

WEINGARTEN RIGHTS & WEINGARTEN RULES

WEINGARTEN RIGHTS

An employee has the right to be represented by the union at an investigatory interview with their supervisor when the employee reasonably believes that the interview may lead to a disciplinary action.

(The employee should ask the nature of any meeting with any supervisor. If the supervisor refuses to answer, the employee has reason to believe the meeting may lead to discipline, and thus, Weingarten Rights apply. If the employee is told the meeting will not result in disciplinary action, but during the meeting something shifts, and the employee then reasonably believes the meeting may result in disciplinary action, Weingarten Rights apply, and the employee should immediately ask for union representation in the meeting.)

Weingarten Rules:

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules apply:

RULE 1:

The employee **must** make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.

RULE 2:

After the employee makes the request, the employer must choose from among three options.

The employer must:

- a. Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
- b. Deny the request and end the interview immediately; or
- c. Give the employee a choice of:
 - (1) having the interview without representation or
 - (2) ending the interview.

RULE 3:

If the supervisor denies the request for union representation and continues to ask questions, they commit an unfair labor practice and the employee has the right to refuse to answer. The supervisor cannot discipline the employee for such a refusal.

RIGHTS OF UNION REPRESENTATIVES

Supervisors often assert that the only role of a Union representative at an investigatory interview is to observe the discussion, i.e., to be a silent witness. The Supreme Court, however, clearly acknowledged a union representative's right to **assist and counsel** workers during the interview.

Decided cases establish the following procedures:

1. When the union representative arrives, the supervisor must inform the representative of the subject matter of the interview; i.e., the type of conduct for which discipline is being considered (theft, lateness, drugs, etc.).
2. The union representative **MUST** be allowed to take the worker aside for a private pre-interview conference before questioning begins.
3. The union representative **MUST** be allowed to speak during the interview. The union representative, however, does not have the right to bargain over the purpose of the interview.
4. The union representative can request that the supervisor clarify a question so the worker can understand what is being asked.
5. After a question is asked, the union representative can give advice on how to answer.
6. When the questioning ends, the union representative can provide information to the supervisor.

It must be emphasized that if the Weingarten rights are complied with, union representatives have no right to tell workers not to answer questions or to give false answers.

ADDITIONAL INFORMATION

The right of employees to the presence of union representatives during investigatory interviews was announced by the U.S. Supreme Court in 1975 in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251. Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as Weingarten Rights.

What is an investigatory interview?

Employees have Weingarten rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has a right to request union representation. Investigatory interviews usually relate to subjects such as:

Absenteeism; drinking; fighting; poor attitude; violation of safety rules; accidents; drugs; insubordination; sabotage; work performance; damage to state property; falsification of records; lateness; theft; violation of work procedures

California laws and labor rules, including the EERA and PERB decisions related to the EERA, provide employees representation rights that are more supportive than Weingarten Rights. Members are encouraged to contact MDEA at mdea@ourMDEA.org if they have questions about other rights to representation.