

Weingarten Rights

The Legal Right to Union Representation during an Investigatory Review.

Where the right comes from

The National Labor Relations Act (Section 7), says that employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Included within this is the right to have representation at an investigatory interview.

What the right is in general

If an employee is called in for an interview or discussion or conversation with management and the employee reasonably believes that what is said at the interview may result in him/her being disciplined, then the employee has the right to demand union representation at the interview.

Sample Card – front

Weingarten Rights

I have a reasonable belief that this meeting may lead to disciplinary action against me. I respectfully request that my AEA Representative be present at this meeting. Without representation, I choose not to answer any questions.

[*NLRB vs. Weingarten, Inc. U.S. - 251 (1975)*]

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Sample Card – back

You have professional rights

If you have any work-related problem, follow these guidelines:

1. DO NOT resign or abandon your location.
2. All communication with your association is strictly confidential.
3. Document in writing the incident.
4. Keep any records that relate to the incident.
5. Representation is strongly advised.
6. Timelines are important. DON'T DELAY.
7. Use your contract as a guide.
8. Follow orders unless there is potential for personal injury. You can grieve the orders later.

The “Weingarten” Case

This right was formally recognized by the U.S. Supreme Court in 1975 in a case called *NLRB vs. Weingarten*.

In this case, the Court determined that workers have this right. The Court established the following general rules:

1. An employee’s right to representation in an interview applies to situations where the employee reasonably believes the investigation at the interview will result in discipline;
2. In this kind of situation, the employee is entitled to union representation;
3. The employee **must clearly request** representation in order to claim this right (there is no right to representation unless an employee requests it and the employer has no duty to inform the worker of this right);
4. An employer does not have to grant a “Weingarten” request; once an employee makes a request for union representation, an employer has three options:
 - a. The employer may grant the request;
 - b. The employer may deny the request and stop the investigatory interview immediately.
 - c. The employer may give the employee the option of continuing the interview without representation or discontinuing the interview;
5. The employer has no duty to bargain with the union representation who attends the interview.

The role of A/Rs in Weingarten

The presence of an association rep can be crucial, and both members and A/Rs should be aware of their rights.

1. The employee does not have the right to a representative of his/her choice. The choice of a representative may be based on availability.
2. The employee and the AR have the right to know the subject matter of the interview.
3. The AR must be allowed to take the employee aside for a private pre-interview conference before questioning begins.
4. The AR must be allowed to speak during the interview.
5. The AR can request that the supervisor clarify a question so that the employee can understand what is being asked.
6. Before questions have been asked, the AR can give advice on how to answer.
7. When the questioning ends, the AR can provide additional information to the supervisor.
8. If Weingarten rules are complied with, A/Rs have no right to tell employees not to answer questions, nor to give false answers.

Local associations need to educate members about their Weingarten rights. The presence of an AR can be crucial. It can save employees from making foolish statements that may lead to discipline or discharge.

Confidentiality – Rawlings

Conversations between an attorney and an association member are privileged. Conversations between an association member and association representatives are not privileged and are subject to compulsory disclosure through subpoena.

Rawlings was a police officer who refused to submit to a drug test and confided to a union representative that he probably could not pass the test. The union representative confided that under those circumstances, he probably would not take the test. Therefore, the union representative received a subpoena that required him to testify to conversations with Rawlings. Any conversation could be subject to subpoena/compulsory disclosure.

Could I be accused of Child Abuse?

The answer is yes.

In fact, in recent years there has been a significant increase in the number of New Jersey teachers being investigated for child abuse. Physical abuse charges can arise out of corporal punishment, and inappropriate touches or hugs can lead to accusations of sexual abuse.

One of a teacher's most cherished possessions is his or her reputation. To guard yours, take these simple precautions:

1. Review your local policy on child abuse. Reporting is required by law.
2. Don't ever leave your class unattended. Be sure your students and their parents understand your classroom rules and methods of discipline. Make sure students are adequately supervised on field trips. Make every effort not to be alone with children (after school, tutoring, etc.)
3. If you must physically restrain a student in a discipline situation, use no unnecessary force. Corporal punishment is not allowed. The only time you may use reasonable force is:
 - a. To quell a disturbance, threatening physical injury to others;
 - b. For the purpose of self-defense;

- c. To obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil; and
 - d. For the protection of persons or property.
4. Today's children need more attention and love than ever, but touching students could put you at risk.
 5. Scolding children, ridicule, sarcasm and excessive school work or homework have been declared forms of emotional child abuse.
 6. While details are still fresh in your mind, make a written description of any incidents that you think may cause you liability problems later on. Don't put anything in writing or sign any documentation without assistance from the NJEA

SHOULD YOU BE QUESTIONED ABOUT ABUSING A CHILD, YOU HAVE THE RIGHT TO REMAIN SILENT.

SHOULD YOU BE ACCUSED OF CHILD ABUSE DISCUSS IT WITH NO ONE. CONTACT YOUR NJEA REGIONAL UNISERV OFFICE. YOU WILL RECEIVE FREE LEGAL ASSISTANCE.