

Weingarten rights- Right to Union Representation

Weingarten rights" derive from a 1975 Supreme Court case, NLRB v. J. Weingarten, Inc. Essentially, they are the right to request assistance from union representatives during investigatory interviews, so that a steward may prevent management from coercing an employee into confessions of misconduct (either through threatening behavior, or simply through skilled interrogation techniques). The union steward can:

- serve as a witness to the actual content of the investigation;
- object to intimidating tactics or confusing questions;
- help an employee avoid making "fatal admissions;"
- advise an employee, when appropriate, against denying everything, and thereby giving the appearance of guilt or dishonesty;
- counsel an employee against losing her/his temper;
- discourage an employee from informing on others;
- raise extenuating factors.

Weingarten rights apply only in investigatory interviews -- that is, when management questions an employee to obtain information; and the employee has a reasonable belief that discipline (or other negative consequences) may result. If an employee is called in to a supervisor's office merely to be informed of a disciplinary decision, the courts have found that this is not an investigatory meeting. The decision to discipline the employee has already been made. However, if the supervisor asks additional questions about the employee's conduct, the meeting becomes an investigatory interview.

SAMPLE REQUEST FOR REPRESENTATION:

"If this discussion could in anyway lead to my being disciplined or terminated, or affect my personal working conditions, I request that my union representative be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

The employee may request union representation before, or at any time during, the interview. At that point, the employer must either grant the request and delay questioning until the steward arrives; deny the request and end the interview immediately; or give the employee the choice of having the interview without representation or ending it immediately. If the employer denies the request for union representation and continues the meeting, the employee has the legal right to refuse to answer questions. However, it is a good idea to phrase the refusal in such a way that it can not be interpreted as insubordination; for example, by saying that you are willing to write down their questions and respond once you've spoken to a union representative. Employers sometimes assert that the steward's only function in these meetings is to observe the discussion (a "silent witness"), but this is not the case. The steward is also allowed to advise and assist the employee in presenting the facts. Once the steward arrives:

- The employer must inform the steward of the subject of the interview (the type of misconduct being investigated);
- The steward must be allowed to meet privately with the employee before questioning begins;
- The steward may speak during the interview, but cannot insist that the interview be ended;
- The steward may object to confusing questions and request for clarification (so that the employee understands what s/he is being asked);
- The steward may advise the employee not to answer questions that are abusive, misleading, or harassing;
- When the questioning ends, the steward can provide information to justify the employee's conduct.

The employer is under no obligation to inform employees of their right to representation. You lose your Weingarten rights if you do not assert them.

Know your labor law Weingarten rights - Use them or lose them!

By Att. Gay Semel

Most union activists know that employees have the right to union representation during an investigatory interview, but . . .

Question: *Where does the right come from?*

Answer: In the landmark Weingarten case, the United States Supreme Court ruled that a union-represented employee has the right to representation during an interview with management if he or she reasonably believes that disciplinary action will result. Although the right to union representation usually arises during an "investigatory interview," such an official setting is not required. Any conversation with management during which the employee is questioned and reasonably believes the questioning could lead to discipline triggers the right to union representation. (Note: Weingarten rights apply to private sector employees only. Unionized public sector employees usually enjoy similar rights but those are established by state law or collective bargaining).

Question: *What is a reasonable belief?*

Answer: A "reasonable belief" is based on an objective standard. When all the circumstances are evaluated, is it reasonable to believe that continued discussion could lead to disciplinary action? If so, the Weingarten right arises.

Question: *What must an employee do?*

Answer: The employee must request union representation. The employer has no obligation to make sure a union steward is present during an investigatory interview, or even to advise the employee of their right to union representation. Therefore, it is very important that the union educate bargaining unit members about their right to representation and when to ask for it.

Question: *What happens after the employee asks for representation?*

Answer: If an employee being questioned by a supervisor, a manager, a company security agent, or other company representative asks to have a steward present, the request must be granted or the interview stopped.

Question: *What if the supervisor or other company representative continues the interview?*

Answer: If a supervisor ignores a request for a steward and continues the interview, the employee should refuse to respond. The employee must be careful, however, not to do anything else that could be considered insubordinate. For example, the employee should not walk out of the interview. Rather, the employee should remain at the interview but advise the company representative that they are requesting a steward and will not answer questions without union representation.

Question: *Does the employer have to provide the steward requested by the employee?*

Answer: No, If the employee's regular steward is not available, the employer need only provide a steward in order to lawfully continue the interview. However, the employer can not select a steward more to the employer's liking if the employee's regular steward is available.

Question: *Must the employer allow time for the employee to consult with the union steward prior to continuing the interview?*

Answer: Yes. When the union representative arrives at the interview, the employee has the right to consult with the steward privately before continuing the interview.

Question: *During the interview, what can a steward do?*

Answer: The investigatory interview is not a bargaining session or a grievance meeting and the employer is not obligated to bargain with the union representative. On the other hand, the employer cannot order the steward to remain silent. The steward is entitled to provide assistance and counsel during the interview. At the beginning of the interview, or when the steward arrives, the steward must be told the nature of the alleged misconduct. During the interview, the steward may request that a question be clarified. The steward may give advice to the employee on how to answer a question. The steward and the employee may confer privately regarding the question and answer. When the questioning ends, the steward may provide additional useful information. The steward may not tell the employee not to answer a question or to give a false answer. The steward may and should take notes throughout the interview.

Question: *What should the union do if an employee is denied Weingarten rights?*

Answer: If an employee advises the union that they requested union representation and it was denied, an unfair labor practice charge should be filed with the [National Labor Relations Board](#). Ultimately, if the Union wins at the Board, the employer will have to post a notice and, hopefully, will learn that Weingarten rights must be granted.

Note: this article was written by an attorney addressed specifically to unions covered by the National Labor Relations Act (NLRA).

Union Representation