

RIGHTS TO REPRESENTATION "WEINGARTEN RIGHTS"

Title VII of the Civil Service Reform Act of 1978, Public Law 95454, provides that a bargaining unit employee, upon request has the right to union representation during an investigation conducted by management, where the employee being questioned reasonably believes that the investigation may result in discipline. This right is commonly referred to as an employee's "Weingarten Rights" after a 1975 U.S. Supreme Court decision involving a company of that name which granted this same right to workers in private industry. The provisions of the Civil Service Reform Act granting Federal employees similar rights are based upon this decision; hence, the nickname "Weingarten Rights."

Although this right appears to be straightforward and uncomplicated, there is much more to it than meets the eye. Determining whether or not an employee has "Weingarten Rights" can sometimes be difficult. In determining when "Weingarten Rights" apply, the following question and answer guidance is provided:

Question: How are an employee's "Weingarten Rights" triggered? How will I know if I'm involved in a potential Weingarten situation?

Answer: The right arises in situations where management is investigating actions of the employee (asking the employee questions) where the employee reasonably believes discipline may result from the questioning and where that employee requests union representation.

Question: When an employee is called in for questioning in a Weingarten type situation, does the interviewer have to inform that employee of these rights before questioning begins?

Answer: No. The law provides that each agency (in our case, the Air Force) shall annually inform employees of their rights. This is the only notification required. (Note: This differs for the "Miranda Rights" the OSI and Security Police are required to read in certain situations.)

Question: Does an employee's request for representation in a Weingarten situation have to be in writing?

Answer: No. A simple oral request will suffice.

Question: How will management know if an employee "reasonably believes" that discipline may result from questioning?

Answer: Consider whether answers to the questions could cause discipline or a recommendation for discipline. Is the intent of the questions to obtain information concerning an incident so discipline may be taken? Could the employee's specific answers result in discipline based upon the information the employee discloses? If the answer to either question is "yes," then a Weingarten situation probably exists and the employee is entitled to union representation.

Question: Can an employee be represented by a family lawyer or other personal representative of their own choosing in a Weingarten situation?

Answer: No. The right to be represented under the law only applies to a union representative (steward, officer, business agent, etc.) being present as a representative in a Weingarten situation.

Question: Okay, management wants to question an employee about suspected misconduct and the employee requests a union representative be present. What are the options?

Answer: The management interviewer can decide not to question the employee at all and cancel the interview; adjourn the interview until a union representative is present; or, if a union representative is not available and the employee agrees to proceed without a union representative present, then the interview may continue.