

DELEGATES' RIGHTS

What is a delegate?

Delegates, also known as workplace delegates, or union delegates, are employees appointed or elected as representatives of union members in their workplace.

Delegates can represent the industrial interests of union members and those who are eligible to be union members, including in disputes with their employer.

They act as a first point of contact for union members to assist employees in connecting with their union and assist union members to know their rights at work and run union campaigns.

What is the difference between a delegate and an official/organiser or representative?

Union organisers are union officials who are employees of the union/employee organisation and liaise with delegates across workplaces. Whereas a delegate is not an employee of the union but an employee of the relevant employer who assists with representing their colleagues' interests.

Delegates are also not to be confused with Health and Safety Representatives (**HSR**) who are similar to delegates in that they are employees who are elected by their colleagues to represent and promote their interests. However, HSRs only act on Work Health and Safety issues and have different rights.

What rights do delegates have?

Workplace delegates have the right to:

- represent the industrial interests of union members and those eligible to be members of the union;
- reasonable communication with current members and those eligible to be members, about their industrial interests (such as holding a meeting with employees during enterprise bargaining to get their input on issues important to them);
- reasonable access to the workplace and workplace facilities (such as use of the computer provided by the employer); and
- reasonable access to paid time during normal working hours, for the purposes of training related to their role as a delegate (unless the employer is a small business, i.e. has 15 or less employees).

What is reasonable?

What is considered reasonable depends on the:

- size and nature of the delegates' employer;
- resources of the employer; and
- facilities available at the workplace.

How are delegates' rights protected?

An employer of a workplace delegate must not:

- unreasonably fail or refuse to deal with the workplace delegate;
- knowingly or recklessly make a false or misleading representation to the workplace delegate;
- unreasonably hinder, obstruct or prevent the exercise of the workplace delegate's rights while acting in the capacity as a workplace delegate,

As of 15 December 2023, workplace delegates' rights are a workplace right. Therefore, an employer must not take adverse action against a union delegate for exercising their rights.

Adverse action includes, but may not be limited to, the following actions taken by the employer against the relevant workplace delegate due to their exercise of their workplace rights:

- not allowing the delegate to meet with employees;
- prevent a delegate from using a meeting room to hold discussion with employees;
- preventing a delegate from inviting employees to meetings using their company email;
- dismissing the employee;
- reducing the number of shifts or hours of work the employee has;
- demoting the employee; and
- treating the employee differently to others and offering them different/worse conditions to other employees.

If an employer takes adverse action against a union delegate for exercising their workplace rights the delegate may commence a general protections claim in the Fair Work Commission against the employer.

The maximum penalty for general protections contraventions is \$18,780 for an individual and \$93,900 for a company.