

Boxing Day Trading and Public Holidays

Presented by NSW Industrial Relations

BOXING DAY

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Retail Boxing Day Trading

What are Restricted Trading Days

The *Retail Trading Act 2008* recognises a number of 'restricted trading days', these are:

- Good Friday
- Easter Sunday
- Anzac Day (prior to 1pm)
- Christmas Day
- Boxing Day

History of Boxing Day Trading

- In 2015 the Act was amended to create a new, temporary conditional exemption permitting shops throughout NSW to trade on Boxing Day in 2015 and 2016.
- The condition is that staff have freely elected to work without being coerced, harassed, threatened or intimidated by or on behalf of the retailer.
- The Act also ensures that an owner or lessor of a shop must not require a shopkeeper to open their shop on Boxing Day.

Amendment for Boxing Day

- The Retail Trading Amendment (Boxing Day) Bill 2017 passed through Parliament on 20 September 2017
- The Bill removes the sunset clause and therefore permits shops to continue to be able to trade on Boxing Day and banks to be able to trade on Boxing Day, Bank Holiday and certain other public holidays provided **staff have freely elected to work**

Deciding to Trade on Boxing Day

NO

- The Act ensures that a landlord or lessor of a premises, or a person acting on their behalf, must not require a shopkeeper to keep a shop open for the purpose of Boxing Day sales.

YES

- All retail shops are freely able to trade on Boxing Day.
- Start planning and know your obligations.

Notifying and rostering staff on Boxing Day

- Importantly, a person is not taken to have freely elected to work on a restricted trading day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.
- This applies to **all persons staffing the shop** including salaried managers, contractors, whether covered by an industrial instrument or not even if the shop is not open to the public.

Staff have freely elected to work

What does that mean?

- You cannot direct **any staff** to work on Boxing Day.
- This includes Store Managers, Supervisors, Team Leaders, Clerical or Admin Staff and Contractors.
- Ensure your staff have freely agreed to work on Boxing Day.

Small Shop Exemption

- Small Shops generally are a sole business of no more than two owners and employing four or less employees.
- The Voluntary work provisions will not apply to these shops.

What is Undue Influence, Pressure or Coercion

- Undue influence or pressure is when an employer uses their power to try to influence or pressure an employee to work on Boxing Day
- It's unlawful for an employer to place undue influence or pressure on an employee who have not freely elected to work on a Boxing Day
- Coercion means forcing someone to do something against their will, for example, through fear, intimidation or threats
- A person can't be forced to work on Boxing Day for example, if an employee refuses to work, the employer can't:
 - * threaten to sack the employee
 - * threaten to demote the employee

Best Practice Process for Notifying and Rostering Staff

- It is recommended this process covering planning, notification, feedback and recruitment should be run each year over the period from August to October

Project retail sales and staffing need for Boxing Day

Notify staff that working on Boxing Day is not obligatory

Ask who is willing to work on Boxing Day for a holiday penalty?

Recruit short-term casuals to fill any Boxing Day Shortfall

Best Practice Process for Notifying and Rostering Staff

- Implementing a standard practice, computerised rostering systems that remind store employees that working on Boxing Day offers extra pay, but is purely on a voluntary opt in or opt out basis.
- In smaller stores a paper based system, should suffice to demonstrate compliance with both the letter and spirit of the law.

Volunteer to Work on Boxing Day

By signing this form, I freely offer my services to work at (store) on Boxing Day 20xx. I understand that I will be paid public holiday rates per the General Retail Industry Award. I also confirm there has been no pressure or coercion from the management in this regard.

(Sign as appropriate)

Name:..... Date:.....

Signed:.....

Form

Work on Boxing Day is Your Choice

All work on Boxing Day is voluntary.* Only people who freely elect to work are allowed to work on Boxing Day. It is against the law to require someone to work on Boxing Day.

I _____, employed at _____
(Name) (store) (suburb)

DO NOT volunteer to work on Boxing Day.

DO volunteer to work on Boxing Day. Please discuss hours of work with me.

*Note: the voluntary work provisions do not apply to 'small shops' as defined under the Retail Trading Act – generally 'small shops' are a sole business of no more than two owners and employing four or less employees. For further details see s8 of the Retail Trading Act 2008.

Regards,

(Signature)

✂ _____

I _____, employed at _____
(Name) (store) (suburb)

handed in a letter to _____ at my store telling them I
(Manager's name)

DO NOT want to work on Boxing Day.

DO want to work on Boxing Day.

I gave them the letter at the date and time below:

Date: _____

Time: _____

Regards,

(Signature)

(Manager's signature)

- Template form that could be used by retailers and their employees
- If you choose to use this form it is important that you and your employee both sign it
- Available on the NSW Industrial Relations website for download

Penalties

- If retailers coerce, harass, threaten or intimidate their staff to work on Boxing Day - significant fines of up to \$11,000 per person found to have been coerced to work apply.
- If landlords force a shopkeeper to open their shop against their will – significant fines of up to \$22,000 apply.

Scenarios

Scenario 1

- The Head Office of a major retailer with multiple locations throughout NSW has just sent a email to all Store Managers directing that all staff must make themselves available to work during the Boxing Day Sale
- Is this ok?

Response

- No. An employee has a choice to decide whether they want to work or not on Boxing Day.
- Store Managers who are unsure about the freely elect to work provisions should visit our website and read the Boxing Day Factsheet or contact our Boxing Day Hotline on 13 16 28 for more information.
- Again remember that a condition to trade on boxing day is that staff have freely elected to work.



Scenario 2

- Tom works as a full time sales assistant at a major electrical retailer. His employer has just published a roster for the Christmas and New Year period and he has noticed that he is rostered to work on Boxing Day which falls on a Tuesday this year, a day he normally works
- Is this ok?

Response

- No. An employee has a choice to decide whether they want to work or not on Boxing Day. An employee has not freely elected to work merely because they have been rostered to work.
- Retail workers and store managers who are unsure about the freely elect to work provisions should visit our website and read the Boxing Day Factsheet or contact our Boxing Day Hotline on 13 16 28.
- They will be advised that fines of up to \$11,000 per person found to have been coerced to work may apply.



Scenario 3

- Centre management at a large regional shopping complex have circulated a memo to all retailers within the centre directing them to open for trade on Boxing Day. They have cited the terms contained within lease agreements.
- Is this ok?

Response

- A landlord cannot compel a shopkeeper to open on Boxing Day.
- If you encounter a situation like this we would encourage you to call our Boxing Day Hotline on 131 628. An inspector will then liaise with centre management and advise that any provision of a lease or agreement that requires a shop to open for trade on Boxing Day is void.
- Fines of up to \$22,000 apply.



Public Holiday Penalties for the Retail Sector

Penalty Rates

Retail Award CI 29 Effective 1 July 2017

225%

- Full-time & Part-time

250%

- Casuals

(inclusive of casual loading 25%)

National Employment Standards (Division 10 Fair Work Act 2009)

- Employees have protections under the Commonwealth Fair Work Act where the NES recognises Boxing Day as a public holiday.
- The NES provides that an employee is entitled to be absent from his or her employment on a day or part day that is a public holiday if they normally work that day.

National Employment Standards (Division 10 Fair Work Act 2009)

- However, an employer may request an employee to work on a public holiday if the request is reasonable
- The employee may refuse the employer's request if
 - The request is not reasonable; or
 - The refusal is reasonable

Public Holidays In NSW

National Employment Standards (Division 10 Fair Work Act 2009)

The NES recognises the following as public holidays

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (Anzac Day)
- The Queen's Birthday Holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
- 25 December (Christmas Day)
- 26 December (Boxing Day)
- Any other day, or part day, declared or prescribed by or under a law of a state or territory to be observed generally within a state or territory or a region of a state or territory

Payment of Absence on a Public Holiday

Not Required to attend duty

- If the employee is absent on a day that they would work ordinary hours due to a public holiday occurring and the employee is not required to work, the employee must be paid at the employee's base rate of pay

During a period of Annual Leave

- If an employee is on a period of annual leave and a public holiday occurs during such leave and it is a day that the employee would have worked ordinary hours, they are to be paid at the employee's base rate of pay and not from their annual leave accrual

During a period of personal leave (s98)

- If an employee is sick on a day they would work ordinary hours and a public holiday occurs on that day, the employee is to be paid at the employee's base rate of pay for that day and not from their personal leave accrual
- May be subject to reasonable notice and evidence requirements of the employer

Standard Public Holidays are declared for the whole NSW state

- **New Years Day:** Additional day declared if on a Sat/Sun
- **Australia Day 26 January:** No Public Holiday if a Sat/Sun but following Monday will be gazetted
- **Good Friday:** The day publicly observed as Good Friday
- **Easter Saturday:** The day after Good Friday
- **Easter Sunday:** The Sunday following Good Friday
- **Easter Monday:** The Monday following Good Friday

NSW Public Holiday Act 2010

Standard Public Holidays are declared for the whole NSW state

- **Anzac Day 25 April**
- **Queens Birthday:** Second Monday in June
- **Labour Day:** First Monday in October
- **Christmas Day 25 December:** If Sat or Sun an additional public holiday the following Mon/Tues
- **Boxing Day 26 December:** If Sat or Sun an additional day the following Mon/Tues

Public Holiday Penalties

Modern Award Provisions

- Check your Modern Award
- A modern award may provide the ability to substitute that day or part day for another day or part day
- A modern award may provide for a penalty payment in addition to the ordinary hours payment (double time or double time and one half)
- No additional public holidays, picnic days or recognition of Melbourne cup for Hair and Beauty and Retail Sector
- Casuals are not entitled to payment unless they work the day
- Shift worker's may have additional provisions
- An employer and an award/agreement free employee may agree on the substitution of a day or part-day for another day or part-day

Public Holiday Payment

Penalties may apply in various circumstances depending on what you are covered by

- Check your Modern Award or Enterprise Agreement
- In a Modern Award an employee required to work on a public holiday may be required to be paid a penalty payment of double time or double time and one half or some other provision like another day off or day in lieu in addition to normal pay

Penalty Rates Recent Decision

Public Holiday Penalty Rates Effective 1 July 2017

Full-time & Part-time		Casual (inclusive of Casual Loading 25%)
Hospitality Award (cl. 32)	250 > 225	275 > 250
Restaurant Award (cl. 34)	250 > 225	250
Retail Award (cl. 29)	250 > 225	275/250 > 250
Fast Food Award (cl. 30)	250 > 225	275 > 250
Pharmacy Award (cl. 31)	250 > 225	275 > 250

Education and Compliance Activities

Where to Go

Fact Sheet

- NSW Industrial Relations has developed a Boxing Day 2017 Factsheet to help retailers and employees understand the practical effect of the key obligations conferred and conditions imposed by the Retail Trading Act 2008
- Available on our website at www.industrialrelations.nsw.gov.au

Make an Enquiry

- Phone Boxing Day Hotline 13 16 28
- Speak to our customer friendly NSW industrial Relations Officers

Lodge a Complaint

- Visit our website: www.industrialrelations.nsw.gov.au
- CLICK on lodge a complaint
- Use our online application form

Useful Contacts & Information

Workshop Program

- NSW Industrial Relations is working with NSW businesses to help them better understand their rights and responsibilities as an employer. Through a comprehensive workshop and webinar program NSW IR are providing employers with information and tools to deal with Industrial Relations issues and Human Resource issues
- Face to Face Industrial Relations and Human Resources Workshops include:

Industrial Relations:

- * Rights and Responsibilities
- * Workplace issues for Bookkeeper and Payroll
- * Various Modern Awards workshops including:
 - Health Professionals
 - Children's Services

Human Resources:

- * Managing Employees
- * Writing Workplace Policies
- * Bullying in the Workplace
- * Workplace Negotiations

Our Team



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Useful Information and Contacts

NSW Industrial Relations Boxing Day Hotline - 13 16 28

- Live and recorded webinars
- Workshop Program
- Long Service Leave
- Public Holidays

www.industrialrelations.nsw.gov.au

Fair Work Ombudsman - 13 13 94

- Fact Sheets, templates, pay tools and other resources for employers

www.fairwork.gov.au

Fair Work Commission - 1300 799 675

- Modern Awards
- Fair Work Act 2009
- Enterprise Agreements & Unfair Dismissals

www.fwc.gov.au

Upcoming Events

Goulburn - The Mercure Goulburn	26 Oct 2017	Thursday	09:30 - 10:30 AM
Goulburn - The Mercure Goulburn	26 Oct 2017	Thursday	11:30 - 12:30 PM
Queanbeyan – Best Western	26 Oct 2017	Thursday	09:30 - 10:30 AM
Queanbeyan – Best Western	26 Oct 2017	Thursday	11:30 - 12:30 PM
Gosford Golf Club	31 Oct 2017	Tuesday	09:30 - 10:30 AM
Gosford Golf Club	31 Oct 2017	Tuesday	11:30 - 12:30 PM
Hurstville - Club Central Hurstville	01 Nov 2017	Wednesday	09:30 - 10:30 AM
Hurstville - Club Central Hurstville	01 Nov 2017	Wednesday	11:30 - 12:30 PM
Campbelltown RSL Club	02 Nov 2017	Thursday	09:30 - 10:30 AM
Campbelltown RSL Club	02 Nov 2017	Thursday	11:30 - 12:30 PM
Springwood Sports Club	02 Nov 2017	Thursday	12:00 - 01:00 PM
Wollongong - Adina Apartment Hotel	08 Nov 2017	Wednesday	12:00 - 01:00 PM
Bankstown Sports Club	09 Nov 2017	Thursday	09:30 - 10:30 AM
Bankstown Sports Club	09 Nov 2017	Thursday	11:30 - 12:30 PM
Liverpool	09 Nov 2017	Thursday	09:30 - 10:30 AM
Liverpool	09 Nov 2017	Thursday	11:30 - 12:30 PM