

Workplace delegates' rights

Important

There have been changes to workplace delegates' rights as part of the Closing Loopholes amendments to the Fair Work Act:

- **15 December 2023** – new rights and protections were introduced for workplace delegates
- **1 July 2024** – awards, new enterprise agreements and new workplace determinations include a workplace delegates' rights term
- **26 August 2024** – workplace delegates' rights are extended to regulated workers

Read on to find out more about workplace delegates' rights.

Who is this fact sheet for?

This fact sheet is for workplace delegates and their employers or hirers. It explains:

- what a workplace delegate is
- the rights and responsibilities of workplace delegates
- entitlements and protections for workplace delegates
- the benefits of consultation and cooperation in the workplace
- where to get more information and help.

What is a workplace delegate?

A workplace delegate (or delegate) is a worker who is elected or appointed to represent union members in their workplace. They may also be called a union rep.

Delegates have the right to represent the industrial interests of union members and potential members. This includes disputes with their employer or hirer.

What do workplace delegates do?

Workplace delegates represent the workplace interests of union members and potential members. They may represent workers in:

- consultation about major workplace changes, rosters, or hours of work
- resolution of disputes
- disciplinary processes
- enterprise bargaining, and
- any other process or procedure in an award, agreement or policy where eligible employees are entitled to be represented and which concerns their industrial interests.

Note: Workplace interests related to Workplace Health and Safety conduct are covered under relevant State or Commonwealth or Territory laws which can impact the action that employers and workplace delegates can take.

Example

Roz is a workplace delegate for her union.

Roz's colleague Tao has approached her for advice about a workplace problem he is experiencing.

Roz provides Tao with information about his rights and entitlements and offers advice on how to resolve the issue with their employer. Roz also offers to attend a meeting between Tao and his manager as a support person.

What are workplace delegates entitled to?

Workplace delegates can be covered by an award, be award free or be regulated workers. Award free and regulated worker workplace delegates get their entitlements from the Fair Work Act. Award covered workplace delegates get their entitlements from the Fair Work Act and their award.

Workplace delegates are entitled to reasonable:

- communication with union members and potential members about their workplace interests
- access to the workplace and workplace facilities.

In some instances, employers aren't required to provide access to a workplace facility. For example, if the workplace doesn't have the facility or if it's not practical to provide access due to operational requirements.

Paid time for training

Some workplace delegates are also entitled to reasonable access to paid time during normal working hours, for training related to their role as a delegate.

The entitlement to paid training time **does not apply** if the delegate:

- is employed by a small business with fewer than 15 employees at the time, or
- is a regulated worker (this includes 'employee-like' workers performing digital platform work in the gig economy and regulated road transport contractors)

Determining what's reasonable for workplace delegates' entitlements depends on factors including the:

- size and nature of the business
- resources of the employer or hirer
- facilities available at the workplace.



Did you know?

Delegates can communicate with union members and potential union members in different ways and at various times.

Communication may include, but is not limited to:

- face-to-face meetings or discussions
- posting information on noticeboards
- using the work email system.

Communication may take place during working hours, on work breaks, or outside of work hours.

How do workplace delegates access their entitlements?

Award covered delegates

To access their entitlements, a workplace delegate that is covered by an award needs to tell their employer or hirer in writing that they are an appointed workplace delegate. They may be asked to show evidence of their appointment.

Paid training time

Delegates that want to access paid training time to attend related training during normal working hours must:

- be an employee appointed as a delegate
- be employed by a business with 15 or more employees at the time.

Delegates covered by an award must, also:

- give their employer at least 5 weeks notice of the training
- tell their employer the training topic, dates and start and finish times.

The delegate's employer must tell the delegate at least 2 weeks before the training starts if they can access paid training time. The delegate's employer cannot unreasonably refuse the delegate's request.

The delegate's employer can ask the delegate for an outline of the training content and to show evidence they attended the training.

Award covered delegates and employers should check their award for additional requirements for accessing paid time that may apply.

Example

Jorge was elected as a delegate in his workplace. Jorge sends his employer an email to let them know he is now a delegate.

Jorge finds out that there is a training course for new delegates in 6 weeks time, that runs during work hours.

Jorge wants to go to the training, so he emails his employer to give them notice. He includes information about what the training covers, and the training dates and times.

Jorge's employer approves his request to attend the training on paid time and asks Jorge to give them evidence of his attendance.

What responsibilities do workplace delegates have?

Workplace delegates must fulfil their duties and obligations as a worker. This includes following reasonable policies and procedures such as:

- codes of conduct
- workplace health and safety
- acceptable use of information communication technology (ICT) resources.

Workplace delegates must not hold up or prevent:

- the normal performance of work
- workers exercising their right to freedom of association.

What protections do workplace delegates have?

There are extra protections to prevent employers and hirers from taking adverse (negative) action against delegates because of their delegate role.

An employer or hirer must not:

- unreasonably fail or refuse to deal with a workplace delegate
- knowingly or recklessly make a false or misleading representation to a workplace delegate
- unreasonably hinder, obstruct or prevent a workplace delegate from exercising their rights under the Fair Work Act or a fair work instrument (such as an award or enterprise agreement).

Examples of adverse action include doing, threatening or organising to:

- fire or terminate a worker
- injure an employee in their employment (for example, by not giving legal entitlements such as pay or leave)
- change a worker's job to their disadvantage (for example by demoting them, or cutting their shifts or hours).

Courts can impose legal penalties on employers or hirers who take adverse action against a worker because of their role as a workplace delegate.

We, the Fair Work Ombudsman, can investigate allegations of adverse action. For more information see our Protections at work fact sheet at fairwork.gov.au/factsheets.

The Fair Work Commission can deal with disputes about general protections, including workplace delegates' rights. For more information visit the Fair Work Commission at fwc.gov.au.

What are the benefits of consultation and cooperation in the workplace?

Consultation means asking for and considering workers' views when making decisions. Cooperation means working together to find solutions.

Employers and hirers have the right to make final decisions for their business. The benefits of taking a consultative and cooperative approach with workplace delegates when making decisions can include:

- improved worker engagement and performance
- easier change implementation because workers have been involved in the planning process
- better business performance during change because less time is spent on responding to misunderstandings, rumours or disputes.

For more information see our Consultation and cooperation in the workplace best practice guide at fairwork.gov.au/bestpracticeguides.

Where can I get more information and help?

For more information on:

- **workplace delegates' rights** visit our Workplace delegates page at fairwork.gov.au/delegates
- **changes to workplace delegates' rights** as part of the Closing Loopholes amendments to the Fair Work Act visit our Closing Loopholes page at fairwork.gov.au/closing-loopholes
- **how to become a workplace delegate**, workers should contact their union. Workers can find their relevant union on the Australian Unions – Which is the union for you page at australianunions.org.au/about-unions/which-is-the-union-for-you. A list of unions is also available on the Fair Work Commission website at fwc.gov.au/registered-organisations/find-registered-organisation
- **general protections** for workplace delegates visit our Protections at work page at fairwork.gov.au/protections
- **dealing with disputes** about workplace delegates' rights visit the Fair Work Commission at fwc.gov.au/issues-we-help.

CONTACT US

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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