



Workplace right of entry for union officials

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Part 3-4 of the *Fair Work Act 2009* (Cth) provide right of entry provisions which allow union officials to enter a workplace.

Circumstances where a union official might be granted right of entry to a workplace include:

- where the union official/s are investigating a suspected breach of workplace laws and hold a reasonable suspicion that a contravention has or is occurring;
- to hold discussions with employees; or
- to enforce workplace health and safety laws.

The purpose of a right of entry is to balance the rights of employees (the right to be represented and informed in the workplace and have their representatives investigate suspected contraventions in the workplace on their behalf) and employers (the right to go about their business undisturbed).

It is important to understand *when* and *why* a union official might be allowed to enter a workplace. If a union official does not enter a workplace in accordance with the provisions of the *Fair Work Act*, both the union and the union official may be subject to significant penalties.

Further, an employer may be within their rights to:

- demand that the union official(s) leave the workplace; or
- take other actions, such as making a complaint of trespass or seeking injunctive relief.

What is an entry permit?

A right of entry is not automatic. A union official must have an “entry permit” granted by the Fair Work Commission.

An entry permit will generally include the following details:

- The name of the permit holder and their organisation;
- A recent photo of the permit holder and their signature;
- The expiry date of the permit.

An “official” includes “a person who holds an office in, or is an employee of, the association”.

Who can apply for and hold an entry permit?

A member of the committee of management of a registered union may apply for a right of entry permit on behalf of their nominated official by completing a Form 42 in consultation with the proposed permit holder.

Before lodging the application, the proposed permit holder must also complete certain sections of the application and make a declaration regarding their personal details, any matters to disclose and completion of right of entry training

When considering whether to grant an entry permit, the Fair Work Commission will consider whether the nominated official is “fit and proper”. Matters that the Commission will assess when considering whether someone is fit and proper include:

- whether the nominated official has received training about the rights and responsibilities of a permit holder;
- whether the nominated official has ever been convicted:
 - of an offence against an industrial law; or
 - a criminal offence relating to entry, [fraud, dishonesty](#) or intentional use of violence or destruction of property;
- whether the nominated official has been ordered to pay a penalty under the *Fair Work Act*;
- whether the nominated official has held an entry permit before that has been cancelled or suspended, and/or whether the person has been disqualified from applying for a permit.

Where a person might not meet the fit and proper person test, the Fair Work Commission may still grant a permit for right of entry and impose conditions on the permit holder.

How long does an entry permit last?

Once granted (unless the permit is revoked or the permit holder ceases to be an official of the relevant Union), the entry permit operates for a period of 3 years from the date it was issued.

An entry permit must be returned to the Fair Work Commission within 7 days after it has expired.

An entry permit may be extended upon application. Such an application must be made at least 1 month before the expiration date.

What is an entry notice, and is it required?

An entry notice is a written notice to the occupier/affected employer that the entry permit holder intends to enter the premises. An entry notice is separate to an entry permit and must be obtained in addition to holding an entry permit, unless the Fair Work Commission has issued an exemption certificate.

An entry notice generally contains the following information:

- Details of the premises intended to be entered;
- The date proposed for the entry;
- Identification of the permit holder and name of their organisation;
- The relevant provisions of the *Fair Work Act* which permit the entry;
- If the permit holder's purpose for entering is to investigate suspected conduct, the entry notice must contain particulars of the suspected contravention/s (including whom the suspected contravention/s relate to and affect) and a declaration that the permit holder is entitled to represent the industrial interests of a member working at the premises; and
- A declaration by the permit holder.

An entry notice must be given:

- during work hours; and
- at least 24 hours, but not more than 14 days, before the entry.

There are circumstances where a permit holder may apply for an exemption certificate.

An exemption certificate may be issued by the Fair Work Commission where the Commission reasonably believes that any advance notice by way of an entry notice may result in the destruction, concealment or alteration of potentially relevant material. An exemption certificate is required to be provided to the occupier/affected employer either before or as soon as practicable after entering the premises.

What does an entry permit holder have to comply with when entering a premise?

The *Fair Work Act* generally requires an entry permit holder to:

- comply with any and all conditions on an entry permit;
- comply with any reasonable request of the occupier regarding occupational health and safety requirements;

- produce their entry permit and entry notice (or exemption) on request of the occupier;
- only exercise rights during working hours;
- only hold discussions during mealtimes or other breaks;
- only enter premises in accordance with the entry notice or exemption certificate;
- not misrepresent their authority to enter the premises;
- not hinder or obstruct another person; and
- not enter part of the premises which is residential only.

Get help from an employment lawyer

If you or your organisation needs assistance in relation to right of entry obligations or breaches (by you as a union official or the employer/business related to the entry permit), please contact our [employment law team](#) for advice and assistance.

Contacting Gilshenan &Luton Employment Lawyers

[07 3361 0222](tel:0733610222) (24/7)

gnl@gnl.com.au

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