

## Right of Entry for Union Officials

From 1 July 2009 the Fair Work Act 2009 introduces revised laws for union officials to access the workplace. As part of our ongoing review of the new workplace laws, this edition of EMA Note looks at the new rules.

Access to workplace for unions from 1 July 2009 is controlled by the Fair Work Act 2009 ("Act"). Access can only be for authorised purposes unless an employer consents to the union being there. The authorised purposes are:

- to investigate a suspected breach of the Act; or
- to meet with employees, or
- to enter on the basis of a right conferred under an occupational health and safety law.

### To Investigate a Suspected Breach of the Act

This means that the union is investigating a suspected breach of the Act in relation to the Act itself or an industrial instrument created under the Act (such as an Award or an Enterprise Agreement).

When seeking to enter the premises for this purpose the union must:

- have a member(s), which the union is entitled to represent, to whom the suspected breach relates;
- have a reasonable basis upon which to base the suspicion of the breach;
- provide the employer with at least 24 hours written notice of an intention to enter;
- display his/her permit to an employer before entering;
- comply with any reasonable direction by the employer to comply with site OH&S/security obligations.

Whilst on the premises the union may:

- interview any employee in relation to the alleged breach;
- inspect machinery, plant, work area etc that may relate to the breach;
- inspect any time, wage or personnel file of a union member that is relevant to the breach; however, a union may not view the time or wage books of a non-member without the written authority of that employee;
- give the employer written notice of a requirement to produce certain documents that are relevant to the suspected breach.

Whilst on the premises the union must not:

- interview any employee that is not in relation to the alleged breach;
- inspect machinery, plant, work area etc that does not relate to the breach;
- inspect any time, wage or personnel file of a union member that is not relevant to the breach;
- demand that the employer produce documents without giving the employer written notice of a requirement to produce certain documents that is relevant to the suspected breach;

- interfere, hinder or obstruct the performance of work whilst attending the work site.

#### To meet with Employees

The Act permits that a union has the ability to enrol employees as members under its rules to enter the workplace for the purpose of meeting with employees. To access entry for this purpose the union must:

- have a member(s) or an employee who is able to become a member at the workplace;
- only enter during designated meal breaks;
- provide the employer with at least 24 business hours written notice of an intention to enter for this purpose;
- display his/her permit to an employer before entering;
- comply with any reasonable direction by the employer to comply with site OH&S/security obligations;
- meet in a place nominated by the employer provided that such a place is reasonable for the purpose intended.

Whilst on the premises the union may:

- discuss with employees or members any matter that the union wishes to.

Whilst on the premises the union must not:

- meet with any employee that is not able to become a member of the union;
- move away from the area designated as the meeting area;
- interfere, hinder or obstruct the performance of work whilst attending the work site;
- continue a meeting beyond a designated break.

It should be noted that there is no obligation on the employer to advise employees that the union is on site, or to post a notice of the union attendance on a notice board. Strictly interpreted, the Act places the obligation to arrange employee attendance upon the union.

#### To enact a right under an Occupational Health and Safety Law

The Act permits a union official right of entry where such a right is conferred by a state or territory occupational health and safety law. The union must:

- provide the employer with written notice of its intention to enter for this purpose;
- have a member or the ability to enrol a member at the workplace concerned;
- provide evidence of the union official permit before entering the workplace;
- comply with any obligation imposed by the relevant state or territory occupational health and safety law once on site.

In some states, such as NSW or Victoria, the union has quite broad powers under the relevant state laws, including an ability to enter where the union has a reasonable belief that there may be a breach of occupational health and safety laws. In NSW, the union's powers extend to powers similar to that of an inspector, including the issuing of temporary non-compliance notices.

In South Australia on the other hand, there is currently no right of entry under state occupational health and safety laws.

## Practical Implementation

To appropriately manage right of entry employers need to:

- develop a policy and procedure that deals with each type of right of entry. This would include scripts, standard letters and logs for noting right of entry occurrences and events;
- educate managers and supervisors in the application of that policy;
- designate and train a responsible person at each worksite for managing right of entry.

EMA Consulting has developed a management guide to facilitate the above, which will be shortly available on our online web portal, E-matrix. For more information about our products and services visit our web site at the address noted below.

Require further information?

Contact your local EMA Consulting consultant with any of your right of entry questions at either our Melbourne office or our Adelaide office on the phone numbers noted below.

### Free Information Sessions

EMA Consulting is holding free information sessions in our Adelaide office to outline the right of entry laws and subsequent implications this may have on employers. These sessions will be held on Wednesday morning and afternoon on 24 June 2009. Please visit our website if you would like to register for either of these sessions.

#### **South Australia**

Level 1, 82 Waymouth Street  
Adelaide SA 5000  
Ph (08) 8221 6665  
Fax (08) 8221 6660

#### **Victoria**

Level 5, 189 Flinders Lane  
Melbourne VIC 3000  
Ph (03) 9650 2800  
Fax (03) 9650 8226

acn 078 829 517  
abn 17 078 829 517  
www.emaconsulting.com.au

**emaconsulting**