

Weingarten Rights

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

The rights of employees to have present a union representative during investigatory interviews were 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 an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and request.

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

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. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative can not tell the employee what to say but he may advise them on how to answer a question. At the end of the interview the union representative can add information to support the employee's case.

QUESTIONS AND ANSWERS:

1. Demanding to attend meeting:

Q. If I see a worker being interviewed in a supervisor's 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.

2. Coercing employee 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 worksite supervisor, 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.

3. 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.

4. Medical examination:

Q. The agency 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.

5. Lie detector test:

Q. Does Weingarten apply to a polygraph examination?

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

6. 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.

7. 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.

8. 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.

9. 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.

10. Request for attorney:

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

A. Generally, a lawyer will only be allowed when the employer is engaged in a pre-disciplinary/name clearing (Loudermill) meeting. However, there is nothing wrong with attempting to have a lawyer present to assist if the member so desires.

11. 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.

12. 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.

13. Walking out of interview:

Q. Suppose a worker's request for a steward is denied. If the supervisor continues to ask questions, can the 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.

14. Department / Agency meeting:

Q. If the employer 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.

