

Shop Opening Hours

This circular:

- Summarises the law requiring all shops to close on three and a half days of the year.
- Explains the exemptions provided under the Shop Trading Hours Act Repeal Act 1990.
- Discusses the exemptions issued prior to 1990 by the Shop Trading Commission.

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This circular is part of the information service provided for the NZ Retailers Association members. For more information please phone our helpline number: **0800 472 472**, or visit our website, **www.retail.org.nz**

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This circular addresses only the shop closing requirements under the Shop Trading Hours Act Repeal Act 1990. It does not address any limitations under the Sale of Liquor Act 1989 or any local body bylaws.

The Shop Trading Hours Act Repeal Act is very clear on the times shops must be closed. Unless a shop (as defined by the Act) is specifically exempted, it must be closed on three and a half days of the year:

- Christmas Day
- Good Friday
- Easter Sunday; and
- Anzac Day until 1 pm.

The Act is quite separate from the Holidays Act 2003 and employers need to have regard to the effect on employees. For example, the requirement for a shop to close may conflict with an employer's obligation to an employee who would normally work that day.

Easter Sunday is not a public holiday so causes some confusion. The employer will need to plan ahead. If work cannot be provided, agreement on a suitable alternative may be required. Call the helpline for advice on this issue.

Anzac Day causes some problems by virtue of the half day closing. The whole of Anzac Day is a public holiday and staff who work on any part of the day are entitled to benefits accordingly.

Remember this circular deals only with the Act requiring the closing of shops. For information on staff employment and public holiday and payment entitlements, see the Association's circular 'Holidays Act 2003 -A Retailers Guide' or contact the Helpline on 0800 472 472.

What is a shop?

A shop is defined by the Act as any building, place, or part of a building or place, where goods are kept, sold or offered for retail sale. It includes an auction mart, barrow, stall or subdivision of a market.

It does **not** include a private home where the owner or occupier's effects are being sold, an auction for agricultural products and/or livestock, or a building where sales take place to dealers only (wholesale).

By this definition a video rental, hire pool, workshop, training school or hairdressing salon are not shops unless goods are sold or offered for retail sale.

Leaseholder protection

The Act states that mandatory opening provisions in a lease, licence, contract, covenant or agreement entered into or made before 1 August 1990 shall not be construed to require a shop to open on a Sunday, New Years Day, January 2nd, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day or the day observed locally as Anniversary Day.

The Act does not however prevent the renegotiation of leases to require the opening of shops on the above-mentioned three and a half days. It is unlikely that many leases made before 1 August 1990 are still in effect.

Enforcement

This legislation is enforced by the Labour Inspectors in the Department of Labour. Any interested person or group can seek enforcement of the restrictions on trading hours by lodging a complaint with the Inspectors.

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Protection for Certain Employees

Members should be aware that the Shop trading Hours Act Repeal Act 1990 contains protective provisions intended to ensure that staff work on any of the protected days only by agreement.

The 1990 Act originally contained extensive restrictions on employment on a Sunday, a public holiday or at night but these have largely been overtaken by changes to employment law in the intervening years. For the most part, the effect of those provisions is now limited to employees working on Easter Sunday as the Holidays Act provides protection for the other non trading days. Employers are required to reach agreement with each employee whom they require to work on Easter Sunday.

Exemptions under the Act

The Act provides five categories of exemption allowing specified shops to open on the days when all other shops are required to close.

1. Specific shops

Any pharmacy. (It does not matter what else it sells.)

2. Shops in specific locations:

- A shop in premises where a show devoted to agriculture, art, industry or science is being held.
- A shop at any public passenger terminal or station whose principal business is selling books, magazines and newspapers, or categories mentioned under 3 below.

3. Shops whose principal business falls into one of the following specific categories:

- duty free goods
- goods intended to be bought as souvenirs
- prepared or cooked food ready to be eaten in the form it is sold (eg bakeries, restaurants, takeaway food stores).

Note: Stores in this group may continue to sell any other goods when they are open provided that the principal nature of the business remains the sale of the listed categories of goods.

4. Shops which have for sale only specific goods in limited quantities

This covers dairies / convenience stores and petrol stations. The Act requires these shops to restrict the range of goods on sale strictly to:

- food
- drink
- household items
- personal items
- automotive fuel
- automotive lubricant
- any automotive accessory that people may reasonably need to buy at any time.

In addition, the quantity of goods on sale must be not greater than that sufficient to meet the demands of travellers, visitors or locals.

Note: It is apparent that many shops which open under this exemption sell a wider range of product than the strict reading of the wording suggests. Court precedents have interpreted the definition in a realistic way that allows those shops to trade provided the overall quantity is realistic.

5. Garden centres – Easter Sunday only

A special exemption was introduced in 2001 for shops “whose sole or principle business is the sale of plants or garden supplies or both” to enable garden centres to open on Easter Sunday.

Exemptions Issued by the old Shop Trading Hours Commission

In addition, shops that continue to trade under the terms of an order of the old Shop Trading Hours Commission may open.

The Shop Trading Hours Commission operated until 1990 and issued exemption orders under the Shop Trading Hours Act 1977. Although that Act is repealed and the Commission long defunct, any such orders remain in effect to the extent that they apply to the three and a half days that are still restricted.

Most of the orders were specific to times and localities. Some pertained to shops in designated holiday resorts. Friction and problems have arisen where the boundary of the retail district has changed in the intervening years and where retailers in non-exempt localities feel the inequity of the situation. Nevertheless these exemptions remain valid today providing the certificate of exemption is displayed in the shop concerned. For a full list see the table opposite.

There is no procedure to obtain further exemptions as the Shop Trading Hours Commission was abolished in 1990 when the current law was enacted.

Summary

Shops must be closed on Christmas Day, Good Friday, Easter Sunday and until 1pm on ANZAC Day. Exempt from this are: dairies, service stations, souvenir shops, duty free stores; stores selling prepared or cooked food ready to be eaten immediately, bookstalls at public passenger transport terminals, pharmacies, and shops at genuine exhibitions and shows. These shops may open every day of the year. Specific exemptions issued under order of the Shop Trading Commission are still valid.

Related resources

Members may also want to refer to the Association’s circulars ‘Holidays Act 2003 -A Retailers Guide’ and ‘Public Holidays & Shop Closing Days’.

Members are welcome to call the Helpline on 0800 472 472 for assistance.

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Still Valid Section 18(2) Exemptions under the Shop Trading Hours Act

Town/Location	Exemption	Hours	Restrictions	OrderNo.	Date Issued
Auckland Parnell Road	Easter Sunday	10am-6pm	None	1828	12/7/89
Christchurch Arts Centre	Easter Sunday	10am-4pm	None	1815	26/4/89
Dunedin Carnegie Centre Moray Place	Easter Sunday ANZAC Day	7am-9pm	Only arts, crafts, children's toys & books (toys and books sold only while performances happening on the mezzanine floor)	1459	28/6/85
Hamilton Market Place Collins Road	Easter Sunday	9am-5pm	None	1202	8/4/83
Napier Harbour Market	Easter Sunday	10am-4:30pm	Only food, second-hand goods, industrial goods	1660	9/11/87
Nelson	Christmas Day Good Friday Easter Sunday ANZAC Day	Whenever Founders Park is open	Crafts only	1559	15/9/86
Paihia	Good Friday Easter Sunday ANZAC Day	7am-9pm	None	1174	10/10/81
Picton Mariners Mall	Good Friday Easter Sunday <i>(if a cruise ship is docked.)</i> ANZAC Day	7am-9pm	None	1750	7/10/88
Queenstown District	Good Friday Easter Sunday ANZAC Day <i>(after 12 noon)</i>	Any Time	None	1462 2156 2155	26/8/86
Tairua	ANZAC Day <i>(if Fri or Mon)</i>	8am-8pm	None	1551	9/12/86
Taupo Central	Easter Sunday	10am-3pm	None	1946	13/11/89
Thames Richmond Court	Christmas Day <i>(if Sunday)</i> Easter Sunday <i>(if in March)</i>	8am-5pm	Only full-time artists & crafts people, selling their own work at stalls	1480	6/8/83
Wanaka Pembroke Mall Stage I	Easter Sunday ANZAC Day	7am-9pm	None	537	22/6/82
Whangamata	ANZAC Day <i>(if Fri or Mon)</i>	8am-6pm	None	1550	25/9/86
Whitianga District	ANZAC Day <i>(if Fri or Mon)</i>	8am-8pm	None	1554	15/9/86

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