

## EMPLOYEE'S RIGHT TO UNION REPRESENTATION

### *Weingarten* Rights

The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the *Weingarten* rights.

Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct.

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee of his/her *Weingarten* rights; it is the employees responsibility to know and request.

When the employee makes the request for a union representative to be present management has three options:

- (1) it can stop questioning until the representative arrives.
- (2) it can call off the interview or,
- (3) it can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)

Employers will often assert that the only role of a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel workers during the interview.

The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative can not tell the employee what to say but he may advise them on how to answer a question. At the end of the interview the union representative can add information to support the employee's case.

On June 15, 2004, The National Labor Relations Board ruled by a 3-2 vote that employees who work in a nonunionized workplace are not entitled under Section 7 of the National Labor Relations Act to have a coworker accompany them to an interview with their employer, even if the affected employee reasonably believes that the interview might result in discipline.

This decision effectively reversed the July 2000 decision of the Clinton Board that extended Weingarten Rights to nonunion employees.

#### **Q & A WEINGARTEN RIGHTS**

**Q:** When do I have "Weingarten" rights to have a fellow "associate" present when speaking with a manager?

**A:** Anytime you think the manager may question you about something that you feel you might be disciplined for. **EXAMPLE:** An assistant manager asks to talk about an accident you were involved in the week before. You think the manager is trying to find out who was responsible. **YOU HAVE WEINGARTEN RIGHTS TO BRING IN AN "ASSOCIATE" YOU TRUST.** **EXAMPLE:** An assistant manager asks to talk to you but doesn't say about what. Your department manager warned you that he told the store manager about a customer who complained about you. **YOU HAVE WEINGARTEN RIGHTS TO BRING IN AN "ASSOCIATE" YOU TRUST.** **EXAMPLE:** An assistant manager wants to talk to you. You've heard that the manager is talking to "associates" who were in an argument that got too loud. **YOU HAVE WEINGARTEN RIGHTS TO BRING IN AN "ASSOCIATE" YOU TRUST.**

**Q:** What kind of "communications" does Weingarten apply to?

**A:** All kinds: in person, over the telephone, even e-mail. **EXAMPLE:** A manager telephones you from outside of the store and you think the manager may want to talk about something that happened at work that you could be disciplined for. **YOU HAVE WEINGARTEN RIGHTS.** You should tell the manager that you'd rather talk in the presence of another "associate" or with another "associate" on the telephone. **EXAMPLE:** A manager asks you to write a report about missing merchandise. **YOU HAVE WEINGARTEN RIGHTS.** **EXAMPLE:** A manager approaches you while you're working on the sales floor and starts to ask you questions about your tardiness. **YOU HAVE WEINGARTEN RIGHTS.** **EXAMPLE:** A manager approaches you in the break room or in front of the store while you're on break and starts to ask you questions about the shelves in your department that the manager has warned you about before. **YOU HAVE WEINGARTEN RIGHTS.**

**Q:** Does the communication have to occur at work?

**A: No. EXAMPLE:** Your manager telephones you at home about your absences. **YOU HAVE WEINGARTEN RIGHTS.** You can tell your manager that you'd rather speak at work in the presence of another "associate". **EXAMPLE:** Your manager attends the same Church you do and after a service, starts to talk to you about some shortages in your cash register. **YOU HAVE WEINGARTEN RIGHTS.** **EXAMPLE:** A manager approaches you in the parking lot as you leave work or at the nearby McDonald's and starts to ask you questions about your bad "attitude." **YOU HAVE WEINGARTEN RIGHTS.**

**Q:** When should you "invoke" your Weingarten rights?

**A:** As soon as you realize that the manager may be asking you questions about something you could be disciplined for. **EXAMPLE:** A manager tells you that he wants to talk tomorrow about a spill the manager says you should have cleaned up. You can tell the manager at that time or just as the meeting starts that you are invoking your Weingarten rights and that you want an "associate" you choose and you trust to attend. **EXAMPLE:** You try to invoke your Weingarten rights and the manager "guarantees" that you will not be asked any questions. Then, halfway through the meeting, the manager begins to ask you what happened. At the point during the meeting that the manager begins to ask questions, you should invoke your Weingarten rights and refuse to answer any questions until an "associate" you trust and you chose is present.

**Q:** Who can you chose to witness the communication?

**A:** Any co-worker you trust who is working. **EXAMPLE:** If a manager wants to question you and you pick an "associate" who is at work but busy, the manager can either choose to interrupt that "associate's" work or postpone the meeting. The manager may not choose which "associate" will sit in or force you to pick an "associate" you do not trust.

**Q:** What can my Weingarten witness do?

**A:** First, the witness will hear everything everyone says and may take notes. Second, the witness can make sure that all of the manager's questions are clear and that you have a chance to answer all questions in your own words. They can ask the manager to rephrase confusing questions or questions you don't understand. Third, they can make sure that the manager does not abuse or harass you. **EXAMPLE:** A manager tries to put words in your mouth by asking, "so you admit eating the potato chips before paying for them," when you already denied this. Your Weingarten witness can jump into the discussion and correct

the manager. **EXAMPLE:** A decent manager is truly trying to find out the facts but asks a convoluted question. Your Weingarten witness can ask the manager to rephrase the question so it is clear. **EXAMPLE:** A manager asks, "so you admit being at work when the money was missing, that the money came out of your cash register, that the missing money was your responsibility, and that you're the 'associate' who should be disciplined for it? Yes or no?" Your Weingarten witness can insist that the manager break up these four questions so you can answer "yes" to the first two but "no" to the last two. **EXAMPLE:** A manager tries to mislead or trick you into admitting something untrue. Your Weingarten witness can point out what the manager is doing and insist that the manager question you fairly. **EXAMPLE:** A manager gets angry, starts shouting and doesn't let you say anything. Your Weingarten witness can insist that the manager let you answer in your own words. **EXAMPLE:** A manager tries to ask you a trick question, like "have you stopped beating your wife?" Your Weingarten witness can point out that the manager's question assumes that you engaged in wrongdoing, and insist that the manager separately ask you whether you ever engaged in the wrongdoing before asking you whether you continue to do so.

**Q:** What other rights does Weingarten give me?

**A:** You can insist that the manager tell you what the interview is about and what kind of discipline might result. If you feel the need for a break or you want to talk things over with your Weingarten witness, you can take a private break. You also have the right to present your side and make your own defense.

**Q:** How can a manager respond to me invoking my Weingarten rights?

**A:** The manager can grant your request and continue with the interview. Or the manager can terminate the communication.

**Q:** Can the company retaliate against me or the "associate" I choose to witness the communication?

**A:** No. If the company retaliates, discriminates or treats you or your witness any differently, contact the UFCW as soon as possible. UFCW attorneys are available to file Unfair Labor Practice Charges with the National Labor Relations Board on your behalf and on behalf of your Weingarten witness at no cost.

**Q:** What should I do if the company denies my Weingarten rights?

**A:** Tell the manager that you do not want to answer any questions until your Weingarten witness is present. If your manager refuses and insists that you answer the questions anyway, inform the manager that you will answer the

questions but only under protest. Tell the manager that you will file Unfair Labor Practice Charges against the manager