

WEINGARTEN RIGHTS: THE RIGHT TO REPRESENTATION

According to the U.S. Supreme Court, without union representation, you **do not** have a right to representation if you are summoned into an investigatory meeting by your supervisors regarding possible disciplinary action.

Once you have union representation, you are covered by the Weingarten Rights. If you are summoned by an administrator to an investigatory meeting that you **believe** might possibly result in disciplinary action against you, you have a legal right to union representation (**Weingarten Rights**). **It is important to remember that you must make the request for representation.** The employer is not required to inform you about your right to have someone with you at the meeting unless your collective bargaining agreement has a provision that requires employer to notify you of your right to have representation.

Steps to invoke your Weingarten Rights:

1. When called into a meeting, always ask the administrator about the purpose of the meeting. If **you believe** that it is an investigatory meeting that could lead to disciplinary action against you, ask for union representation (**Weingarten Rights**). The meeting should not be held until you can reasonably arrange to have representation at the meeting.
2. If you are in a meeting with an administrator(s), you have a right to union representation at any point during the meeting when **you believe** that the matters being discussed are investigatory in nature and might lead to disciplinary action against you. The meeting should be suspended until you have reasonable time to arrange for union representation.

The employer can do one of three things: (i) delay the investigation until you get a union representative (though not necessarily the exact representative that you want if another one is more readily available), (ii) deny your request and announce disciplinary action without conducting the meeting, or (iii) deny your request for union representation (see next point).

3. If the administrator refuses to grant your request for union representation, do not walk out of the meeting as that might be grounds for a charge of insubordination. Ask why the employer is refusing your request for a representative. **Listen but say as little possible.** If a question is directed at you, repeat you request for union representation. Contact you union representative immediately after the meeting.

Use the Weingarten Statement below to invoke you right to union representation.

Weingarten Rights Statement

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

Weingarten Rights

Regardless of whether criminal charges for the employee's off-duty conduct have been filed or not, when the employer requires the employee to attend a disciplinary meeting, the employee must assert his Weingarten Rights. See, the 1992 Legal Update for a "Request for Legal Representation Card."

UNION REPRESENTATION REQUEST (Formerly 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 Association representative be present at the meeting. Without representation, I choose not to answer any questions.

(Above is what is printed on the handout cards.)

Weingarten rights are triggered when an employer seeks to question an employee regarding the employee's alleged wrongful conduct. If the employee reasonably believes that the questioning or investigation may result in discipline, the employee must assert their desire to have a knowledgeable union representative present. This is an assertion to exercise one's "Weingarten Rights."

When the employee makes this assertion for knowledgeable union representation, the employer can 1) halt the questioning until the representative arrives, 2) call off the questioning and reschedule, or 3) ask the employee to waive his Weingarten rights (note to self: never assist in your own arrest!)

Under the NLRA, the following rules have been established regarding Weingarten representation:

- 1) the employer must inform the representative of the nature of the investigation;
- 2) the representative must be allowed to take the employee aside for a pre-interview conference;
- 3) during the interview the representative cannot argue with the employer, but can interrupt to clarify a question or object to confusing or intimidating tactics;
- 4) the representative can give the employee advice on how to answer the questions; and
- 5) the representative can add information at the end of the interview in support of the employee.