

Weingarten Rules

If a union steward could teach just one thing to his or her members, it would have to be about their “Weingarten rights” — the right of unionized workers to have a steward or someone else from the union present if they find themselves in situations where they may be disciplined.

Many workers crumble in the face of questioning by their supervisor or other management type. They get rattled and start explaining and making excuses and apologizing and often end up giving the employer ammunition to do whatever he wants. They often become like the suspects you see in cop shows on television: they ‘fess up to things that maybe never even happened or say things in such a way that they worsen the problem rather than talk their way out of it.

With few exceptions, workers across North America enjoy the legal right to have a steward or other union representative present if they find themselves in *any* situation with management — a conversation, a discussion, an interrogation — that could lead to disciplinary action. For private sector and federal government workers in the U.S., this protection is called Weingarten Rights, named after a 1975 Supreme Court decision. Most state workers and workers throughout Canada enjoy pretty much the same guarantees.

But unlike Miranda rights, which police are supposed to tell criminal suspects about (“You have the right to remain silent, anything you say may be used against you...”), employers *do not* have to tell employees about their Weingarten rights. Workers have to *ask* for them. And the only way they’re going to know they have that right, odds are, is if *you* tell them.

These are the basic guidelines covering the use of Weingarten:

- The employee must make a clear request for union representation before or during the interview. The worker can’t be punished for making such a request.

- The employer must either grant the request and delay questioning until the union person arrives; deny the request, but end the interview at once; or give the worker the choice of going ahead without representation *or* ending the interview immediately.

- An employer who denies the worker’s request for representation and continues to ask questions is committing an unfair labor practice.

The worker can legally refuse to answer questions in such circumstances.

If the employer obeys the law and waits to continue until the union’s representative arrives, the following rules apply:

- Once the steward arrives, the supervisor must inform him or her about the subject matter of the interview — the type of misconduct under discussion.

- The steward and the worker should be allowed to talk privately before the questioning begins.

- The steward can speak during the interview and, if necessary, ask that questions be clarified. The steward cannot bargain over the purpose of the interview.

- The steward can advise the worker on how to answer any or all questions, can object to improper questioning, and has the right, once the questioning is ended, to provide additional information. The steward cannot tell workers not to answer questions, or to give false answers.

Be careful that you don’t give

Weingarten more power than it has. The rights do not extend to meetings where no questioning is involved, but rather just to one-way communication from the supervisor to the worker, or a discussion — without threat of discipline — about job performance.

At the same time, remember that workers *do* have the right to call their Weingarten rights into play if they have

any reasonable expectation that a disciplinary action may result from the meeting. The key word here is *may*. If there’s the slightest concern that the session could bring about discipline, the worker has the right to ask for union help even though the supervisor who calls the employee in may not be intending to take such action. If other workers have been disciplined for similar alleged situations, or if the

worker being called in has had a previous discussion with the supervisor about discipline, or is working under the threat of

a performance warning letter...any of these things can cause a worker to think that discipline may be an outcome of the meeting.

One final thing: along with being there to support the worker, you can be really helpful by taking complete notes of what goes on during the interview. If the case becomes serious, your notes can be invaluable in documenting who said what.

— David Prosten. The writer is editor of Steward Update.

Weingarten Rights

If this discussion could in any way lead to my being disciplined or terminated or have any effect on my personal working conditions, I respectfully request that my union steward, representative or officer be present at this meeting. Without union representation, I choose not to participate in this discussion.

