

WEINGARTEN RIGHTS

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

"Weingarten Rights"

The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the ***Weingarten rights***.

Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information, which could be used as a basis for discipline or asks an employee to defend his or her conduct.

If called into a meeting with management and the meeting could in any way lead to your being disciplined or terminated, or affect your personal working conditions, inform management that you request that your Union Representative or Steward be present at the meeting. Until your representative arrives, explain that you choose not to participate in their discussion.

THE EMPLOYEE MUST MAKE CLEAR TO ***ASK FOR UNION REPRESENTATION*** BEFORE OR DURING THE MEETING.

Management is not required to inform the employee of his/her *Weingarten* rights; it is the employee's responsibility to know and request.

READ THIS STATEMENT TO MANAGEMENT:

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I request that my union representative, officer, or steward be present at the meeting. Without representation, I choose not to answer any question".

"This is my right under a U.S. Supreme Court decision called Weingarten."

The employee cannot be punished for making this request. If the Employer denies this request and continues to question, it commits an UNFAIR LABOR PRACTICE, which is a violation of Federal law, and the employee has a right to refuse to answer. The employer may not discipline employees for such a refusal.

When the employee makes the request for a union representative to be present management has three options:

1. It can stop questioning until the representative arrives.

2. It can call off the interview or,

3. It can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)

The presence of a steward can help in many ways. For example:

- The steward can help a fearful or inarticulate employee explain what happened.
- The steward can raise extenuating factors.
- The steward can advise an employee against blindly denying everything, (hereby giving the appearance of dishonesty and guilt).
- The steward can help prevent an employee from making fatal admissions.
- The steward can stop an employee from losing his or her temper, and perhaps getting fired for insubordination.
- The steward can serve as a witness to prevent supervisors from giving a false account of the conversation.

Rights of Stewards

Employers will often **assert** that **the only role of a union representative** in an investigatory interview **is to observe** the discussion. **The Supreme Court**, however, **clearly acknowledges a representative's right to assist and counsel workers during the interview.**

The Supreme Court has **also ruled** that **during an investigatory interview management must inform the union representative of the subject of the interrogation.** The **representative must also be allowed to speak privately** with the employee **before the interview.**

While the interview is in progress the representative cannot tell the employee what to say but **he may advise** them **on how to answer a question.**

Decided cases establish the following procedures:

1. When the steward arrives, the supervisor must inform the steward of the subject matter of the interview, i.e., the type of misconduct for which discipline is being considered (theft, lateness, drugs etc.).
2. The steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.
3. The steward must be allowed to speak during the interview. However, the steward does not have the right to bargain over the purpose of the interview.
4. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.
5. The steward can request that the supervisor clarify a question so that the worker can understand what is being asked.
6. After a question is asked, the steward can give advice on how to answer.
7. When the questioning ends, the steward can add information to support the employee's case.

It must be emphasized that **if the Weingarten rules are complied with**, stewards have no right to tell workers not to answer questions, or to give false answers.

On June 15, 2004, The National Labor Relations Board ruled by a 3-2 vote that employees who work in a non-unionized workplace are not entitled under Section 7 of the National Labor Relations Act to have a coworker accompany them to an interview with their employer, even if the affected employee reasonably believes that the interview might result in discipline.

This decision effectively reversed the July 2000 decision of the Clinton Board that extended Weingarten Rights to nonunion employees.

What Is an Investigatory Interview?

Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a *reasonable belief* that discipline or other adverse consequences may result from what he or she says, the employee has a right to request union representation. Investigatory interviews usually relate to subjects such as:

- Absenteeism
- Accidents
- Damage to company property
- Drinking
- Drugs
- Falsification of records
- Fighting
- Insubordination
- Lateness
- Poor attitude
- Sabotage
- Theft
- Violation of safety rules
- Work performance

Shop-floor conversations.

Not every management initiated discussion is an investigatory interview. For example, a foreman may talk to a worker about the proper way to do a job. Even if the boss asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversations to clarify work assignments or explain safety rules.

Nevertheless, even an ordinary shop-floor discussion can change its character if the supervisor is dissatisfied with the employee's answers. If this happens, the employee can insist on the presence of a union representative before the conversation goes any further.

Disciplinary announcements.

When a supervisor calls a worker to the office to announce a warning or other discipline, is this an investigatory interview affording the worker a right to union representation? The NLRB says no, because the employer is merely answering a previously arrived-at decision and is not questioning the worker. Such a meeting, however, can be transformed into an investigatory interview if the supervisor begins to ask questions to support the decision.

Note: An employer that has followed a past practice of allowing stewards to be present when supervisors announce discipline must maintain the practice during the contract term. Refusing to allow a steward to attend would constitute an unlawful unilateral change.

QUESTIONS AND ANSWERS

Demanding to attend meeting

Q. If I see a worker being interviewed in a supervisors' office, can I demand to attend the meeting?

A. Yes. A steward has a protected right to demand admission to a Weingarten interview. However, once the request is made, the employee being interviewed must indicate a desire for your presence. If the employee states that he or she wishes to be interviewed alone, the steward must leave.

Coercing employees to drop request

Q. An employee was summoned to an interview with his foreman and asked for his steward. In response, the foreman said, "You can request your steward, but if you do, I will have to bring in the plant manager, and you know how temperamental she is. If we can keep it at the level we're at, things will be a lot better for you." Violation?

A. Yes. The foreman is threatening greater discipline to coerce the employee into abandoning his Weingarten rights. This is an unfair labor practice.

Employee refuses to go to meeting

Q. An employee was ordered by her foreman to the personnel office for a "talk" about her attitude. She asked to bring a union representative but the foreman said she would have to make her request when she got to the office. Can she refuse to go to the office?

A. No. Weingarten rights do not begin until the actual interview begins. The employee must go to the office and repeat her request to the official conducting the interview. Only if a supervisor makes clear in advance to the employee that he or she intends to conduct an investigatory interview without union representation, does an employee have a right to refuse to go to a meeting.

Medical examination

Q. The company is recalling workers from a layoff and is insisting on medical examinations for those out of work three months or more. Can the workers demand a steward's presence during the examination?

A. No. Medical examinations are not investigatory interviews. Weingarten rights do not apply.

Lie detector test

Q. Does Weingarten apply to a polygraph examination?

A. Yes. An employee has a right to union representation during the pre-examination interview and the examination itself.

Urinalysis

Q. If management asks a worker to submit to a urine test for drugs, does Weingarten apply?

A. Yes and no. Since a urine test is not questioning, an employee does not have a right to the presence of a steward during the actual test. Management must, however, allow the employee to consult with a union representative to decide whether or not to take the test.

Locker search

Q. Can management order a worker to open a locker without a steward being present?

A. Yes. Locker searches, car searches, or handbag searches are not interviews. Employees do not have a right to insist on the presence of a steward.

Counseling session

Q. An employee was given a written warning about poor attendance and told he must participate in absence counseling sessions with a member of the personnel department. Does the worker have a right to demand the presence of a union steward at the counseling sessions?

A. This depends on whether the employee has a reasonable fear that the counseling sessions could result in further discipline. If notes from the sessions are kept in the employee's permanent record, or if other employees have been disciplined after counseling sessions, the employee's fears would be reasonable and would entitle him to bring a steward. But if the employer gives firm assurances that the meetings will not be used for further discipline and promises that the conversations will remain confidential, Weingarten probably would not apply.

Request to sign warning slip

Q. If a worker is given a warning slip for misconduct and is asked to sign the slip to acknowledge receipt; must the employer permit her to consult her steward before signing?

A. No. Since the employer is not questioning the worker, Weingarten rights do not apply.

Request for attorney

Q. Can a worker insist on the presence of a lawyer before answering questions at an investigatory interview?

A. Not where employers simply announce discipline. However, if the employer starts asking questions or tries to make the employee admit guilt, Weingarten would apply

and the employee can insist on the presence of a steward or other union representative before answering.

Steward not at worksite

Q. If a worker's steward is out sick, can the worker insist that the interview be delayed until the steward is available?

A. No. Management does not have to delay an investigation if other union representatives are available to assist the employee at the interview.

Steward's right to representation

Q. If I am called in by my foreman to discuss my work record, do I have the right to a union representative?

A. Yes. Union stewards have Weingarten rights. If you fear discipline or other adverse action, you have the right to the presence of a union representative.

Walking out of interview

Q. Suppose a worker's request for a steward is denied. If the supervisor continues to ask questions, can a worker walk out of the office to get a steward?

A. In some cases, yes. According to NLRB decisions, when an employee is entitled to union representation and the employer denies the employee's request, an employee can refuse to participate in the interview, even to the point of walking out to seek a union representative. However, if the employee is told to wait while management gets the steward, the employee must stay in the office until the steward arrives.

Shop meeting

Q. If the company calls a meeting to lecture workers about job performance; do the employees have a right to demand the presence of a union representative before attending the meeting?

A. No. Holding a meeting on work time which does not involve interrogation is not a Weingarten meeting. There is no right to a steward unless the employer begins asking questions of employees in a manner that creates a reasonable fear of discipline.

Penalties for Weingarten violations

Q. If management refuses an employee's request for union representation, gets the employee to confess to theft, and then fires the employee, will the NLRB/FLRB order the worker to be reinstated?

A. Probably not. The NLRB used to order the reinstatement of employees who were fired as a result of admissions during an illegal interview. But in 1984 the Board ruled that such a penalty was an unwarranted "windfall" for guilty workers. The standard Weingarten penalty is now limited to a bulletin board posting in which the employer promises not to repeat its violations.