

WEINGARTEN RIGHTS

Bargaining unit employees have a right to engage in concerted activities for mutual aid and protection. This includes the “Weingarten Right”, which was established by the United States Supreme Court in *N.L.R.B. v. J. Weingarten, Inc.*, 95 S. Ct. 959 (1975) and which entitles bargaining unit employees to **be represented by a union representative in meetings with management** when the **employee reasonably believes that discipline may result from the meeting**. For Connecticut public employees the State Board of Labor Relations extended the “Weingarten Right” to employees covered by the MERA and the SERA. [See *East Hartford Board of Education*, Decision No. 2256 (1983)]

This right arises when an employee is called into an investigatory meeting or interview by an employer or supervisor and the employee reasonably believes that the meeting will result in disciplinary action. The employee then has the right to insist on being accompanied by a union representative or a fellow bargaining unit employee. It is well established that the Weingarten right under the NLRA does not give the employee the right to be represented by a private attorney, but the NLRB has not yet determined whether the right extends to the member’s right to have a Union attorney present. [See *Montgomery Ward & Co. Inc.*, 269 NLRB 904 (1984) and *Consolidated Casinos Corp.*, 266 NLRB 988 (1983)]

The following elements must be present for the right to arise:

- **The meeting or interview must be investigatory in nature:**

This means that the employer's purpose is to elicit information from the employee. Thus, if the meeting is simply to advise an employee of disciplinary action that the employer has already determined, the right does not arise – unless the employer attempts to elicit a confession or other information from the employee to further justify the disciplinary action. In addition, the right does not apply to so-called “shop floor” discussions. This would include instructions, training, needed correction of work techniques, suggested corrective action, or even a warning.

- **The employee must have a reasonable belief that discipline might result as a consequence of the meeting:**

This determination will depend on the facts of each individual situation. For example, a prior warning regarding the subject matter of the meeting could be the basis for a reasonable belief that discipline might result from the interview or meeting.

- **The employee must request that a union representative be present:**

Unlike a “Miranda” right, the employer is not required to advise an employee of his/her “Weingarten Right”. The responsibility lies with the employee to make the request.

Once a valid request for representation is made, the employer has three choices: discontinue the meeting; grant the request; or offer the employee the choice of continuing the meeting unaccompanied or having no interview at all.

Keep in mind that if the employee chooses no interview, he/she may lose any benefit he/she may derive from participating without representation. In addition, the employer is free to continue its investigation without interviewing the employee.

If the employee's request for representation is granted, the representative's role is to assist the employee by helping to clarify facts or suggest other sources of information. However, the representative is not there to bargain or engage in adversarial or disruptive behavior.

The employee's Weingarten rights are violated if the Employer dictates to the employee which Union representative will be present. [See *City of New Haven*, Decision Nos. 2554 and 2554-A (1987) and *State of Connecticut*, Decision No. 3631 (1998)]

Finally, if a private sector employee is disciplined for exercising his/her Weingarten right, or based on information obtained from the employee in an illegal interview, the employer is in violation of the Act. However, if the Employer has cause to discipline the employee, even with the presence of a "Weingarten" violation, the NLRB has determined that rescinding the discipline is an inappropriate remedy and the discipline will stand. The only remedy that the NLRB will provide is a cease and desist order. [See *Taracorp Industries*, 273 NLRB 54 (1984)] The State Board of Labor Relations in Connecticut, however, has rejected the NLRB's approach. In Connecticut, the appropriate remedy for a violation of an employee's Weingarten rights is a full make-whole remedy. [See *Town of Cheshire*, Decision No. 2447 (1985)]

Because the Weingarten right must be asserted by the employee, the National has developed a WEINGARTEN RIGHTS card that our members can carry in their wallets.

The card reads:

“I believe this discussion could lead to my being disciplined. I therefore request that my union representative or officer be present to assist me at the meeting. I further request reasonable time to consult with my union representative regarding the the subject and purpose of the meeting. Please consider this a continuing request; without representation, I shall not participate in the discussion. I shall not consent to any searches or tests affecting my person, property, or effects without first consulting with my union representative.”