

WEINGARTEN RIGHTS

What are my Weingarten rights?

Workers have the legal right to have a union representative present during an investigatory interview. These rights derive from a Supreme Court decision (NLRB v. J. Weingarten, Inc.) that clarified the National Labor Rights Act (NRLA).

What is an investigatory interview?

An investigatory interview is one in which management questions an employee about actions that may lead to discipline or an employee reasonably believes that such questions could lead to discipline.

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 their conduct, or defend it during the interview, or is compelled to answer questions or give evidence.

When a supervisor gives instruction or general information to an employee, this is not an investigatory interview and therefore the employee does not have a right to union representation under Weingarten. Similarly, if a supervisor is merely informing an employee about a discipline decision that has already been made, the employee does not have a right to union representation under Weingarten but may have a right to union representation under the Collective Bargaining Agreement.

Please keep in mind that if a meeting between an employee and a supervisor starts out as a routine discussion, but then becomes an investigatory interview in which an employee reasonably believes that such questions could lead to discipline, the employee then becomes entitled to union representation.

What should I do before an interview?

Employers have no obligation to inform workers of their right to request union representation. If a worker wants to have union representation during an investigatory interview, the worker must affirmatively request that a union representative be present.

You can use the following language to assert your Weingarten rights.

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

How does it work?

Under Weingarten, the following rules apply when an investigatory interview occurs:

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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.
2. After the employee makes the request, the employer must choose from among three options. The employer must either:
 - a. Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
 - b. Deny the request and end the interview immediately; or
 - c. Give the employee a choice of having the interview without representation or ending the interview.

If the employer denies the request for union representation, and continues to ask questions, the employer 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.

Union Representative's Rights Under Weingarten

You are not required to merely be 'silent witness'. You have the right to:

1. be informed by the supervisor of the subject matter of the interview
2. take the employee aside for a private conference before questioning begins
3. speak during the interview
4. request that the supervisor clarify a question so that what is being asked is understood
5. give employee advice on how to answer a question
6. provide additional information to the supervisor at the end of the questioning.

You do not have the right to tell the employee not to answer nor, obviously, to give false answers. An employee can be disciplined for refusing to answer questions.