

WEINGARTEN RIGHTS

Your Right to Union Representation During an Investigatory Interview

What are Weingarten rights?

The U.S. Supreme Court ruled that federal law gives workers, including federal employees, the right to request union representation during investigatory interviews. The name of the court case was the *National Labor Relations Board v. Weingarten*. These rights are now known as “Weingarten rights.” The Federal Service Labor-Management Relations statute codified these rights in 5 USC Chapter 71 at 7114(a)(2)(B) and required that the Agency annually notify the employees of these rights at 7114(a)(3).

When can an employee exercise his/her statutory Weingarten rights?

Weingarten rights ONLY apply during an investigatory interview. The worker can request union representation before or at any time during the interview.

What is an investigatory interview?

An investigatory interview occurs when both these factors exist:

- Management questions an employee to obtain information; AND
- The employee has a reasonable belief that discipline or other adverse actions may result.

What does an employee need to do to exercise his/her statutory Weingarten rights?

- The employee must clearly state to the management official that he/she wants a union representative to be present.

What does an employer have to do when a worker asks for union representation?

An employer has three options when a worker requests union representation:

- Grant the request and delay questioning until the union representative arrives;
- Deny the request and end the interview immediately; OR
- Give the employee the choice of:
 - Having the interview without representation
 - Ending the interview

NOTE: the employer does NOT have to inform the worker that he/she has the right to a union rep.

NOTE: if a particular union representative is not available, and will not be available in a reasonable period of time, the employer can ask that another union representative attend the meeting instead.

What are an employee’s rights if the employer denies his or her request for union representation?

The employee can refuse to answer questions. Further, the worker or union can file a ULP.

What are a steward’s rights during an investigatory interview?

- The steward’s role is NOT just to observe. The steward must be allowed to advise and assist the employee in presenting the facts.
- When the steward arrives at the meeting, the employer must:
 - Inform the steward of the subject matter of the interview – i.e. the type of misconduct being investigated
 - Allow the steward to have a private meeting with the worker before the employer begins questioning the employee
 - Allow the steward to speak during the interview. (The steward cannot insist that the interview be ended, but the steward may call a caucus to speak privately with the worker during the meeting).
 - Allow the steward to object to a confusing question and ask that the question be clarified so the worker understands what is being asked.
 - Allow the steward to advise the employee NOT to answer questions that are abusive, misleading, or harassing.
 - Allow the steward to provide information to justify the worker’s conduct (once the interview ends).
- Further, a steward may enter a meeting where the steward reasonable believes that a worker is being interviewed and may be disciplined. However, if the worker refuses representation, the steward must leave.

Examples of when Weingarten rights apply

- When the worker reasonably believes the interview will result in discipline.
- Meetings that do not start out as investigatory interviews but that become one.
- Meetings in which the employee at first does not reasonably believe he/she will be disciplined, but later realizes discipline is possible.
- During phone interviews.
- During polygraphs (lie detector tests)

Examples of when Weingarten rights do **not** apply

- When the worker does not clearly ask for union representation.
 - Example: During an investigatory interview, the employee asks his manager if he should ask for a union rep, instead of directly stating he wants a union rep.
- During non-investigations, such as a urine test or locker search.
- During a disciplinary *announcement* (i.e. no questions), which federal law states is different than an *interview*.
 - BUT, if the supervisor begins asking the employee questions (interviewing him/her), then Weingarten rights apply and the worker has the right to union representation.