

## "Weingarten Rights"

The National Labor Relations Act (NLRA) gives employees the right to assistance from union representation during investigatory interviews. Although not explicit in the Act, the right was declared by the US Supreme Court in 1975 in NLRB vs. J. Weingarten, Inc. The rules the court announced are known as Weingarten rights.

Employees sometime confuse the Weingarten rules with the Miranda rules. However there is a big difference in the two rules. Under Miranda rules police who question criminal suspects MUST notify them of their right to remain silent and to have an attorney present during questioning. Under Weingarten employers have NO obligation to inform the employees of their rights to union representation. The employee must ask for union representation in such meetings.

An investigatory interview occurs when Management questions an employee to obtain information and the employee has a reasonable belief that discipline or other adverse consequence may result from what he or she says.

Investigatory interviews relate to such subjects as:

- ◆ Absenteeism
- ◆ Accidents
- ◆ Compliance with work rules
- ◆ Damage to Company property
- ◆ Drinking
- ◆ Drugs
- ◆ Falsification of records
- ◆ Lateness, poor attitude
- ◆ Poor work performance
- ◆ Sabotage
- ◆ Slowdowns
- ◆ Theft
- ◆ Violation of safety rules

Not every discussion with management is an investigatory interview. For example, a supervisor may speak to an employee about the proper way to do a job. Even if the supervisor asks the employee questions, this is not an investigatory interview as the use or possibility of discipline is remote.

However a routine conversation changes character if a supervisor becomes dissatisfied with an employee's answers and takes a hostile attitude. If this happens, the meeting becomes an investigatory interview and Weingarten rules apply.

When a supervisor calls an employee to the office to announce a warning or other discipline that has already been decided it is not an investigatory meeting since the supervisor is just informing the employee of a previously arrived-at decision. Such a meeting becomes an investigatory interview, however, if the supervisor asks questions that are related to the subject matter of the discipline.

Having a steward present can help in many ways. The steward can:

- ◆ Serve as a witness to prevent supervisors from giving a false account of the conversation
- ◆ Object to intimidating tactics or confusing questions
- ◆ Advise (when appropriate) an employee against blindly denying everything. Thereby giving the appearance of dishonesty and guilt.
- ◆ Help an employee to avoid making fatal admissions
- ◆ Warn an employee against losing his or her temper
- ◆ Raise extenuating factors

The *Employee Rights* under Weingarten rules are as follows:

1. The employee may request union representation before or during the interview. (Remember the company does not have to offer union representation. )
2. After the request, the employer must choose from among three options.
  - a. Grant the request and **delay** questioning until the union representative arrives.
  - b. Deny the request and end the interview immediately.
  - c. Give the employee a choice of:
    - Having the interview without representation (usually a mistake or wrong choice)
    - Ending the interview (best choice if no union steward is available)

If the employer denies the request for union representation and questions the employee, it commits an unfair labor practice and THEN the employee may refuse to answer.

Although some supervisors sometimes try to assert that the only function of a steward at an investigatory interview is to observe the discussion, in other words be a SILENT witness, this is WRONG. The steward has the right to counsel the employee during the interview and to assist the employee to present the facts. Legal cases have established the following rights and obligations of the steward.

1. When the steward arrives, the supervisor must inform the employee and the steward of the subject matter of the interview: for example, the type of misconduct, which is being investigated. (The supervisor does not, however, have to reveal management's entire case.)
2. The steward can take the employee aside for a private pre-interview conference before the questioning begins.
3. The steward can speak during the interview. (But, the steward has no right to bargain over the purpose of the interview or to obstruct the interview.)
4. The steward can advise the employee not to answer questions that are abusive, misleading, badgering, confusing or harassing.
5. When the questioning ends, the steward can provide information to justify the employee's conduct.

**If called to a meeting with management, read the following statement to management BEFORE the meeting starts!!**

*"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 this meeting. Without representation present, then...*

***I choose not to participate in this discussion."***