**How to Guide**

**Working with Unions**

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| How to Guide Sample  This ‘How to Guide’ is ready to be tailored to your company’s needs and should be considered a starting point for setting up your management policies and processes.  Disclaimer: This template is meant to provide general guidelines and should be used as a reference. It may not take into account all relevant local, state or federal laws and is not a legal document. Neither the author nor HR Expert Australia will assume any legal liability that may arise from the use of this document. |

# Right to join a Union

Under the *Fair Work Act 2009* (the Act) all employees have the right to belong, or not belong, to a trade union. An employer cannot dismiss an employee because of their choice.

# Unions as Bargaining Agents

An employee has the right to appoint a union as a bargaining agent when negotiating an enterprise agreement. An employer must notify employees of their right to be represented in bargaining within 14 days of agreeing to or having been ordered by the Fair Work Commission (FWC) to commence bargaining.

Employees can appoint a bargaining agent of their choice. A bargaining agent could be a colleague, a friend, a consultant, **or an eligible union**.

If an employee is a member of a union, that union is automatically that employee’s bargaining agent unless the employee appoints someone else, or advises that they do not wish that union to represent them. A union that acted as a bargaining representative during the negotiations may apply to be covered by the agreement.

*Note: Refer to the HR Expert Australia Information Sheet on Enterprise Agreements for further information regarding the rights of Unions when dealing with enterprise agreements.*

# Right of Entry

## Entry for discussion with employees

Under the previous legislation *(Workplace Relations Act 1996)* a union could only enter a workplace if there was an award or agreement at the workplace which the union was a party to. Under the Act a union is able to enter the workplace if they can prove they have the ability to represent the industrial interests of employees in that particular workplace.

Employers will not be expected to know whether a particular union has the ability to represent the industrial interests of employees in their workplace. Therefore a union official seeking entry to a workplace will need to declare in their written entry notice that the union is entitled to represent the industrial interests of the employees.

In order for the union to gain right of entry for discussions with employees the union must satisfy a number of requirements. The union official must hold a valid entry permit issued by FWC and provide the employer with an entry notice (in writing) at least 24 hours, but no more than 14 days, before the entry.

Discussions with employees may only occur during working hours and only during meal times or other breaks.

The union official must comply with any reasonable request from the employer that the discussions take place in a particular room or area of the workplace. A request by the employer would be unreasonable if;

The room or area is not fit for the purpose of conducting the interviews or holding the discussions; or

The request is made with the intention of:

1. Intimidating persons who might participate in the interviews or discussions; or
2. Discouraging persons from participating in the interviews or discussions
3. Making it difficult for persons to participate in the interviews or discussions, whether because the room or area is not easily accessible during mealtimes or other breaks, or for some other reason.

## Entry for investigation of a suspected breach

An eligible union official may enter a workplace for the purpose of investigating a suspected contravention of the Act or a term of a fair work instrument (e.g. award, enterprise agreement). The union official will be able to investigate a suspected breach affecting any person the union is entitled to represent.

While on the premises investigating a suspected breach, a union official may;

* Inspect any work, process or object relevant to the suspected contravention
* Interview any person about the suspected contravention (only if the union has the right to represent the industrial interests of the person and the person agrees to be interviewed)
* Inspect and make copies of any record or document kept on the premises that is directly related to the suspected contravention. The Act states that this does not include access to non-member records or documents, unless the documents relate to the employment of a person who is a union member or the union official has approval from FWC to do so.

There is also a provision in the Act for a union official to request access to a record or document that is directly relevant to the suspected contravention on a later date. The union official must put their questions writing to the employer within 5 days after the entry and must provide at least 14days notice.

## Exercising right of entry with a Work Health & Safety entry permit

**Notice of entry under the *Work Health and Safety Act 2011***

Under the *Work Health and Safety Act 2011* written notice (a WHS entry notice) must be given before entering a workplace in order to consult and advise workers no less than 24 hours and no more than 14 days before the proposed entry.

If entry is for the purpose of inquiring into suspected contraventions of the *Work Health and Safety Act 2011*, the WHS permit holder must give written notice of entry and of the suspected contravention as soon as is reasonably practicable after entering a workplace.

A WHS permit holder is not required to comply with the notice requirements for suspected contraventions if it would defeat the purpose of the entry or if it would unreasonably delay the WHS entry permit holder in an urgent case.

# What does a WHS entry notice include?

A WHS entry notice should include:

* The full name of the WHS entry permit holder
* The name of the union that the WHS entry permit holder represents
* the section of the *Work Health and Safety Act 2011* under which the WHS entry permit holder is proposing to enter the workplace
* the name and address of the workplace to be entered
* the date of entry.

If entry is for the purpose of inquiring into a suspected contravention the entry notice should also include:

* the particulars of the suspected contravention
* a declaration stating:
  + that the union is entitled to represent a worker at the workplace and that the worker is, or is eligible to be, a member
  + the provision in the union's rules that entitles the union to represent the worker
  + the suspected contravention that relates to the worker
* if entry is to inspect documents held elsewhere, a description of the documents and a declaration that the documents relate to the suspected contravention.

If entry is for the purpose of consulting and advising workers, the entry notice should also include a declaration stating:

* that the union is entitled to represent a worker at the workplace and that the worker is, or is eligible to be, a member
* the provision in the union's rules that entitles the union to represent the worker.

# Conduct in relation to WHS right of entry

A WHS entry permit holder must:

* abide by conditions imposed on their permit
* also hold a Fair Work entry permit
* have their WHS entry permit and photographic identification available for inspection
* enter only during the usual working hours at the workplace and only the area where the relevant workers work or any other area that directly affects the health or safety of those workers
* comply with any reasonable work health and safety and other legislated requirements
* not enter any part of a workplace that is used only for residential purposes.

A WHS entry permit holder must not:

* be refused or delayed entry to the premises
* be refused the right to inspect and copy documents regarding a suspected contravention
* be hindered or obstructed from exercising their rights
* intentionally or unreasonably delay, hinder or obstruct any person or work, or act in an improper manner
* give the impression that they are authorized to do things they are not, nor be reckless about giving that impression
* use information for any purpose that is not related to the inquiry.

Penalties may apply for refusing, delaying or obstructing entry as well as for other breaches of the legislation.

# Rights while on the premises

While on the premises, a WHS entry permit holder may:

* warn any person of a risk where the permit holder reasonably believes that person to be exposed to a serious risk to their health or safety.

While on the premises to inquire into a suspected contravention, a WHS entry permit holder may:

* inspect any work system relevant to the suspected contravention
* consult relevant workers about the suspected contravention
* inspect or make copies of documents, including employee records, that are directly relevant to the suspected contravention.

A WHS entry permit holder is not required to disclose the name of any worker at the workplace. The name of a worker can only be disclosed by the WHS entry permit holder with the consent of the worker.

# What happens if union officials breach the provisions?

The union official may have his or her permit revoked or suspended. Abuse of the right of entry provisions outlined in the Act should be reported to the Fair Work Commission.

***Disclaimer:***

*Whilst every care has been taken to ensure that this information is accurate, no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of persons acting in reliance thereon.*