

ALERT

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Company fined for blocking union access to the workplace

The Federal Court has handed down a \$9,000 fine to a Melbourne glass company after it refused entry to two officials from the CFMEU.

The *Fair Work Act 2009* (Cth) (**Act**) provides a framework within which union officials may exercise a right of entry to premises occupied by employers. Under s502(1), a person may not intentionally hinder or obstruct a permit holder who is exercising his or her rights of entry in accordance with the Act.

In this case, the union officials gave the company notice of their intention to enter the premises the following day to hold discussions with employees. When they arrived, they were met in the car park by a senior manager from the company who sought information from them about their authority to enter the site and the purpose of their proposed visit. Despite the union officials providing this information, they were refused entry into the building and a room in which to interview employees. The senior manager told the officials that any meeting was to take place in the undercover car park area and if they wished to speak to a particular employee, he would fetch that employee for them. After a heated

exchange, the senior manager asked the union officials to leave the premises.

Justice Richard Tracey found that the company had contravened s502(1). The Act places various restrictions on the union's right of entry to minimise inconvenience to the employer. However, Justice Tracey said where the right of entry is exercised in accordance with the provisions of the Act, union officials are entitled to unimpeded access to business premises for their proposed purposes. Furthermore, he noted that employers are required to 'respond positively' to any reasonable request that a room be made available to the union.

The penalty imposed was undoubtedly significantly reduced by the company's acknowledgement of liability. However Justice Tracey also issued this warning to employers –

- *'It must be made clear to employers that they are not entitled to deny access to their premises to union officials who are exercising lawful rights of entry under the Act.'*



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Employers should note:

The following conditions must be satisfied before a permit holder is entitled to enter the premises:

- A union official who holds a permit and who wishes to enter premises must give the employer an entry notice of at least 24 hours before exercising a right of entry.
- The entry notice must specify the premises to be entered, the day of entry, and the name of the union of which the permit holder is an official.
- If the proposed entry is for the purpose of holding discussions with employees, the notice must contain certain additional details (s518(3)).
- An employer is not entitled to hinder or obstruct the entry of a permit holder if the above conditions are met. To do so is a contravention of the Act. Employers should also note that it is a contravention of the Act to refuse or unduly delay the entry of a permit holder who is entitled to enter the premises.
- Furthermore, the Act provides a union with standing to apply for the imposition of a penalty if it is affected by the contravention (s539(2)).
- Employers should note that the maximum penalty which may be imposed for contravening this section is \$33,000 (where the offender is a corporation).

Authored by: Joanna Shields, Cornwall Stodart

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**For further information
please contact:**

Tracey Davies, Partner

Phone (direct) **+61 3 9608 2177**

Mobile **+61 412 164 030**

Email **t.davies@cornwalls.com.au**