

KNOW YOUR RIGHTS

WEINGARTEN RIGHTS: THE RIGHT TO REPRESENTATION

One of the most important rights a worker has on the job is the right to have a union steward or representative present when being questioned by management on a matter that could result in disciplinary action. A 1975 U.S. Supreme Court Case, *NLRB v. J. Weingarten, Inc.*, gives workers that right, but it is not automatic. If a worker wants representation in a meeting with management, he or she MUST ask for it.

Specific conditions must be met for a worker to invoke his or her Weingarten rights:

1. **The meeting must be an investigatory interview.** An investigatory interview is one in which a worker is expected to answer questions as part of an inquiry into possible wrongdoing. Weingarten rights do not apply to meetings where communication is one-way from management to worker. For example, if a supervisor meets with a worker for the purpose of stating a change in policy, or to discuss job performance, Weingarten does not automatically apply. However, if a worker is expected to answer questions and the information may lead to disciplinary action, then the worker has a right to ask for representation. If a worker is unsure, he or she should ask outright if the meeting may lead to disciplinary action.
2. **The worker reasonably believes that disciplinary action may result.** This is the key standard used in determining if Weingarten rights apply. It doesn't matter if management *intends* to discipline the worker. If the meeting or interview *may* result in disciplinary action, the worker has the right to union representation under Weingarten. While "reasonable belief" may be subject to debate, the circumstances surrounding the meeting or interview will usually determine if it applies. For example, if other workers have been disciplined for a similar wrongdoing, or if the worker has had previous discussions with management about discipline, then he or she can reasonably believe that the interview may result in disciplinary action.
3. **The worker MUST make a clear request for union representation before or during the interview.** This is the most important part of Weingarten. Unlike Miranda rights, management does not have to inform the worker of their right to have representation before questioning begins. If the above conditions are met, however, the worker has a right to ask for representation and cannot be punished for making the request.

Once the request has been made, management can take the following action:

- Grant the request and delay questioning until a Union representative arrives;
- Deny the request, but end the interview immediately;
- Give the worker the option of going ahead without representation or ending the interview.

NOTE: If management denies a request for representation and continues asking questions, it is an unfair labor practice and, under these circumstances, the worker can refuse to answer questions.

The Weingarten Declaration

For your protection, you may want to read the following statement to management before the start of any meeting that you believe to be investigatory and may lead to discipline.

"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, representative or officer be present at the meeting. Without representation, I choose not to answer questions."