



Right of Entry - Federal Union Officials - What to do when visiting a site

Union officials do not have an automatic right to enter workplaces. A union official who wishes to enter premises must hold a federal right of entry permit and comply with the right of entry provisions in the *Fair Work Act 2009* before they can exercise that right to enter a workplace.

YOUR RIGHTS

Your rights as a permit holder are established by the *Fair Work Act 2009* (FW Act). Legislation came in to effect 1 July 2009 introducing new right of entry provisions.

Right of entry clauses cannot be included in enterprise agreements. If right of entry clauses are included in enterprise agreements, they will have no effect.

REASONS TO ENTER A SITE

If you are a federal permit holder you may enter a site to:

- investigate, on reasonable grounds, a suspected breach of the FW Act, or a term of a fair work instrument, that relates to, or affects, a member of your union who performs work on the premises
- hold discussions with employees if work is being done at the site by members or workers eligible to be members of your union
- perform inspections and functions under an occupational health and safety (OHS) law of a state or territory, provided you hold a federal right of entry permit.

REQUIREMENTS FOR YOU TO ENTER A SITE

You must:

- hold a valid federal permit
- provide at least 24 hours written notice of entry unless entry is under an OHS law*
- show your federal permit and notice of entry if requested
- only visit during working hours and hold discussions during meal times or other breaks
- when entering to investigate a suspected breach, provide sufficient details and facts which give rise to the breach on the notice
- enter on a day specified in the entry notice.

**The FW Act does not require 24 hours written notice if entry is under OHS law except if you wish to inspect employment records. Where entry is under an OHS law, you must hold a federal permit and comply with the right of entry provisions in the FW Act. In addition you must comply with any requirements in the relevant state or territory OHS law.*

If you do not meet these requirements you do not have the right to enter the site.

CIRCUMSTANCES WHERE YOU HAVE NO RIGHT OF ENTRY

You will not have a right to enter a site:

- if you do not have a federal right of entry permit
- if you do not produce your federal permit or entry notice if you are requested to do so.

YOUR RIGHTS WHEN YOU ARE ON YOUR SITE

As a union official you have specific rights when you are lawfully on site. In investigating suspected breaches you may:

- inspect any work, process or object relevant to the suspected breach
- interview employees who are members or eligible to be members of your union who agree to be interviewed about the suspected breach
- require the occupier or an affected employer to allow you to inspect, and make copies of relevant **records of your members** that are directly relevant to the suspected breach and that are kept on the premises or accessible on a computer
- serve a notice requiring the production of your **member records** at a later date
- require the occupier or an affected employer to allow you to inspect, and make copies of any relevant **record of a non-member** that is directly relevant to the suspected breach and that is kept on the premises or accessible on a computer provided the non-member has consented in writing or an order has been made by Fair Work Australia.

YOUR OBLIGATIONS

You must comply with the employer's reasonable requests about:

- the rooms or areas you may use on the site for holding discussions or conducting interviews
- the route you should take to access those rooms or areas
- OHS.

WHAT TO DO IF YOU HAVE BEEN REFUSED OR DELAYED LAWFUL ENTRY ONTO A SITE

- contact the ABCC hotline for assistance regarding right of entry issues on 1800 003 338.

FURTHER INFORMATION

Fact sheets and other reference material is available from the ABCC:

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50