

## **ENTRY PERMIT – HOLDERS – RIGHTS AND RESPONSIBILITIES WHEN EXERCISING ENTRY WITHOUT PRIOR NOTICE**

The *Work Health and Safety Act 2011* (the WHS Act) allows an official of a union who holds a Work Health and Safety (WHS) entry permit issued by WorkSafe ACT and a Fair Work Act 2009 permit, to enter workplaces during usual working hours without prior notice to inquire into a suspected contravention of the WHS Act.

An overview of the key requirements in respect of such an entry are set out below. More detail of this and other rights and responsibilities of WHS entry permit-holders can be found on WorkSafe ACT's website ([www.worksafe.act.gov.au](http://www.worksafe.act.gov.au)).

### **WHAT CONDITIONS MUST A WHS ENTRY PERMIT-HOLDER (EPH) MEET BEFORE THEY CAN ENTER A WORKPLACE WITHOUT GIVING PRIOR NOTICE?**

No prior notice to the business (or other person conducting a business or undertaking (PCBU)) is required where a WHS entry permit holder (EPH) holds a valid entry permit issued by WorkSafe ACT and a current Fair Work Act permit to investigate a suspected contravention of the WHS Act. But you must give notice as soon as it is reasonably practicable after entering the workplace unless it would defeat the purpose of the entry or cause unreasonable delay in an urgent case.


The entry permit-holder must have a reasonable suspicion before entering the workplace that a contravention of the WHS Act has occurred or is occurring that relates to or affects a relevant worker.

In order to have a reasonable suspicion, the WHS entry permit-holder must have some information about events in the workplace that would lead to a belief that there has been a contravention, or there is a contravention occurring. For example, a reasonable suspicion could be based on a complaint from a worker or someone familiar with the workplace that provides detail of incidents or events at the workplace or a direct observation by the WHS entry permit-holder, while outside the workplace, of an incident or event that is likely to constitute a contravention.

The WHS Act does not give WHS entry permit-holders an unconditional right of entry.

The WHS entry permit-holder must hold both a WHS entry permit from WorkSafe ACT and a current Fair Work Act permit and produce it when requested by **any** person at the workplace.





They must indicate that they believe a suspected contravention of the WHS Act has occurred or is occurring on the site they are seeking to enter.

After entering a workplace in such circumstances, a WHS permit-holder must provide a written entry notice as soon as reasonably practicable after they have entered the workplace. Written notice of entry must be completed on the prescribed approved form AF2018-6 ensuring the safety issue is described adequately.

Where there is more than one WHS entry permit-holder entering the site at the same time, their details may be included on the one form, or they may each provide a separate entry notice.

## HOW MANY WHS PERMIT-HOLDERS CAN ENTER A WORKPLACE AT THE ONE TIME?

While the WHS Act does not provide clear guidance on this question, the expectation is that the right of entry be carried out in a reasonable manner that is not disruptive to the work being carried out. The number of permit-holders who enter must be reasonable in all of the circumstances. The WHS Act does not limit the number of permit-holders who may enter at one time.

## WHAT CAN A WHS PERMIT-HOLDER DO ONCE THEY HAVE ENTERED A WORKPLACE?

WHS entry permit-holders must abide by any reasonable safety requirement imposed by the person in control of the site.

Although these will vary from site to site, the most common of these may be that they:

- be always accompanied by an employer representative while on the site
- wear the personal protective equipment reasonably required for safe access to that site.

When they enter a site, a WHS entry permit-holder can:

- inquire into the suspected WHS contravention they have identified and any other suspected contraventions they may sight whilst carrying out their inquiry
- consult with the relevant PCBU about the suspected contravention
- consult with relevant workers in relation to the suspected contravention
- warn any person they reasonably believe may be exposed to a serious risk arising from an immediate or imminent hazard or risk because of the suspected contravention
- inspect and make copies of documents related to the suspected contravention which are held by the PCBU, however, if the documents they wish to inspect and/or copy are employee records they must give a minimum of 24 hours' notice for the employer to produce them



- take photographs, audio and visual recordings of WHS contraventions while exercising a right of entry at a workplace.

A WHS entry permit-holder cannot:

- force either workers or the employer to cease work
- intentionally and unreasonably be disruptive or delay, hinder or obstruct the work being carried out or otherwise act in an improper manner.

## **WHAT MUST AN EMPLOYER DO WHEN A WHS ENTRY PERMIT-HOLDER SEEKS TO ENTER A SITE TO INQUIRE INTO A SUSPECTED CONTRAVENTION?**

A person in charge of a site either a PCBU or Person with Management or Control of a Workplace (PWMC) must not unreasonably refuse, delay or hinder a WHS entry permit-holder who is validly seeking to enter a site and inquire into a suspected contravention. To do so would be a breach of the WHS entry permit provisions by the PCBU or PWMC.

A WHS entry permit-holder has a statutory right of entry and there are limited circumstances where a PCBU may refuse or delay such entry. An example of a reasonable excuse to delay or refuse entry may be where entry to the site would be unsafe for the permit-holder.

While it may be reasonable, on a large site for example, for the WHS entry permit-holder to be delayed for several minutes while the site supervisor came to the gate from another part of the site, any unreasonable delay, such as a lengthy delay, or waiting for a senior employer representative to arrive at the site from another site or part of the town, is not reasonable. A PCBU should always have someone onsite who can accept responsibility in such circumstances until a more senior company representative can arrive.

## **WHAT IF EITHER THE EMPLOYER OR THE WHS ENTRY PERMIT-HOLDER FAILS TO ABIDE BY THEIR OBLIGATIONS UNDER THE LEGISLATION?**

Failure to comply with the obligations imposed by the legislation on any of the parties involved can lead to enforcement action from WorkSafe ACT including, ultimately, prosecution and the prospect of significant fines.

## **SHOULD WORKSAFE ACT BE INVOLVED?**

While both WHS entry permit-holders and employers should be able to exercise their mutual rights and obligations without the involvement of the WHS regulator (WorkSafe ACT), disputes can be referred to a WorkSafe inspector for resolution.

WorkSafe inspectors can attend a site and assist the parties with resolving disputes but will not decide what action should be taken. In some circumstances the parties may



agree to continuing discussions about the matter(s) in dispute at a later time or date. It should be noted that it is not a reasonable excuse to refuse entry merely because a WorkSafe inspector has been called to attend the site to resolve a dispute.

