

### UNION RIGHT OF ENTRY TO WORKPLACES—EMPLOYERS SHOULD KNOW THEIR RIGHTS

Melissa Demarco, Senior Associate

CBP Lawyers, Brisbane

#### IN BRIEF

The holder of a work health and safety (WHS) permit cannot attempt to enter a workplace for another purpose and then later decide to 'investigate a suspected WHS contravention'.

#### WHS COMPLAINTS CAN HALT MAJOR CONSTRUCTION WORKS AND ARE OFTEN UNFOUNDED

There has been a lot of attention nationwide regarding union officials entering jobsites and, after talks of union membership have been exhausted, halting major construction works due to purported work health and safety complaints involving alleged 'immediate or imminent risks to workers'.

The usual target is small operators who have little or no union membership. The purported WHS complaints are usually unfounded, verging on vexatious.

How are they doing this? Effectively, they are playing the work health and safety right of entry card and no-one is calling their bluff.

#### HOW CAN YOU ATTEND TO WHS WHILE AVOIDING FURTHER DISRUPTION TO YOUR WORKPLACE?

If you are faced with this, it is important for you and your employees to understand what your rights and obligations are in dealing with the union whilst ensuring the health and safety at your workplace and what you can do to stop any further disruption to your workplace.

In doing so, if there is a genuine work health and safety issue at your workplace, it should be taken seriously and not seen as just another coercive tactic for the union to seek membership.

#### RIGHT OF UNION OFFICIALS TO ENTER A WORKPLACE

Under the *Fair Work Act 2009* (Cth) (FW Act) and the *Work Health and Safety Act 2011* (Cth) (WHS Act), union officials (including employees of a union) can be given the right to enter workplaces for specified purposes, subject to meeting certain requirements.

To exercise this right of entry, the union official must hold a current and valid entry permit and must also be entitled to represent workers at the workplace. In addition to holding an entry permit, union officials must provide written notice of entry pursuant to the FW Act and/or WHS Act as required.

#### FAIR WORK ENTRY PERMITS AND WHS ENTRY PERMITS ISSUED BY THE FAIR WORK COMMISSION

The ability to enter a workplace is given by way of an entry permit issued by the Fair Work Commission. Depending on the nature of the proposed entry, the union official will be required to hold a valid and current Fair Work entry permit. If the entry deals with any issue with respect to work health and safety, a WHS entry permit will also be required.

You can check on the website of the Fair Work Commission to see whether someone holds a current and valid Fair Work entry permit or WHS entry permit.

The Fair Work entry permit allows the permit holder to:

- investigate suspected breaches of the FW Act and other instruments
- investigate breaches relating to textile, clothing and footwear industry outworkers
- meet with employees to hold discussions

- exercise rights under relevant work health and safety laws

The WHS entry permit allows the permit holder to:

- inquire into suspected contraventions of the WHS Act
- inspect documents directly relevant to a suspected contravention
- consult and advise workers

## **HOW MUCH NOTICE OF ENTRY SHOULD BE GIVEN TO THE EMPLOYER?**

Under the FW Act, a Fair Work entry notice is required to be given no less than 24 hours and no more than 14 days before the proposed entry into a workplace.

Under the WHS Act, a WHS permit holder can enter a workplace to consult and advise workers or to inquire into a suspected contravention of the WHS Act. To enter into a workplace to consult and advise workers, written notice (WHS entry notice) must be given by the WHS permit holder before entering a workplace. The WHS entry notice must be provided 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 WHS Act, 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.

## **EXCEPTIONS TO THE REQUIREMENT TO GIVE NOTICE OF ENTRY**

A WHS permit holder is not required to comply with the above notice requirements for suspected WHS 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'.

However, this cannot be done after the permit holder has attempted to enter a workplace for another purpose and then later decides to 'investigate a suspected WHS contravention'.

If a WHS permit holder exercises a right of entry for this purpose, we strongly recommend that you [seek professional] advice.

Importantly, both a Fair Work and WHS entry notice must set out certain details regarding the proposed entry.

Further, when exercising a right of entry, the union must, among other things, comply with the conditions imposed by the entry permit, comply with any reasonable work health and safety and any legislative requirements.

## **RIGHT OF ENTRY DISPUTES UNDER THE FW ACT OR WHS ACT**

If you suspect that a Fair Work entry permit holder and/or WHS entry permit holder is unreasonably and intentionally disrupting work at a workplace, an application regarding right of entry disputes under the FW Act and/or the WHS Act may be made to the Fair Work Commission.

If an application is made, the Fair Work Commission may make orders including:

- imposing conditions on a permit
- suspending a permit
- revoking a permit
- orders about the future issue of entry permits to one or more persons

## **WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL 2014**

Presently, there is a Bill being considered by Queensland parliament, the Work Health and Safety and Other Legislation Amendment Bill 2014, to restrict

union right of entry and the ability of WHS permit holders to halt unsafe work.

If the Bill is passed, it would prevent unions from using loopholes in the system to force their way onto worksites and lock workers out.

The WHS Act will be amended to require workplace health and safety entry permit holders (usually union officials) to give at least 24 hours' notice and outline any suspected safety contraventions before entering a workplace.

In addition, maximum fines for entry permit holders who breach the entry provisions will be doubled to more than \$20,000 and health and safety representatives will lose the power to direct workers to cease unsafe work, but will be able to issue provisional improvement notices.

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