

A-Z Guide

SHOP TRADING RESTRICTIONS



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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
- The consequences of breaching the restrictions

Introduction

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

Most organisations will need to consider their obligations to their employees before making any decisions. The Act only limits your ability to trade; it does not limit your ability to provide work for employees. However, the restricted days are generally also public holidays (besides Easter Sunday), so employees who work will be entitled to payment for the day in accordance with public holiday law from the Holidays Act 2003.

The shop trading restrictions ("the Restrictions") have exceptions which allow exempted retailers to trade on the restricted days. If your organisation is exempted from the Restrictions, you can open as usual and provide work for your staff. A retailer who is not exempted from the Restrictions, but opens for trade on any of the restricted days, has committed an offence. Individuals and organisations that breach the law can be fined up to \$1,000 for each offence.

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 those, where goods are kept, sold, or offered for sale, by retail.

- It includes an auction mart, a barrow, a stall, or another subdivision of a market.
- It excludes a private home where the owner or occupier's effects are being sold (by auction or otherwise); and buildings or places where the only business carried on is:
 - selling by auction, any or all of agricultural products, pastoral products, and livestock
 - selling goods to people who are dealers, and buying the goods to sell them again

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

Good Friday

Easter Sunday

Christmas Day

ANZAC Day – only before 1pm.

In the event that ANZAC Day falls on a weekend and is transferred to Monday, the transfer *will not* affect the shop trading restrictions, which still apply on the real date of 25 April.



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 its goods for sale 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 is one of the following:
 - Selling food, drinks, household items, personal items, motor vehicle fuel, oil, parts or accessories
 - A shop that sells mainly: souvenirs, duty-free goods to people intending to take them overseas, food ready to be eaten
 - A bookstall at a public transport terminal
 - A pharmacy
 - A shop at an exhibition or show.

Some geographical areas also have exemption orders that exempt their shops. The exempted areas tend to be tourist resorts such as Taupo and Queenstown. Exemptions are legacy law, so it is no longer possible for shops covered by area exemptions to change them, or for new exceptions to be granted.

Trading on Easter Sunday

As well as the main Restrictions, 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. Provisions in an employment agreement requiring a shop employee to work on Easter Sunday, or to be available to accept any work, are unenforceable.

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. The relevant timelines are:

- Employee started more than 4 weeks before the relevant Easter Sunday: notice is no earlier than 8 weeks, and no later than 4 weeks, before the Easter Sunday.
- Employee started 4 weeks or less before the relevant Easter Sunday: notice is as soon as is reasonably practicable after the shop employee's employment with the employer starts.

A shop employee who intends to refuse to work on Easter Sunday must give notice to their employer of that intention in writing. The relevant timelines are:

- Employee started more than 14 days before the relevant Easter Sunday: notice is no later than 14 days after the date on which the shop employee receives a notice.
- Employee started 14 days or less before the Easter Sunday: notice is as soon as is reasonably practicable after receiving the notice from the employer.

These notices in writing must be either delivered to the employee/employer in person, sent by email, or in the manner of giving notices that is specified in the shop employee's employment agreement.

Shop Trading Restrictions

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. This is if the employer does any of:

- 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
- Requires the shop employee to work on Easter Sunday, without giving the shop employee notice of their right to refuse.

If an employer breaches the above, a shop employee can raise a personal grievance under the Employment Relations Act 2000.

Garden centres are exempted from from Easter Sunday Restrictions. Your business may also be exempt through a local Easter Sunday shop trading policy that your territorial authority has in place. This will permit shops to open on Easter Sunday in an area comprising the whole or any part or parts of its district. The policy must not be conditional, such as permitting shops to open only for some purposes, only some types of shops in the area to open, or times at which shops may or may not open.

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

Employer's Obligations

Unrestricted employers

If your organisation is exempted from the Restrictions, 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. **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 you may have a default obligation to provide them with work, or pay the employees even if work cannot be provided. An employer and employee can agree otherwise.

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

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

Offences

The Act makes it an offence for any shop outside 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. Only exempt organisations are otherwise. Most of those days are also public holidays through 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 need to be considered.

If you have any other question in relation to public holidays, shop trading hours, or whether you have an obligation to provide work on a particular day, you can contact our employer advisors in the AdviceLine for telephone advice and assistance:

- **0800 300 362** if calling in New Zealand / **1800 300 362** if calling from Australia
- **advice@ema.co.nz**

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your 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.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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Published: July 2024

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