



restaurant
association
of new zealand

business resource.

Easter Trading Guide: 2021

thought for food.

What dates do the Easter public holidays fall?

The public holidays over the Easter period change from year to year. The dates for 2021 – 2022 are listed below:

Public holiday	2021	2022
<i>Good Friday</i>	2 April	15 April
<i>Easter Monday</i>	5 April	22 April

Easter Sunday is NOT a public holiday (although trading restrictions do apply on Easter Sunday). This means that those employees who normally work on Sunday are not entitled to a paid day off, or time and a half for the hours they work (unless this is provided for in their employment agreement).

What do your employees get paid?

- If an employee usually works on a Friday or Monday (it is an “otherwise a working day”), and you require them to work on these public holidays, they will be entitled to be paid time-and-a-half for the hours that they work, plus they will receive one paid day in lieu/alternative holiday to take as a day off in the future.
- If they do not work the day, but would normally work, they should be paid (that is, they should be paid either their relevant daily pay or average daily pay).
- If an employee doesn’t normally work on these days but you require them to on either Good Friday or Easter Monday (or both), they will get paid time-and-a-half of their usual hourly rate for the hours that they work. They will not receive a day in lieu / alternative holiday for working, as the public holiday(s) do not fall on an “otherwise working day” for them.

Not sure which days are otherwise working days for an employee?

It can often be difficult to determine whether a public holiday falls on an ‘otherwise working day’ for an employee. This is particularly important when establishing an employee’s entitlements over a public holiday. If it is not clear whether a day would otherwise be a working day for an employee, the employer and employee must try to reach an agreement by taking into consideration the factors listed in the Holidays Act 2003. If an agreement cannot be reached, a Labour Inspector can decide.

Some of the factors you should consider are:

- What the employment agreement says
- The employee's work patterns
- The employer's rosters or similar systems
- The reasonable expectations of the employer and employee as to whether the employee would (have) work(ed) on the day concerned
- Whether the employee works for the employer only when work is available

In summary, there is no hard and fast rule. A genuine consideration of all the factors is required by the employer. In highly variable roster situations, it may be expected that an employer review 3-6 months of work history to help form their decision about work patterns and otherwise working days. The Restaurant Association can provide further guidance on this.

When can you open?

While Easter Sunday is not classed as a public holiday it is a restricted trading day for some businesses (along with ANZAC Day until 1pm, Good Friday and Christmas Day). The starting point is that every shop (which includes a restaurant, café, bar, or other food business) must remain closed on Easter Sunday unless it falls into one of the exceptions. One exception is a shop whose principal business is selling prepared or cooked food ready to be eaten immediately in the form in which it is sold, and another, is if the shop is located in a district, or part of a district, in which a local Easter Sunday shop trading policy permits shops to open on Easter Sunday.

For a business in the hospitality industry the Act says they may open if they are selling: "prepared or cooked food ready to be eaten immediately in the form in which it is sold". For example, a coffee house in which someone orders from the menu, and the meal is prepared and consumed on-site, will not have an issue opening on these days.

The types of shops which can open on these restricted trading days are therefore as follows:

- 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. Please note, being able to open on Easter Sunday under a local territorial authority policy doesn't necessarily mean a shop can open on Christmas Day, Good Friday or Anzac Day before 1pm.

Businesses located in Mall complexes will often be restricted due to the affected opening hours of the Mall (and you might want to give us a call to discuss on 0800 737 827).

Shops that can open with conditions, provided they meet certain conditions

A business in the hospitality industry falls under the category of a shop that can open with conditions provided they meet certain conditions. As we have listed above, the Act says that a hospitality business may open if they are selling: "prepared or cooked food ready to be eaten immediately in the form in which it is sold". For example, a restaurant in which someone orders from the menu, (the meal is prepared and consumed on-site) does not have an issue opening on these days. However, a deli with food for sale that requires further preparation in any form by the customer before consumption would have some restrictions.

Other types of shops which may meet the conditions, include:

- **Shops, such as dairies and service stations**
- **Shops** selling mainly souvenirs, duty-free goods, food ready to be eaten
- **Bookstalls at public passenger transport terminals**
- **Pharmacies**
- **Shops at genuine exhibitions and shows**
- **Garden Centres**

Area exemptions

Some shops trade in areas covered by area exemptions issued by the former Shop Trading Hours Commission under previous law. Generally, these exemptions apply to tourist resorts such as Queenstown and Taupo. These shops may still open on all or any of the restricted days, but only if their exemption order allows them to open. Shops covered by area exemptions can't change them, and no new exemptions can now be granted.

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

Since August 2016, territorial authorities (city and district councils) may 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 (MBIE).

Can you sell alcohol on the restricted days?

The Sale and Supply of Alcohol Act 2012 also applies restrictions to trade over the Easter period (on Good Friday and Easter Sunday). These restrictions generally prevent bars and pubs selling or supplying alcohol on Good Friday and Easter Sunday (this restriction also applies until 1pm on ANZAC Day). However, for restaurants and cafes with liquor licences, your regular trading should be unaffected. So long as your customers are “on your premises for the purposes of dining”, you are free to provide them with a drink to accompany their meal.

What if my employees do not want to work over Easter?

Legislation that came into force in 2016, recognised that Easter Sunday continues to be a day of significance across New Zealand and some people may prefer not work on this day. Because of this, all shop employees (this includes restaurants and cafes and takeaway food outlets) will be able to refuse to work on Easter Sunday without any repercussions for their employment relationship. Not only can a shop employee refuse to work on Easter Sunday, but they are also not required to provide the employer with a reason for refusing to work on Easter Sunday. There are special responsibilities that employers and employees must follow if an employer wants a shop employee to work on Easter Sunday and this is detailed below.

For the two public holidays over the Easter period, Good Friday and Easter Monday, (as with all public holidays) your employment agreement will guide you on the process for asking people to work on those days. For example, the terms of the Restaurant Association’s current employment agreement obtain an employee’s agreement to work on public holidays.

It states: You may be requested to work on a public holiday when you are rostered to do so. You will be specifically advised of this in advance.

Please note that a provision in a shop employee’s employment agreement that requires the shop employee to work, or to be available to accept any work that the employer makes available (an availability provision), would be unenforceable against the shop employee on Easter Sunday.

Employer responsibilities with regards to requesting employees to work on Easter Sunday

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, (e.g. 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. If you want to close on this day, there will be particular rules that apply. Please call us at least three weeks prior to the relevant Easter Sunday.

Employers must:

- Notify the employees in writing that they have a right to refuse to work on Easter Sunday. Restaurant Association members please contact us on 0800 737 827 for a sample notification letter.
- 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 (it is not specified in the Restaurant Association employment agreement). This must be done at least four weeks before 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 soon as is reasonably practicable.
- If an employer doesn't follow the notice requirements and requires an employee to work on Easter Sunday or exerts undue influence to get the employee to agree to work, this is considered to be compelling them to work and the employee could bring a personal grievance.
- A shop employee's employer must also not treat the shop employee adversely because the shop employee refuses to work on an Easter Sunday, or the employee has grounds to raise a personal grievance over this. This includes, but is not limited to, if the employer makes it a condition that the employee must work on Easter Sunday to have continuing employment with the business.

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 does not 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.

Offences and penalties

If a shop does not clearly fit into one of the exempted categories listed in this guide, it is an offence to open and trade during any time the law restricts trading.

The occupier of a shop may be liable for a fine of up to \$1,000. This includes the owner, proprietor or any agent, manager, supervisor, or person acting in the management or control of a shop. In the event of a prosecution, the occupier of the shop must prove that the shop comes within one of the exemptions and is therefore able to open. Any interested person or group can prosecute.

Applying Surcharges

The Fair Trading Act 1986 is the governing legislation and the Commerce Commission is the body ensuring that businesses are compliant under the Act.

The Commerce Commission states it is imperative for businesses to be clear in their communication regarding the reason for surcharges.

Generally speaking, a customer may expect that a public holiday might incur a surcharge. In practice it may be unlikely that the business would apply a surcharge on a day that was not the calendar date of the public holiday. However, where the business would like to have the surcharge on another date, for example where it was Mondayised, this must be for a valid reason, which is applicable to the business. In general, it may not be considered valid to apply a surcharge for both days of the same public holiday where it is Mondayised. The Commerce Commission has indicated that it is likely to be misleading and a breach of the Fair Trading Act for businesses to charge a public holiday surcharge on both days when they do not actually incur additional costs. In addition from a business practice perspective it may be problematic to charge a surcharge for both days. Overall if a business indicates a surcharge covers additional costs (such as increased staff costs) the surcharge should not exceed those costs, and the costs should actually be incurred by the business.

The Commerce Commission states it is imperative that businesses are clear in their communication regarding the reason for the surcharge. It should be accurately described and not be capable of

misleading customers. It is important that you make sure customers are aware of any surcharge. Putting a notice on the till and having your staff inform them of the public holiday surcharge are both useful ways of managing this. However, you may need to implement additional measures depending on your business. It is important that customers know a surcharge is in place before they pay. This could involve having a sign at the door and/or window and indicating the surcharge on menus.

Customers who consider they have been misled about the reason for a surcharge, or the amount of a surcharge, or who believe that the surcharge has not been adequately disclosed, can make a complaint to the Commerce Commission.

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