

AFGE



# WEINGARTEN RIGHTS

Local

899

Weingarten rights guarantee an employee the right to Union representation during an investigatory interview.

These rights, established by the United States Supreme Court, *NLRB v. J. Weingarten Inc. 420 U.S. 251 (1975)* must be claimed by the employee. The supervisor has no obligation to inform an employee that the employee is entitled to Union representation.

## WHEN DO EMPLOYEES HAVE A RIGHT TO WEINGARTEN?

If you have a reasonable belief that the answers you give might result in your being disciplined, you have a right to union representation during the meeting. Employees are entitled to Weingarten rights in the following situations:

- "Investigatory interviews," in which the supervisor is seeking to elicit facts, to have the employee explain his or her conduct, to discover the employee's "side of the story" or to obtain admissions or other evidence.
- A supervisor's request for a written statement or written answers to interrogatories about an incident or accident in which the employee's own conduct may be at issue.
- A meeting or discussion in which the employer either has not yet decided whether to impose discipline or is seeking information to support that decision.

## WHEN DO EMPLOYEES NOT HAVE A RIGHT TO WEINGARTEN?

An employee has NO right to the presence of a Union representative where:

1. The meeting is merely for the purpose of conveying work instructions, training, or communicating needed corrections in the employee's work techniques.
2. The employee is assured by the employer prior to the interview that no discipline or employment consequences can result from the interview.
3. The employer has reached a final decision to impose certain discipline on the employee prior to the interview, and the purpose of the interview is to inform the employee of the discipline or to impose it.
4. Any conversation or discussion about the previously determined discipline which is initiated by the employee and without employer encouragement or instigation after the employee is informed of the action.

***Even in these above four (4) circumstances, the employee can still ask for representation. Most employers will permit a representative to attend even when not required to.***

Need Representation? Contact: [afgelocal899.org](http://afgelocal899.org)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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## WEINGARTEN RULES

When an investigatory interview occurs, the following rules apply:

**RULE 1:** The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request.

**RULE 2:** After the employee makes the request, the supervisor has three (3) options.

1. Grant the request and delay the interview until the Union representative arrives and has a chance to consult privately with the employee or;
2. Deny the request and end the interview immediately; or;
3. Give the employee a choice of:
  - a. having the interview without representation
  - b. ending the interview

**RULE 3:** If the supervisor denies the request and continues to ask questions, this might be an unfair labor practice. The denial must be provided in writing. The employee should cooperate with the investigation as refusing to do so may be grounds for discipline. As soon as possible after the interview is concluded, the employee should contact AFGE.

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