

WEINGARTEN RIGHTS

In 1975, the U.S. Supreme Court ruled that employees have a right to union representation during investigatory interviews by management. These rights are called "Weingarten Rights".

An investigatory interview occurs whenever a supervisor questions an employee to obtain information that could be used as basis for discipline. The employee must have a "reasonable belief" that disciplinary action may result from what he or she says at the interview. However, a supervisor who gives instruction on how to do a job is not conducting an investigatory interview. The possibility of discipline resulting from what is referred to as a "shop floor" discussion is usually remote.

Employees are not entitled to association representation if the employer is simply informing the employee of some discipline that has already been decided.

When an investigatory interview occurs, the following rules apply:

Rule 1 The employee must make a request for union representation either before or during the interview. Employers have no duty to inform workers of their rights. Workers who fail to request union representation can be questioned at length.

Rule 2 Once an employee makes a request, the employer must choose from among the following options:

- The employer may grant the request and delay questioning until the union representative arrives and has a chance to consult with the employee.
- The employer may deny the request and end the interview immediately (and possibly proceed with discipline based on other evidence).
- The employer may give the employee a choice of:
 - a) Continuing the interview without representation or
 - b) Discontinuing the interview

Under no circumstances can an employer ignore or deny a Weingarten request and continue asking questions.

Rule 3 If an employer denies the request for union representation the worker has a right to refuse to answer further questions. 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 union representation has not been provided).

THE ROLE OF ASSOCIATION REPRESENTATIVES IN WEINGARTEN

The presence of an association representative can be crucial, and both members and ARs should be aware of their rights.

1. The employee does not have the right to a representative of their choice. The choice of a representative may be based on availability.
2. The employee and AR have the right to know the subject matter of the interview.
3. The AR must be allowed to take the employee aside for a private pre-interview conference before questioning begins.
4. The AR must be allowed to speak during the interview.
5. The AR can request that the supervisor clarify a question so that the employee can understand what is being asked.
6. Before questions have been asked, the AR can give advice on how to answer.
7. When the questioning ends, the AR can provide additional information to the supervisor.
8. If Weingarten rules are complied with, AR's have no right to tell employees not to answer questions, nor to give false answers.

Local associations should educate members about their Weingarten rights. The presence of an AR can be crucial. It can save employees from making foolish statements that may lead to discipline or discharge.

CONFIDENTIALITY – RAWLINGS

Conversations between an attorney and an association member are privileged. Conversations between association member and association **representatives are not privileged and are subject to compulsory disclosure through subpoena.**

Rawlings was a police officer who refused to submit to a drug test and confided to a union representative that he probably could not pass the test. The union representative confided that under those circumstances, he probably would not take the test. Thereafter, the union representative received a subpoena that required him to testify to the conversations with Rawlings. Any conversations could be subject to subpoena/compulsory disclosure.