

# Weingarten Rights

## The Weingarten Rule:

### An Employee's Right to Representation

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In 1975 there was a case brought before the National Labor Relations Board, National Labor Relations Board v. J. Weingarten, Inc., which ultimately was heard by the U. S. Supreme Court. The case established an employee's right to union representation during conferences or interviews where the employee had a reasonable fear that the meeting might result in disciplinary action. As a result of the Supreme Court's findings as well as subsequent case law, certain guidelines with respect to *Weingarten* have been established.

- 1) The right of a single employee to representation is part of the employees' right to act together for mutual aid and protection.
- 2) A request for the presence of an attorney is not for mutual aid and protection and may be lawfully denied by the employer.
- 3) The right only arises if the employee requests representation.
- 4) The right to request representation only arises where the employee reasonably believes the investigation (or conference) will result in disciplinary action or will adversely affect his or her employment relationship.
- 5) The employer may refuse a request for representation and may require the employee to choose between an interview without representation or no interview at all.
- 6) The employer has no duty to bargain with a union representative who attends the interview.
- 7) The duty of a representative at an investigatory interview is to assist an employee to clarify the facts and not necessarily to engage in collective bargaining.
- 8) Once the request for representation is made, it becomes the burden of the employer either to
  - a) grant the request;
  - b) discontinue the interview; or

- c) offer the employee the choice between continuing the interview unaccompanied by a union representative or having no interview at all.
- 9) Employers are required to give employees advance notice of the subject matter of an interview and a chance to confer with a union representative before the interview, since effective representation of an employee requires a knowledgeable union representative.
- 10) If an employee has been assured that a meeting is not a disciplinary investigation, the employee is not entitled to have a union representative at the meeting.
- 11) If, however, the meeting becomes disciplinary in nature, the employee has no obligation to remain without union representation when it is requested and denied by the employer.
- 12) It is well established that employees, upon denial of union representation, can refuse to participate in interviews that they reasonably fear will result in disciplinary action.
- 13) Once an employee has requested union representation at the initial stage of an investigation, repeated requests at later stages of the investigation are not necessary.
- 14) An employee's interests need not be safeguarded by the presence of a "specific representative" as opposed to being accompanied and assisted by "any" union representative.

Please note that it is reasonable to expect an employer to reschedule an interview or conference where union representation is requested, in order to allow the representative to attend at a time reasonably convenient to his or her schedule.