

# Weingarten Rights

## THE WEINGARTEN RULE

**An employee's right to representation**

### WEINGARTEN RIGHTS

An employee may be represented by the union at an investigatory interview with his or her supervisor when the employee reasonably believes that the interview may lead to a disciplinary action.

#### **U.S. Supreme Court ruling:**

The rights of employees to the presence of union representatives during investigatory interviews was announced by the U.S. Supreme Court in 1975 in *NLRB v. J. Weingarten, Inc.* Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as Weingarten Rights.

#### **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  
drinking  
fighting  
poor attitude  
violation of safety rules  
accidents  
drugs

insubordination  
sabotage  
work performance  
damage to state property  
falsification of records

lateness  
theft  
violation of  
work  
procedures

#### **Weingarten rules:**

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules 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:

Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or Deny the request and end the interview immediately; or Give the employee a choice of: (1) having the interview without representation or (2) ending the interview.

### **RULE 3**

If the supervisor denies the request for union representation and continues to ask questions, he or she commits an unfair labor practice and the employee has the right to refuse to answer. The supervisor cannot discipline the employee for such a refusal.

### **Rights of Stewards**

Supervisors often assert that the only role of a steward at an investigatory interview is to observe the discussion, i.e., to be a silent witness. The Supreme Court, however, clearly acknowledged a steward's right to assist and counsel workers during the interview. 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 conduct 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. The steward, however, does not have the right to bargain over the purpose of the interview.
4. The steward can request that the supervisor clarify a question so the worker can understand what is being asked.
5. After a question is asked, the steward can give advice on how to answer.
6. When the questioning ends, the steward can provide information to the supervisor.

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

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