

Weingarten Rights Represented Employee Right to Union Representation

"Weingarten rights" are derived from a 1975 Supreme Court case (NLRB v. J. Weingarten, Inc.). Essentially, represented employees have the right to request assistance from union representatives during investigatory interviews. Weingarten rights apply only in investigatory interviews, where the employee has a **reasonable** belief that discipline may result. If the interview/fact-finding could in any way lead to the employee being disciplined or affect the employee's working conditions, the employee may request that their union representative be present at the meeting. An employee may choose not to participate in this discussion until the union representative is present.

If an employee is called to a supervisor's office merely to be informed of a disciplinary decision, such as issuance of documented counseling, letter of reprimand, or even termination, the courts have found that this is not an investigatory meeting, and therefore, the represented employee is not entitled to union representation. The decision to discipline the employee has already been made. There is also no right to a representative for routine counseling by a supervisor, assignment of work or prior day feed back with the employee.

The employee may request union representation before, or at any time during, an interview. When representation is requested the supervisor must either 1) grant the request and delay questioning until the representative arrives; 2) deny the request and end the interview immediately; 3) or give the employee the choice of having the interview without representation or end the interview immediately. If the supervisor denies the request for union representation and continues the interview, the employee has the legal right to refuse to answer questions.

The representative is allowed to advise and assist the employee in presenting the facts. Once the representative arrives:

- The City must inform the Representative of the subject of the interview;
- The Representative must be allowed to meet privately with the employee before questioning begins;
- The Representative may speak during the interview, but cannot insist that the interview be ended or help the employee answer questions;
- The Representative may object to confusing questions and request for clarification so the employee understands what s/he is being asked.

The Union Representative can:

- Serve as a witness to the actual content of the investigation;
- Object to intimidating tactics or confusing questions;
- Advise an employee, when appropriate, against denying everything, and thereby giving the appearance of guilt or dishonesty;
- Counsel an employee against losing his/her temper;
- Raise extenuating factors.

The City is under no obligation to inform employees of their right to representation. You lose your Weingarten rights if you do not assert them.

The following are answers to most frequently asked questions:

Question: *Where does the right come from?*

Answer: In the landmark Weingarten case, the United States Supreme Court ruled that a union-represented employee has the right to representation during an interview with management if he or she reasonably believes that disciplinary action will result. Although the right to union representation usually arises during an "investigatory interview," such an official setting is not required. Any conversation with management during which the employee is questioned and reasonably believes the questioning could lead to discipline triggers the right to union representation. In California the Meyers-Milas-Brown Act (MMBA) covering local government also provides this protection.

Question: *What is a reasonable belief?*

Answer: A "**reasonable belief**" is based on an objective standard. When all the circumstances are evaluated, is it reasonable to believe that continued discussion could lead to disciplinary action? If so, the Weingarten right arises.

Question: *What must an employee do?*

Answer: The employee must request union representation. The City has no obligation to make sure a union representative is present during an investigatory interview, or even to advise the employee of their right to union representation.

Question: *What happens after the employee asks for representation?*

Answer: If an employee being questioned by a supervisor, a manager, a security agent, or any other City representative asks to have a Representative present, the request must be granted or the interview stopped.

Question: *What if the supervisor or other City representative continues the interview?*

Answer: If a supervisor ignores a request for a Representative and continues the interview, the employee may refuse to respond. The employee must be careful, however, not to do anything else that could be considered insubordinate. For example, the employee should not walk out of the interview. Rather, the employee should remain at the interview but advise the City representative that they are requesting a Representative and will not answer questions without union representation. If the employee is frightened into answering, the admission will be excluded in any disciplinary appeal.

Question: *Does the City have to provide the Representative requested by the employee?*

Answer: No, if the employee's regular Representative is not available, the City need only provide a Representative in order to lawfully continue the interview. However, the City can not select a Representative more to the City's liking if the employee's regular Representative is available.

Question: *Must the City allow time for the employee to consult with the Union Representative prior to continuing the interview?*

Answer: Yes. When the union representative arrives at the interview, the employee has the right to consult with the Representative privately before continuing the interview.

Question: *During the interview, what can a Representative do?*

Answer: The investigatory interview is not a bargaining session or a grievance meeting and the City is not obligated to bargain with the union representative. On the other hand, the City cannot order the Representative to remain silent. The Representative is entitled to provide assistance and counsel during the interview. At the beginning of the interview, or when the Representative arrives, the Representative must be told the nature of the alleged misconduct.

During the interview, the Representative may request that a question be clarified. The City may allow the Representative to confer privately with the employee; however, if a question has been asked the employee must answer the question before allowing the union and employee to confer. When the questioning ends, the Representative may be allowed to provide additional pertinent information. The Representative may not tell the employee not to answer a question or to give a false answer.

Finally, the union representative cannot disrupt the interview process. If the union representative disrupts the interview and does not stop after being warned to stop, the City representative (Supervisor/Manager) can end the interview. The employee will be charged with refusing to cooperate/insubordination and the City will take whatever action they deem necessary with the information they already have.