notice to Greg saying that she is refusing to work on Easter Sunday. Greg tells Geri that if she won't work on Easter Sunday then she will be dropped from the Sunday roster permanently. Greg is treating Geri adversely because of her refusal to work on Easter Sunday and Geri successfully brings a personal grievance claim against Greg.

Employee agrees to work on Easter Sunday

Five weeks before Easter Sunday Hilary was emailed by her employer at the dairy where she works, asking her to work on Easter Sunday. This email also notified Hilary of her right to refuse work on Easter Sunday. Hilary decides that she wants to work (so she doesn't need to notify her employer that she is refusing to work). Easter Sunday is not a public holiday so Hilary will be paid her usual pay for working on a Sunday (unless Hilary and her employer agree to a greater rate of pay for this day). Hilary will not get an alternative holiday, because Easter Sunday is not a public holiday.

Factory open on ANZAC Day

Linda work in a plastics factory assembling goods. Her employment agreement doesn't state that she can be required to work on public holidays but she has agreed to work a half shift from 8am to 12pm on ANZAC Day (Tuesday). ANZAC Day is a public holiday, so Linda will receive public holiday entitlements of four hours pay, at time and a half for the hours she works, and a full day's alternative holiday (Tuesday is an otherwise working day for Linda). The restricted trading provisions on ANZAC Day have no effect on Linda's employer (or Linda) because her employer is not a shop.

Mondayisation of ANZAC Day

Lyn and Tony work for Keith who runs the local dairy. They both have set days and hours. Lyn works Monday to Friday and Tony works Saturday and Sunday from 8am-4pm each day. ANZAC Day falls on a Sunday. The local

supermarket will be closed in the morning due to restricted shop trading, and Keith thinks it will be a busy day so he asks Lyn if she can help out Tony and come into work.

Lyn doesn't normally work on Sunday, so her ANZAC Day public holiday is Mondayised and the benefits apply to the Monday instead of the Sunday, even if she works on the Sunday. Because of this, if Lyn works on the Sunday, she will receive her normal pay for working a Sunday and will not get an alternative holiday. She still gets Monday off on full pay because her ANZAC Day is Mondayised (or if she works on Monday, she will be paid time and a half for the hours worked and will get an alternative holiday).

Tony normally works on a Sunday so ANZAC Day is not Mondayised and he receives his eight hours pay at time and a half for working Sunday and also receives an alternative holiday. If Keith decided not to open on ANZAC Day, Tony would receive a day off on his usual pay. The restricted shop trading days have no effect on Mondayisation.

Mondayisation of Christmas Day

Isobel works for Fiona in Fiona's Fashions shop from Monday to Friday. Hana also works for Fiona, but only on Saturday and Sunday. This year Christmas Day falls on a Saturday. Fiona's Fashions can't open on 25 December because of restricted shop trading which always applies on the calendar date of the public holiday, in this case 25 December and is never Mondayised. Fiona can open the shop on Monday 27th December.

Isobel doesn't work on a Saturday, therefore the Christmas Day holiday is Mondayised for her. This means that Isobel has Monday (the 27th December) as her Christmas Day public holiday and she will have a paid day off work on Monday. If Isobel works on the Monday, she will be paid time and a half and will be entitled to an alternative holiday because Christmas Day is Mondayised for her.

Hana usually works on a Saturday so the Christmas Day holiday isn't Mondayised for her. Fiona can't open the shop on the Saturday (25 December) because restricted shop trading applies, so Hana will have the day off on Christmas Day on full pay. If Hana agrees to do a shift on Monday to help Fiona out, she would only be paid her usual rate of pay and wouldn't get an alternative day because her Christmas Day holiday was on the Saturday.

Tools and Resources

Easter Sunday trading template letter for employees - PDF 53KB

Employees intending to refuse to work on Easter Sunday can use our template letter as a guide.

Easter Sunday trading template letter for employers - PDF 84KB

Employers can use our template letter as a guide when informing employees of their right to refuse work on Easter Sunday.

Leave and holidays guide - PDF 1.8MB

A guide to employees' minimum leave and holiday entitlements.

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Page last revised: 01 April 2020

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