

Weingarten Rights

The Right to Union Representation During An Investigatory Hearing

In 1975, the U.S. Supreme Court issued its Weingarten decision. In Weingarten, the Supreme Court upheld the NLRB decision (which had been rejected by the Court of Appeals), in NLRB vs. J. Weingarten, Inc., that held that Section 8(a)(1) of the National Labor Relations Act was violated if the employer requires the employee to submit to an investigatory interview and denies the employee's request for union representation.

Important Factors of Weingarten Rights:

1. Union members have the right to a union representative at an investigatory hearing if they reasonably believe that the investigation could lead to disciplinary action.
2. The member must request a representative; the employer has no obligation to inform the employee of that right.
3. Management does not have to call the representative. Instead, the employer can stop the meeting or just issue the discipline.
4. Once a union representative is called, he/she has the following rights:
 - to know the subject of the investigatory hearing;
 - to confer with the member prior to the hearing;
 - to speak/participate in the hearing.

BUT, the representative cannot argue the case; this is not a grievance hearing.

5. An employee cannot choose which union representative they would like to represent him/her.
 - the department representative will be called, if available;
 - if not, the nearest available representative;
 - if the employer is responsible for the representative not being available, then the supervisor must end the meeting until the representative is available;
 - if the union is responsible for the representative not being available, then another representative or employee can be brought in, unless the supervisor chooses to postpone the meeting.