

RIGHT OF ENTRY

When can union officials enter a workplace?

- Investigation of suspected breaches of *Fair Work Act 2009* (Cth) and other federal workplace laws.
 - union official must “reasonably suspect” that a contravention of a workplace law has occurred or is occurring.
- Holding discussions with employees at the workplace.
 - discussions must relate to work performed or the representational role of the permit holder.
- Enforcing workplace health and safety laws.
 - union official may enter a workplace to exercise rights conferred by a State WHS law.

What are the notice requirements?

- Union officials must give at least 24 hours’ notice prior to entering a workplace.
- Notice must include:
 - premises to be entered.
 - date of entry.
 - the union/organisation.
 - the section of the *Fair Work Act 2009* (Cth) authorising entry.
 - particulars of the suspected breach.
 - declaration that the union is entitled to represent the industrial interests of an employee who performs work on the premises.
 - the provision of the union’s rules which entitle them to represent the member.

Union officials can

- Inspect any work, process or object relevant to the suspected breach.
- Interview any person about the suspected breach:
 - who agrees to be interviewed.
 - who the permit holder is entitled to represent.
- Inspect and make copies of any record or document relevant to the suspected breach.
- Later request access to or copies of a record or document relevant to the suspected breach.

Union officials cannot

- Intentionally hinder or obstruct any person.
- Act in an improper manner.
- Intentionally or recklessly give the impression that their actions are authorised when they are not.
- Contravene any of the requirements of entry.
- Use or disclose any information or document obtained in the course of investigating a suspected breach.

Employers cannot

- Refuse or delay entry onto premises by a permit holder who is entitled to enter.
- Intentionally hinder or obstruct a permit holder exercising rights.
- Intentionally or recklessly giving the impression that their actions are authorised when they are not.

INDUSTRIAL ACTION

Industrial action includes

- Performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice which results in restrictions, limitation or delay in the performance of work.
- A ban, limitation or restriction on the performance of work or on the acceptance of or offering for work.
- A failure or refusal by employees to attend for work or perform work.
- The lockout of employees from their place of employment by the employer.

Industrial action does not include

- Action by employees that is authorised or agreed to by their employer.
- Action based on a reasonable concern of an imminent risk to health or safety.
- Action by an employer that is authorised or agreed to by the employees.

Unprotected vs Protected Industrial Action

- Employers cannot take any legal action in relation to industrial action except in the following circumstances:
 - Personal injury.
 - Theft or destruction of/damage to property.
 - Defamation.

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REMEDIES FOR INDUSTRIAL ACTION

Remedies available for industrial action

- The employer may make an application seeking orders to stop or prevent industrial action in the:
 - Fair Work Commission.
 - Federal Court.
- The employer may seek common law damages.

Where an employee engages in unprotected industrial action

- For a period of less than 4 hours – the employer must withhold 4 hours' payment from the employee.
- For a period of 4 hours or more - the employer must withhold payment for the total duration of the industrial action on that day from the employee.

ENTERPRISE BARGAINING

What is the log of claims?

- The opening position of each party for negotiation of the enterprise agreement.
- Often inflated with an expectation that the final outcome will be less than the position in the initial log of claims.

The bargaining process commences when

- The employer initiates or agrees to a request from the employees or their unions to bargain.
- A majority support determination comes into effect.
- A scope order comes into effect.
- A low-paid authorisation that specifies the employer comes into operation.

What happens after the commencement of the bargaining process?

- A commencement event triggers the "notification time".
- No later than 14 days after the notification time, the employer must take all reasonable steps to notify the employees who will be covered by the proposed agreement of their right to be represented by a bargaining representative.
- Give the notice in the form of a notice of employee representational rights (NERR).

What are bargaining orders?

- Legally binding orders made by the Fair Work Commission to govern the enterprise bargaining process.
- Breach of a bargaining order may result in civil penalties.

A bargaining representative may apply for a bargaining order if there are concerns that

- The bargaining representatives for the agreement have not met or are not meeting the good faith bargaining requirements.
- The bargaining process is not proceeding efficiently or fairly.

The Fair Work Commission can make the following bargaining orders

- Exclude a bargaining representative from bargaining.
- Require some or all of the bargaining representatives to meet and appoint a single bargaining representative to represent them in bargaining.
- Require the employer not terminate an employee if it would constitute or relate to a failure to meet the good faith bargaining requirements.
- Reinstate an employee whose employment has been terminated if it would constitute or relate to a failure to meet the good faith bargaining requirements.

BARCAINING ORDERS

Important Contacts

Fair Work Ombudsman – 13 13 94, fairwork.gov.au

Police – 000

Crime Stoppers – 1800 333 000

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