

FACTSHEET: WORK ON SUNDAYS, RELIGIOUS DAYS OF REST AND PUBLIC HOLIDAYS

The law in Vanuatu limits employers' ability to require their employees to work on Sundays and public holidays. This does **not** mean that employees cannot work on these days. There are also certain types of work that are several exceptions to this general rule. This factsheet sets out these exceptions and options for employees working on these days.

Whilst the law reflects that Sunday is the main religious day of rest in Vanuatu, you should remember that other religions may follow another day of rest. For example, Seventh Day Adventists (SDAs) recognise Saturday as their day of rest. Employers should not discriminate on the grounds of religion. However, if it is important to your business that employees are available to work on particular days it is a good idea to ask questions such as, "Can you work on Saturdays?" or "Are you unavailable to work on certain days (such as Friday or Saturday)?" before employing staff. These questions are not directed at the religion of the employee, but are instead directed at their availability for work so are not discriminatory.

It is also a good idea to state work days that the employee may be expected to work in the employment contract. Doing these things helps to make sure that both the employer and the employee have thought about, and agreed to, what days can be worked.

1. CAN I REQUIRE AN EMPLOYEE TO WORK ON A SUNDAY?

In general **no** employee can be required to work on a Sunday or a public holiday (section 23(1)). There are some exceptions (section 23(2)).

Employees in the following areas **can** be required to work on Sundays or public holidays (section 23(2)):

- businesses engaged in the transport of passengers or goods by road, sea or air, including the handling of passengers or goods at docks, quays, wharves, warehouses or airports;
- businesses providing public utilities including provision of water or gas, generation or supply of electricity, postal and telecommunication services, sewerage and similar services;
- hotels, guest houses, bars, restaurants, clubs and similar establishments;
- theatres and places of public amusement;
- establishments for the treatment and care of the sick, infirm, destitute or mentally unfit;
- newspaper and radio broadcasting undertakings;
- animal husbandry;

Employers can also apply to a *labour officer* to have other work approved for compulsory Sunday work, on the basis of proper management of the undertaking and the convenience of the public (section 23(2)(h)).

Bizniz runs a tour company for tourists. Tours run on Sundays. Can Bizniz require staff to work on Sundays?

Tour companies are not in the list of businesses that are automatically allowed to require staff to work on Sunday. However, proper management of tourist businesses may require them to be open on Sundays. Also, Sunday opening is for the convenience of tourists, who are "the public". Tour companies can seek an exemption from a labour officer to require compulsory Sunday work.

2. CAN I ASK AN EMPLOYEE TO VOLUNTARILY WORK ON A SUNDAY OR PUBLIC HOLIDAY?

Yes. Employees can voluntarily agree to work on a Sunday or a public holiday (section 23(1)). As a good employer you must be careful not to pressure an employee into feeling that he or she must agree to work or lose his or her job, however. Such pressure is ill-treatment and may give the employee the legal right to leave and sue you for damages – see the *factsheet: termination of open ended contracts by notice*.

A salaried Bizniz employee usually works on Sundays as he takes Saturdays off on religious grounds. Does Bizniz need to change his employment contract to cover this?

It is advisable to put a clause in his employment contract to show that he has voluntarily agreed to work on Sundays as part of his normal work days. This will avoid any claims, in the future, that working on Sundays was not voluntarily agreed to.

3. IF I REQUIRED MY EMPLOYEE TO WORK ON A SUNDAY OR PUBLIC HOLIDAY MUST I PAY HER A BONUS OR GIVE HER LEAVE AT A DIFFERENT TIME?

If an **employee has voluntarily worked** on a Sunday or public holiday there is no requirement to pay a bonus or provide additional leave. However, in practice, an employer offering a bonus or other leave may act as an incentive for an employee to volunteer. This is a mutually agreed benefit. The nature of the benefit (for example, being paid more than the regular rate of pay for work on a public holiday) should be stated in the employment contract.

If an **employee was required to work** on a Sunday or public holiday due to the area they work in then the employee must be given an equivalent period of time off work on another day (section 23(3)). There is no requirement that this equivalent time off work is paid.

Nor is there any legal requirement that a bonus rate (sometimes referred to as a penalty rate) be paid for work on Sundays or public holidays that falls within the employee's normal hours of work. The law only provides a rate if the hours of work exceed the normal hours of work. This rate is 1 ½ times the normal rate of pay (section 26(1)(a)).

Bizniz runs a resort and requires employees to work Sundays, as part of a roster. Employees work 40 hours a week and work for 8 hours on days that they are rostered to work on. If employees are rostered on for Sunday then they are rostered off for Monday. Bizniz does not pay any Sunday work bonuses. Is this allowed?

Because the business is a resort employees can be required to work on Sundays.

Because employees are only working 40 hours a week their work on Sundays does not exceed the normal maximum hours of work. Bizniz does not have to pay overtime, therefore.

Employees who work on Sunday are rostered off on Monday. This gives the employee time off on another day.

Bizniz's approach is in accordance with the law.

4. IF A PUBLIC HOLIDAY FALLS ON A REGULAR WORKING DAY AND MY EMPLOYEE DOES NOT WORK, DO I HAVE TO PAY HIM FOR THIS DAY?

The law is silent on this matter.

If an employee's payment is a **monthly or yearly salary** that is not dependent on the number of hours worked, he or she will still get paid the same, regardless of public holidays.

However if an employee's wages are based on the **number of hours worked**, then there is no legal requirement that wages be paid if an employee does not work on a public holiday.

Grey area: This interpretation of the law has not been tested in court. Some long-standing employers do choose to pay wage earning employees for public holidays that they do not work.

Joe works for Bizniz His usual hours of work are Monday – Friday 9 am – 2 pm (5 hours per day). He is paid weekly at a (net) rate of 200 vatu per hour/1000 vatu per day. One week there is a public holiday on Wednesday. Joe does not work that day. His pay at the end of the week is only 4,000 vatu. Is this legal?

The plain meaning of the words in the Act indicates that this is legal.

5. I HAVE AN SDA ON STAFF WHO HAS TOLD ME THAT HE WILL NO LONGER WORK ON A SATURDAY. CAN I REQUIRE HIM TO DO THIS?

This matter has come to court in Vanuatu (*Kelep v Sound Centre* [2008] VUSC 13). The answer is that it depends on the terms of the employment contract. If part of the terms of the employment contract is that the employee will be required to work some or all Saturdays then becoming unavailable for Saturday work means that he is breaching the employment agreement. It does not matter whether this agreement is oral or in writing. Working Saturdays in the past is sufficient to establish an implied term that being available for work on Saturdays is part of the employment agreement.

In practice you cannot force an unwilling employee to work on a Saturday, and it is also undermines a cooperative working relationship. In this situation a good employer will try to keep the employee on but vary his days of work to suit his religious requirements. If it is not possible to reach an agreement as to days of work then the employer can terminate the employment relationship on the grounds that the contract is no longer being fulfilled by the employee, but this should only be done as a last resort.