



FREQUENTLY ASKED QUESTIONS AND ANSWERS

Request To Attend A Meeting

- Q. I am a Grievance Handler. If I see a worker being questioned in a supervisor's office, can I ask to attend the meeting?
- A. Yes. A steward has a protected right to request to be a part of the meeting. If the meeting is not an investigation or involves a previously arrived-at decision to discipline an employee, the request can be denied. But if the meeting is an investigation interview, the worker must be allowed to indicate whether the steward's presence is desired.

Coercing A Worker To Drop A Request For Representation

- Q. A worker summoned to an interview with his supervisor and asked for his union representative. In response, the supervisor said, "You can request your union rep, but if you do, I will have to bring in the plant manager and you know how temperamental she is. If we can keep it at this level, things will be better for you." Is this a violation?
- A. Yes. The supervisor is raising the specter of discipline to coerce the worker into abandoning his *Weingarten Rights*. This is an unfair labor practice.

Refusing To Attend A Meeting

- Q. A worker is ordered by his or her manager to go to the personnel office for a "talk" about his or her attendance. She asked for representation, but the manager said she would have to make the request when she got to the office. Can the worker refuse to go to the personnel office without her union rep?
- A. No. *Weingarten Rights* do not arise until the interview begins. The worker must go to the office and make her request to the person conducting the interview. A worker can refuse to go to a meeting only if a supervisor makes it clear in advance that union representation will be denied.



Medical Examination

- Q. Our company requires medical examinations for recalled workers out of work three months or more. Do the workers have a right to a steward during the examination?
- A. No. Medical examinations are not Investigatory interviews. *Weingarten Rights* do not apply.

Lie Detector Test

- Q. Do *Weingarten Rights* apply to polygraph examinations?
- A. Yes. A worker has a right to union assistance during the pre-examination interview and the polygraph examination.

Drug Testing

- Q. If management asks a worker to submit to a urine test for drugs does *Weingarten* apply?
- A. This question has two answers. When no questioning takes place, a worker does not have a right to the presence of a union representative. However, management must allow the worker to consult with a union representative to decide whether or not to take the test.

Locker Search

- Q. If management orders a worker to open their locker for a routine check, can the worker insist on a union representative being present?
- A. Not necessarily. Locker, car, or handbag searches are not investigation interviews. A worker does not have a right to insist on representation unless a supervisor or guard asks the worker questions.



Counseling Session

- Q. A worker was given a written warning for poor attendance and told she must participate in attendance counseling with the personnel department. Does she have a right to a union rep at the counseling sessions?
- A. This depends on whether the worker has a fear that the counseling sessions could result in further discipline. For example, if notes from the sessions are kept in the worker's permanent record, or if other workers have been disciplined for speaking up at counseling sessions in the past, the worker's fears would be reasonable and would entitle her to representation.

If the personnel representative gives firm assurances the meetings will not be used for further discipline, and promises that the conversations will remain confidential, *Weingarten Rights* probably would not apply.

Warning Slip

- Q. Supervisors in our workplace give warning slips for misconduct and ask workers to sign copies to acknowledge receipt. Does a worker have a *Weingarten Right* to consult a steward before signing?
- A. No. If the supervisor does not ask questions, *Weingarten* does apply.

Request For Private Attorney

- Q. Can a worker insist the presence of an attorney before answering questions at an investigation interview?
- A. No. The *Weingarten* rules only provide for the assistance of union representatives.



Telephone Interview

- Q. Over the weekend, a supervisor called a worker at home to ask questions about missing tools. Did the worker have to answer the questions?
- A. No. *Weingarten* rights apply to telephone interviews. A worker who fears discipline can refuse to answer questions until he or she has a chance to consult with a union representative.

Disciplinary Announcement

- Q. A worker was called into the plant manager's office. She asked for her union rep but her request was ignored. The manager said, "Doreen, yesterday you violated a supervisor's order. We are giving you a one-day suspension for insubordination." Did the company violate *Weingarten*?
- A. No. *Weingarten Rights* do not apply to a meeting where an employer simply announces discipline.

Union Representative Not Available At Worksite

- Q. If a worker's normal union rep is out sick and they are called in for an investigative interview, can the worker insist that an interview be delayed until the steward comes back to work?
- A. No. Management does not have to delay its investigation if another union representative is available to assist the worker. If no other union representative is available *Weingarten* applies and the interview must be delayed until representation is available.

Investigation Of A Union Representative

- Q. I am a union representative. If I am summoned to a meeting by my supervisor to discuss a problem with my work, can I bring my bargaining chairperson?
- A. Yes. Union Rep's have the same *Weingarten Rights* as other workers. If you have a fear of discipline or other adverse consequences you are entitled to representation.



Shop Meeting

- Q. If management calls a meeting to lecture workers about job performance, do workers have a right to bring a union representative to the meeting?
- A. Not necessarily. A meeting that does not involve interrogation is not an investigation interview. *Weingarten Rights* do not apply unless management asks questions of workers in a manner creating a reasonable fear of discipline.

Remedies For Weingarten Violations

- Q. Management rejects a worker's request for union representation. They question and get the worker to confess to wrongdoing, resulting in termination. Will the NLRB order the worker reinstated because of the *Weingarten* violation?
- A. Probably not. The NLRB used to order reinstatement with back pay for workers who were fired as a result of admissions during an illegally conducted *Weingarten* interviews. But in 1984 the Reagan-appointed NLRB ruled that such a remedy was an "unwarranted windfall" for workers. The standard *Weingarten* penalty is now a bulletin-board posting with the employer acknowledging that they violated the *Weingarten* rules and a promise to obey the law in the future.

Note: The remedy is different for workers discharged for exercising a *Weingarten Right* such as requesting a steward or refusing to answer questions when a request is denied. In such cases, the NLRB imposes a "make-whole" remedy, including reinstatement and back pay.

Recording The Interview

- Q. Can a supervisor tape record an investigation interview?
- A. Possibly. Nothing in the *Weingarten* decision prevents an employer from tape recording an investigation interview. However, if this represents a new employer policy, the steward should object on the grounds that the union should have received prior notice of the new policy and an opportunity to bargain about it.



Can A Worker Select A Particular Representative?

- Q. If a worker asks to be represented by her bargaining chairperson instead of her department representative, does management have to comply?
- A. Yes. If two representatives are equally available, a worker's request for a particular representative must be honored.

Worker Asked To Inform On Others

- Q. A worker was summoned to a meeting and asked about the involvement of other workers in illegal activities. Could he have insisted on the presence of a union representative?
- A. Yes. Although the worker may not be involved in wrongdoing himself, he risks discipline if he refuses to inform on others or admits that he was aware of illegal activities. Because what he says or doesn't say at the meeting could get him into trouble, he is entitled to representation.