

Your Weingarten Rights To Union Representation

This article was adapted from information appearing on the website of The Communications Workers of America.

The National Labor Relations Act (NLRA) gives employees the right to assistance with 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. Under Weingarten, employers have **NO obligation** to inform the employees of their rights to union representation. The employee must explicitly ask for union representation in such meetings

An investigatory interview occurs when:

1. Management questions an employee to obtain information and
2. 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 property
- Drinking
- Drugs
- Falsification of records
- Poor work performance
- Sabotage
- Theft
- Violations 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.

Under GESTA's Collective Bargaining Agreement (CBA) an employee has the right to union representation if the meeting is investigatory in character or is being called to a meeting to discuss a warning or discipline; **it is not limited to investigatory meetings:**

SECTION 15.07 Management recognizes the right of employees to be represented by GESTA or other representative of their choosing at any stage of an adverse or disciplinary action, grievance, or related appeal. In any situation where an employee elects to be represented, Management will be advised in writing as to the designated representative. Copies of all correspondence to the employee concerning the matter will be provided to the designated representative.

Having a union representative present can help in many ways. The union representative can:

- A. Serve as a witness to prevent supervisors from giving a false account of the conversation.
- B. Object to intimidating tactics or confusing questions.
- C. Advise (when appropriate) an employee against blindly denying everything. Thereby giving the appearance of dishonesty and guilt.
- D. Warn an employee against losing his or her temper.
- E. Avoid intimidating situations where management has several representatives at the meeting with no one representing the employee, except himself or herself.
- F. Raise extenuating factors.

The Employee Rights under the Weingarten rules are as follows:

- 1. The employee may request union representation before or during the interview. Remember that 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:
 - i. Having the interview without representation (usually a mistake or the wrong choice) or
 - ii. Ending the interview (best choice if no union representative is coming)
- 3. 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 union representative at an investigatory interview is to observe the discussion, in other words be a SILENT witness, this is WRONG. The union representative 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 union representative.

1. When the union representative arrives, the supervisor must inform the employee and the union representative 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 union representative can take the employee aside for a private pre-interview conference before the questioning begins.
3. The union representative can speak during the interview. (But, the union representative has no right to bargain over the purpose of the interview or to obstruct the interview.)
4. The union representative can advise the employee not to answer questions that are abusive, misleading, badgering, confusing or harassing.
5. When the questioning ends, the union representative can provide information to justify the employee's conduct.

Often, when employees are in trouble and seek help, they go to higher level supervisors or the Office of Human Capital Management (OHCM). This is a big mistake. Generally, all that happens is that the content of the interview is simply reported back to your supervisor. Rarely, if ever, does the employee get any relief. If you have a problem, come to GESTA. We're always on your side. Here is our contact information. All inquiries will be handled in strict confidence.

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