

UNION RIGHT OF ENTRY

WESTERN AUSTRALIA

Fair Work Act (2009)

- **Entry to investigate suspected contravention (Checklist A)**
- **Entry to hold discussions with workers (Checklist B)**

Work Health and Safety Act (2020) WA

Industrial Relations Act (1979) WA

- **Entry to investigate suspected WHS contravention (Checklist C)**
- **Entry to inspect records/business information (Checklist D)**
- **Entry to represent workers in WHS issue. (Checklist E)**

General requirements

All entry notices must specify:

1. The name of the permit holder
2. The union the permit holder belongs to
3. The section of the relevant Act that authorises the entry
4. The address of the site to be entered
5. The day of entry

- ❖ **A permit holder must not hinder or obstruct.**
- ❖ **A person must not refuse or delay entry if the requirements of the Act have been met.**
- ❖ **A person must not hinder or obstruct a permit holder.**

CHECKLIST A

Fair Work Act 2009 -Entry with notice to investigate suspected contravention (Not WHS)

s481 of the *Fair Work Act 2009* (the Act) provides a right of entry for the purposes of investigating a suspected contravention of the Act, or a term of an industrial instrument that relates to or affects a relevant worker. A relevant worker is a member, or eligible to be a member of the union, who works at the workplace.

The permit holder must reasonably suspect that the contravention occurred or is occurring s481(3)

- Has the permit holder provided an entry notice to the occupier and any affected employer at least 24 hours but not more than 14 days prior to the entry? *s487(3) FW Act*
- Is the entry notice in the prescribed form? *See template below s518(1) FW Act:*
- Is the permit holder attending site the person that is listed on the entry notice?
- Has the permit holder produced a valid federal right of entry permit issued by Fair Work Commission?
- Does the union for which the permit holder works have members on site, or workers who are eligible to become members?
- Has the permit holder identified the employer and the employees to whom the investigation relates? If no, further details must be disclosed by the permit holder to enable the employer to make necessary records available. *Only member records can be accessed by the permit holder unless permission has been granted by the Fair Work Commission. s482(1):*
- Has the permit holder complied with site WHS requirements, e.g., sign in, wearing PPE, entry with designated site escort? *s499 FW Act*

If the answer to ALL the above questions is YES- the entry is permitted.

The permit holder may enter the site and:

- **Inspect any work or process relevant to the suspected contravention and interview any person about the suspected contravention who agrees to be interviewed, and who is or is eligible to be a member of the permit holder's union.**
- **access requested records or documents (other than a non-member record or document)**
- **make copies of any record or document documents (other than a non-member record or document) that is directly relevant to the suspected contravention that is kept on the premises or is easily accessible from a computer that is kept on the premises. s482(1) FW Act**

CHECKLIST B

Fair Work Act 2009 – Entry with notice to hold discussions with workers (not WHS)

s484 of the *Fair Work Act 2009* (the Act) provides a right of entry for the purposes of holding discussion with one or more employees who:

- iv. Perform work on the premises
- v. Whose industrial interests the relevant union is entitled to represent, and
- vi. Who wish to participate in those discussions.

- Has the permit holder provided an entry notice to the occupier and any affected employer at least 24 hours but not more than 14 days' prior to the entry? *s487(3) FW Act*
- Is the entry notice in the prescribed form? *See template below. s518 FW Act*
- Is the permit holder attending site the person that is listed on the entry notice?
- Has the permit holder produced a valid federal right of entry permit issued by Fair Work Commission?
- Does the union for which the permit holder works have members on site, or workers who are eligible to become members?
- Has the permit holder complied with site WHS requirements that applies to the workplace, e.g., sign in, wearing PPE, entry with designated site escort? *S499 FW Act*

If the answer to ALL the above questions is YES- the entry is permitted.

The permit holder may enter the site and hold discussions with one or more employees who work on the premises who are, or could be, members of the permit holders union and who wish to participate in those discussions. *s484 FW Act*

A permit holder must hold discussions only during mealtimes or other breaks. *s490 FW Act*

Did the permit holder comply with any reasonable request by the occupier of the premises to:

- (a) conduct interviews or hold discussion in a particular room or area of the premises, or
- (b) take a particular route to reach a particular room or area of the premises? *s492(1)*

If not, the permit holder may be directed to use the designated area. Should the permit holder again refuse to do so, they are in breach of the entry requirements and can no longer exercise the right.

CHECKLIST C

Entry without notice to investigate suspected contravention of the *Work Health and Safety Act 2020*

S49 I of the *Industrial Relations Act 1979* (WA) provides a right of entry for the purposes of investigating a suspected contravention* of the WHS Act, that relates to, or affects, a relevant worker. A relevant worker is a member, or eligible to be a member of the union, who works at the workplace.

- Has the permit holder produced their federal (FWC) and State (WHS) permits prior to entry to site? *s496 FW Act*
- Does the union for which the permit holder works have members on site, or workers who are eligible to become members? *49I (1) IR Act*
- Has the permit holder complied with any reasonable WHS requirement that applies to the workplace? E.g., sign in on arrival, show permits, PP, be escorted. *S499 FW Act 2009*

If the answer to ALL the above questions is YES- the entry is permitted.

Allow the permit holder to enter the site during working hours, to inspect or view, and take photographs, films and audio, video or other recordings of, any work, material, machinery, or appliance, that is relevant to the suspected breach. *S49 I (2) IR Act.*

**The permit holder is not required to identify the issue prior to entry. Though this detail may be requested, it is an offence to refuse entry solely on the grounds the permit holder has not advised what the suspected breach is.*

The permit holder cannot inspect employment records or other documents unless the permit holder has given the employer concerned at least 24 hours' written notice; or if the records or other documents are kept other than on-site, at least 48 hours' written notice. (See Checklist D)

CHECKLIST D

Entry with notice to inspect employee records or information - *Work Health and Safety Act 2020.*

S49 I of the Industrial Relations Act 1979 (WA) provides a right of entry for union representatives for the purposes of investigating a suspected contravention of the WHS Act, that relates to, or affects, a relevant worker. An entry permit holder may enter any workplace for the purposes of inspecting, or making copies of:

- a) Employee records that are directly relevant to a suspected contravention, or
- b) Other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.

A relevant worker is one who is a member, or eligible to be a member of the representative's union.

- Has the permit holder produced their federal (FWC) and State (WHS) permits prior to entry to site? *s496 FW Act.*
- Has the permit holder provided an entry notice during normal working hours to the occupier and any affected employer at least 24 hours if the records or other documents are kept on the employer's premises, or if the records or other documents are kept elsewhere, at least 48 hours' written notice? *S495 (1) (b) FW Act s49 I (6) IR Act*

Does the entry notice provide a description of the employee records and other documents, or of the classes of records and documents, directly relevant to the suspected contravention, that are proposed to be inspected?

- Has the permit holder complied with any reasonable WHS requirement that applies to the workplace? E.g., sign in on arrival, show permits, PP, be escorted. *S499 Fair Work Act 2009*

If the answer to ALL the above questions is YES- the entry is permitted.

The occupier /employer must allow the permit holder to enter the site to inspect or make copies of employee records that are directly relevant to a suspected contravention, or other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.

CHECKLIST E

Entry without notice for resolution of health and safety issues - *Work Health and Safety Act 2020.*

S 80 (3) of the Work Health and Safety Act 2020.

A representative of a party to an WHS issue at the workplace may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

If the worker or workers have requested an officer of a federally registered union to represent them in the process of resolving WHS issue the union representative's entry is subject to the Fair Work Act.

If requested by the occupier/employer, the union representative must produce a valid federal entry permit issued by the Fair Work Commission and comply with any reasonable WHS requirements in the workplace. E.g., sign in on arrival, show permits, PP, be escorted.

FAIR WORK REGULATIONS 2009 - SCHEDULE 3.3

ENTRY NOTICE

I, [*full name*], of [*name of organisation*], and having been issued an entry permit under section 512 of the *Fair Work Act 2009* , give notice that I propose to enter [*name and address of premises*] on [*date of proposed entry*].

The suspected contravention, or contraventions, to which this notice relates are:

[*particulars of the suspected contravention or contraventions*].

As the entry is authorised by section 481 of the *Fair Work Act 2009* (which deals with entry to investigate suspected contraventions), I declare that:

[*name of organisation*], under [*provision in organisation's rules*], is entitled to represent the industrial interests of a member who performs work at the premises mentioned above; and

the suspected contravention or contraventions relate to or affect that member.

Given at [*time*]

Dated 2022

Signature of permit holder