

# Know Your Rights



## Weingarten Rights

Section 7 of the National Labor Relations Act (NLRA)

Among the rights protected by Section 7 is the right of *union-represented employees*, **upon request**, to **have their representative present during an interview that the employee reasonably believes could lead to discipline**. This right was first articulated by the Supreme Court in the case, *NLRB v. J. Weingarten, Inc.* In that case, the Court found that Section 7 of the NLRA protects employees who refuse to submit to certain interviews without a requested representative present.

An employee's requested representative, which may be a union steward or officer, is often referred to as a "Weingarten representative." **Weingarten representatives are entitled to provide advice and active assistance to employees during investigatory interviews.** Employees' right to request their representatives are frequently referred to as "Weingarten rights."

**Employers violate the NLRA if they proceed with an investigatory interview while refusing an employee's request or retaliate against them for making the request.** Depending on the circumstances of each case, the Board may order that the employer cease and desist, post a remedial notice, require the employer to repeat the interview with a union member present, or rescind and remedy discipline resulting from a Weingarten violation.

When do employees have a right to request a union representative?

An employee's right to request a representative arises during an investigatory interview. A useful comparison is an individual's Miranda right to an attorney when questioned by law enforcement. **However, unlike the right to counsel in a Miranda setting, employers are not required to inform union members of their rights under Weingarten.**

Any meeting may be an "investigatory interview" provided that the following occurs:

- A manager, representative of management, supervisor, or corporate security (Asset Protection) is seeking to question an employee.
- The questioning is part of an investigation into the employee's performance or work conduct. During an investigatory interview, a representative of management may require an employee to defend, explain, or admit misconduct or work performance issues that may form the basis for discipline or discharge.
- The employee reasonably believes that the investigation may result in discharge, discipline, demotion, or other adverse consequences to their job status or working conditions.
- The employee requests a union representative. Employers are not required to advise employees of their right to representation and third parties (including union representatives) may not make the request on behalf of the employee.

**When making a request for a representative, the Board does not require that the employee specify that they need a "Weingarten" representative. Once an employee requests their representative, they are not required to repeat that request.**