



Right of Entry - What to do when a union official comes on your 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. Even with the permit, conditions apply to right of entry.

YOUR RIGHTS

Your rights as an employer/contractor are established by the *Fair Work Act 2009* (FW Act). Changes to the legislation in July 2009 introduced 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 FOR UNION OFFICIALS TO ENTER YOUR SITE

A union official must have one of the following reasons to enter your site:

- 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 the official's 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 the official's union who wish to participate in those discussions
- perform inspections and functions under an occupational health and safety (OHS) law of a state or territory, provided they hold a federal right of entry permit.

REQUIREMENTS FOR UNION OFFICIALS TO ENTER YOUR SITE

If a union official seeks to exercise a right of entry to your site, they must:

- hold a valid federal permit
- provide at least 24 hours written notice of entry unless entry is under an OHS law*
- only visit during working hours and hold discussions during meal times or other breaks
- show their federal permit and notice of entry on request
- not enter or remain on your site if you ask them to produce their federal permit and they refuse to do so
- when entering to investigate a suspected breach provide sufficient details and facts which give rise to the breach on the notice.

If a union official has not met these requirements you have the right to refuse entry.

CIRCUMSTANCES WHERE THERE IS NO RIGHT OF ENTRY

There is no right of entry for a union official to enter your site:

- if the union official does not have a federal right of entry permit
- if the union official fails to produce their federal permit for inspection if you require them to do so.

RIGHTS OF UNION OFFICIALS WHEN THEY ARE ON YOUR SITE

Union officials have specific rights once they are lawfully on site. In investigating suspected breaches they may, during work hours:

- inspect any work, process or object relevant to the suspected breach
- interview employees who are members or eligible to be members of the official's union who agree to be interviewed about the suspected breach
- inspect and make copies of relevant records of their 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 member records at a later date
- 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 RIGHTS WHEN A UNION OFFICIAL IS ON SITE

Union officials must comply with your reasonable requests about:

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

*The FW Act does not require 24 hours written notice if entry is under OHS law, except for the inspection of employment records.

YOUR OBLIGATIONS

You must not refuse or unduly delay entry to a union official who has complied with the FW Act and has a right to enter your site.

WHAT TO DO IF A UNION OFFICIAL DOES NOT HAVE A RIGHT TO ENTER AND IS ON YOUR SITE WITHOUT YOUR CONSENT

- make it clear the union official does not have your consent to enter and ask them to leave
- contact the ABCC Hotline for assistance regarding right of entry issues on 1800 003 338
- contact the police to remove the union official from your site.

FURTHER INFORMATION

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

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

Please note that the contents of this fact sheet apply until 31 January 2010. A bill proposing new building industry legislation is currently before parliament. These changes are expected to take effect on 1 February 2010 and will replace the BCII Act.



If you need an interpreter to talk to the ABCC, call
Translating and Interpreting Services
Telephone: 13 1450