

Right of Entry

The union's right of entry to workplaces has been expanded. The changes will enable union entry to workplaces without the current pre-requisite that the union be party to an award or an agreement which applies to the workplace or, in the case of discussions, to have a member on site. It is likely this will increase union demarcation where multiple unions seek to exercise right of entry.

Entry to hold discussions

The key conditions for entry to hold discussions with employees during meal and rest breaks (only) are:

- Permit holder union only required to have capacity to cover any worker on premises – does not need a member
- 24 hours written notice of entry

Entry to investigate suspected contravention

- Reasonable suspicion of breach of agreements, award, determination Act.
- Union permit holder needs an eligible member on premises to gain entry, but does not have to be covered by an agreement or award
- Able to inspect work, interview people and copy, obtain records
- 24 hours written notice

A union official can only inspect records or other documents which are directly relevant to a suspected breach of the Act or an industrial instrument. A union official may only use or disclose information obtained under the right of entry powers for purposes related to the investigation or rectifying the suspected contravention. Unions will be able to access non-member records provided they have a FWA Order which outlines a suspected breach.

If a union official is investigating an OHS breach which they suspect has happened or is happening, they are not required to provide notice, but they must still be a valid permit holder.

Unfair Dismissal Protection

The Act removes the ability for companies with 100 employees or less to be exempt from the unfair dismissal process. From 1 July 2009, employees who can make a claim for unfair dismissal are:

- Employees with more than 12 months service who are employed by a small business (fewer than 15 employees)
- Employees with more than 6 months service who were employed by an employer with 15 or more employees

Unfair dismissal claims will again become available in matters of redundancy where

- it would have been reasonable to redeploy within a group; or
- failure to comply with consultation obligations in an agreement