

Weingarten Rights

In 1975 the United States Supreme Court, in the case of *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), upheld a NLRB decision that employees have a right to union representation at investigatory interviews. These rights have become known as the **Weingarten Rights**.

An investigatory interview is one in which a Supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has a reasonable belief that discipline or discharge may result from what s/he says, the employee has the right to request Union representation.

Examples of such an interview are:

1. The interview is part of the employer's disciplinary procedure or is a component of the employer's procedure for determining whether discipline will be imposed.
2. The purpose of the interview is to investigate an employee's performance where discipline, demotion or other adverse consequences to the employee's job status or working conditions are a possible result.
3. The purpose of the interview is to elicit facts from the employee to support disciplinary action that is probable or that is being considered, or to obtain admissions of misconduct or other evidence to support a disciplinary decision already made.
4. The employee is required to explain his/her conduct, or defend it during the interview, or is compelled to answer questions or give evidence.

It is an obligation of the Union to educate bargaining unit employees about their Weingarten rights **BEFORE** an occasion to use them arises. An employee must state to the employer that he/she wants a Union representative present; the employer has no obligation to ask the employee if she/he wants a representative

During an investigatory interview, the Supreme Court ruled that the following guidelines apply:

RULE 1: The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.

RULE 2: After the employee makes the request, the employer must choose from among three options. The Employer must either:

- Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee
- Deny the request and end the interview immediately
- Give the employee a choice of having the interview without representation (NOT a good choice) or ending the interview

RULE 3: If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal. (However, you do not have the right to refuse to attend the meeting even if the union representation has not been provided.)

WHEN IN DOUBT, ASK FOR UNION REPRESENTATION!

Role of the Representative

1. Upon arrival, the administrator must inform the representative of the subject matter of the meeting (interview).
2. The representative must be allowed to take the employee aside for a private interview conference before questioning begins.
3. The representative must be allowed to speak during the interview; however, the representative does not have the right to bargain over the purpose of the interview.
4. The representative can request that the administrator clarify a question so that the employee can understand what is being asked.
5. After a question is asked, the representative can give advice on how to answer.
6. When the questioning ends, the steward can provide additional information to the administrator

Representatives have no right to tell employees not to answer questions, or to give false answers. Employees can be disciplined if they refuse to answer questions if Weingarten rules have been complied with.