

Right of entry

The Fair Work Commission (the Commission) deals with entry permits and other applications relating to right of entry. For more information visit fwc.gov.au/entry-permits.

What is right of entry?

Right of entry is the right for union officials who hold an entry permit to lawfully enter a workplace under certain conditions.

The rules about right of entry in the Fair Work Act (FW Act) cover:

- the rights of union officials to:
 - hold discussions with employees, or workers in the textile, clothing and footwear industries (TCF award workers), at the workplace, and
 - investigate suspected contraventions of workplace laws
- the rights of employers and occupiers of premises to go about their business without undue interruption.

TCF award workers

There are special rights and obligations for right of entry relating to TCF award workers under the FW Act. These rules are not covered by this fact sheet.

For more information contact the Commission.

Right of entry under work health and safety laws

Union officials can enter premises under some Commonwealth, State or Territory workplace health and safety (WHS) laws. To enter a workplace under WHS laws, the official must:

- have a current entry permit issued under the FW Act
- have a current WHS entry permit, and
- give the employer a lawful WHS entry notice.

However, union officials are not required to hold a FW Act entry permit to enter a workplace if they are assisting a WHS representative on request who is exercising particular rights under WHS laws.

This fact sheet does not cover entering the workplace under WHS legislation. For information contact the Commission.

Who can enter a workplace?

Union officials

Union officials who hold a valid and current entry permit can enter a workplace in certain conditions.

They must be an elected officer or employee of the union and the union must be formally registered in accordance with the Fair Work (Registered Organisations) Act 2009.

To enter a workplace under the FW Act, the official must (unless they are assisting a WHS representative on request):

- have a Fair Work entry permit, and
- give the occupier and affected employer a Fair Work entry notice that follows the rules in the FW Act.

Fair Work Inspectors

Fair Work Inspectors can also enter workplaces in some circumstances. These powers are regulated by a different section of the FW Act and are not covered by this fact sheet.

For more information see the Powers of Fair Work Inspectors fact sheet at fairwork.gov.au/factsheets.

Entry permits

Union officials can't enter a workplace unless they hold an entry permit issued by the Commission. A permit holder must be:

- an elected officer of a union or an employee of a union, and
- a 'fit and proper person'.

The Commission must decide if a person is a 'fit and proper person' to hold a permit.

The proposed permit holder must complete training on their rights and responsibilities before the Commission will issue a permit. The Commission can revoke, suspend, or impose conditions on an entry permit. Permit holders must carry their permit at all times when they enter a workplace. If requested by the occupier of the premises or employer, they have to show their permit.

Entry permits include:

- the permit holder's full name and organisation (union)
- the permit number
- an expiry date
- any conditions on the permit
- the permit holder's photograph and signature
- a QR code which links to the Commission's list of current permit holders.

Permit holders can enter a workplace to:

- meet with certain employees (hold discussions)
- investigate if they suspect a breach of the FW Act or other Fair Work instruments (for example, an enterprise agreement)
- exercise their rights under WHS laws.

For more information, and to check if a union official holds a current and valid Fair Work permit, visit the Commission's website.

Entering a workplace to hold discussions

Permit holders can enter a workplace to hold discussions with certain employees during meal or break times.

The employees must work on the premises, be members of the union (or be eligible to be members) and want to participate in those discussions.

Entry notices for holding discussions

Before entering the workplace, the permit holder must give written notice to the person who occupies the building or premises and any affected employers. This is known as an entry notice. It must be given during working hours, at least 24 hours but no more than 14 days before they wish to visit.

The entry notice must include:

- the premises to be entered
- the day of entry
- the organisation (union) the permit holder belongs to
- the section of the FW Act that authorises the entry
- the permit holder's declaration that they are entitled to represent the industrial interests of a worker who works on the premises
- which part of the union's rules gives them the right to represent the worker.

Permit holders can only enter a workplace during working hours and on the day specified in the entry notice.

What can a union official do on the premises if they are entering to hold discussions?

If a union official has lawfully entered the premises, they can hold discussions with relevant employees during meal or break times.

The discussions should take place in a room or area of the workplace agreed to by the occupier. If agreement can't be reached, the discussions can be held in the room or area that is provided for taking meals or other breaks.

Entering a workplace to investigate a suspected breach

Permit holders can enter a workplace to investigate a suspected breach of the FW Act or an applicable Fair Work instrument if:

- they reasonably suspect there has been or is a breach of the FW Act or a Fair Work instrument
- the suspected breach relates to or affects at least one member of their union
- the union is entitled to represent the industrial interests of that member, and
- the member works at that workplace.

Entry notices for investigating a suspected breach

Before entering the workplace, the permit holder must give written notice to the occupier of the building or premises and any affected employer. It must be given during working hours, at least 24 hours but no more than 14 days before they wish to visit (unless the Commission grants an exemption).

The entry notice must include:

- the premises to be entered
- the day of entry
- the organisation (union) the permit holder belongs to
- the section of the FW Act that authorises the entry
- the details of the suspected breach
- the permit holder's declaration that they are entitled to represent the industrial interests of a worker who works on the premises and is affected by the suspected breach
- which part of the union's rules gives them the right to represent the worker.

Permit holders can only enter a workplace during working hours and on the day specified in the entry notice or exemption certificate.

Affected member certificates

There are circumstances where a union can apply to the Commission to issue an affected member certificate. If this certificate is issued, the entry permit holder does not need to provide the identity of affected members of their organisation where they enter premises to investigate a suspected breach of workplace laws. These certificates may be issued where the Commission is satisfied that:

- a member of the organisation performs work at a particular premises
- the organisation is entitled to represent the industrial interests of the member, and
- a suspected breach relates to, or affects, the member.

When less notice is required

Permit holders can give less than 24 hours notice if the Commission gives them an exemption (exemption certificate). If a union applies for an exemption certificate, the Commission must issue one if they reasonably believe that either:

- giving notice of entry may result in evidence being changed, destroyed or concealed
- advance notice of entry would hinder an effective investigation into a suspected contravention or contraventions involving underpayment of a union member who works at that workplace.

What can a union official do on the premises if they are entering to investigate a suspected breach?

If a union official has lawfully entered the premises to investigate a suspected breach, they can:

- inspect any work, process, or object relevant to the suspected breach
- interview someone about the suspected breach (if the person agrees to be interviewed and the permit holder's union is entitled to represent them)
- inspect and make copies of relevant records or documents
- serve a notice on the occupier or affected employer to produce records or documents at a later date.

Interview locations

Interviews should take place in a room or area of the workplace agreed to by the occupier. If agreement can't be reached, the interviews can be held in the room or area that is provided for taking meals or other breaks.

Access to records

While at a workplace to investigate a suspected breach, permit holders are allowed to inspect and copy any record or document that is directly relevant to the suspected breach. They can only do this if the record or document is:

- kept on the premises, or
- accessible from a computer kept on the premises.

Permit holders can also give written notice to an occupier or affected employer for access to these records at a later date. The written notice must:

- be provided while on the premises or within 5 days
- give the occupier or affected employer at least 14 days to provide the records or documents.

Occupiers or affected employers don't have to allow them to inspect or copy a record or document if doing so would break other laws (such as privacy laws).

Permit holders can't inspect documents about a person who is not a member of the union, unless that person gives written consent, or the permit holder applies to the Commission.

Responsibilities and prohibited conduct

Permit holders must:

- follow a reasonable request to comply with applicable WHS requirements
- follow a reasonable request to take a particular route to reach a particular room or area
- show their permit (if requested by the occupier or employer, or when inspecting or requesting records)
- comply with any condition imposed on their entry permit.

Permit holders, including union officials assisting a WHS representative on request under a WHS law, must not:

- intentionally hinder or obstruct any person or act in an improper manner
- fail to follow a reasonable request to comply with applicable WHS requirements
- misrepresent (intentionally or recklessly) the authority and rights that they have under the FW Act (they must not give the impression that something they are doing is authorised by the FW Act right of entry provisions when it is not)
- use information or documents obtained (by a permit holder) in the investigation of a suspected breach for a purpose not related to the investigation or rectifying the suspected breach (with some exceptions).

In addition, permit holders must not enter any part of the premises that is mainly used for residential purposes. Employers and occupiers must not:

- refuse or unduly delay entry to a permit holder if they are entitled to enter the premises
- refuse or fail to comply with a permit holder's lawful request for records or documents
- intentionally hinder or obstruct a permit holder who is exercising their rights
- misrepresent (intentionally or recklessly) the authority and rights that they have under the FW Act (they must not give the impression that something they are doing is authorised by the FW Act right of entry provisions when it is not).

Breaches of the right of entry provisions

If a person (such as an employer, occupier of a premises, worker, or union official) believes that a breach of the right of entry provisions has occurred, they can contact the Commission for assistance.

The Commission can deal with disputes about right of entry. They can make orders that:

- put conditions on, suspend or revoke a Fair Work or WHS entry permit
- put conditions on some or all of the entry permits associated with the union
- ban, for a time, the issue of permits to a union or particular people.

The Fair Work Ombudsman can also investigate right of entry complaints. Penalties can apply for proven breaches of right of entry laws.

Right of entry provisions are provided for in sections 481–521D of the FW Act.

CONTACT US

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

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

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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