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Union right of entry and OH&S

In a recent case, a building company and two of its senior employees were fined \$12,000 for infringement of the right of union officials to enter a worksite to investigate safety issues.

The employees had directed other company staff to stop the CFMEU officials from entering the worksite, on the basis that they had not given 24 hours notice of their proposed entry. This overlooked the applicable law which allowed entry without notice for safety inspections (although 24 hours notice generally has to be given for inspections to inspect records, or to investigate suspected breaches of award conditions or industrial laws, or to hold discussions with workers eligible to be union members).

The Court was not impressed with the employees' argument that they were ignorant of this rule. The Court held that there was no excusable reason for the employees not to have been properly informed about important elements of the OH&S system, and held that ignorance on this issue aggravated the offence and the penalty rather than being an excuse which reduced or avoided penalty.

It is important for all relevant staff to be aware of the rules relating to different types of entry by union officials, to act strictly in accordance with those rules, and not to impede union entry to the workplace within the rules.

For more information on right of entry rules and risk management, contact Stephen Booth, Anna Ford, or Enza Iannella at Coleman Greig on 9635 6422.

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