



The Heart of Florida
Letter Carriers Branch 1779
NALC, AFL-CIO



Weingarten Rights

Weingarten Rights are afforded to employees by way of federal labor law. The Supreme Court ruled in 1975 in *NLRB v. J. Weingarten, Inc.* that every employee holds the right to union representation during any inquiring which they reasonably believe could result in disciplinary consequences. These rights are known as Weingarten rights.

These rights are can be called for during any investigatory interview, whether the questions are simply fact finding in nature or if management is trying to determine the employee's guilt or innocence.

JCAM page 17-6 and 17-7 provides in salient part:

Weingarten Rights Federal labor law, in what is known as the Weingarten rule, gives each employee the right to representation during any investigatory interview which he or she reasonably believes may lead to discipline (NLRB v. J. Weingarten, U.S. Supreme Court, 1975).

The Weingarten rule applies only when the meeting is an investigatory interview—when management is searching for facts and trying to determine the employee's guilt or decide whether or not to impose discipline. The rule does not apply when management calls in a carrier for the purpose of issuing disciplinary action—for example, handing the carrier a letter of warning. [Emphasis added]

An employee has Weingarten representation rights only where he or she reasonably believes that discipline could result from the investigatory interview. Whether or not an employee's belief is "reasonable" depends on the circumstances of each case. Some cases are obvious, such as when a supervisor asks an employee whether he discarded deliverable mail.

JCAM page 17-7 states in part:

The Weingarten rule does not apply to other types of meetings, such as:

- **Discussions.** *Article 16.2 provides that "for minor offenses by an employee ... discussions ... shall be held in private between the employee and the supervisor. Such discussions are not discipline and are not grievable." So an employee does not have Weingarten representation rights during an official discussion (National Arbitrator Aaron, H1T-1E-C 6521, July 6, 1983, C-03769).*
- *Employees do not have the right to union representation during fitness-for-duty physical examinations.*

Usually, management will conduct this investigation behind closed doors in an office. Not always, just remember, **if you are asked a question that you REASONABLY believe could lead to the potential of disciplinary action, then ask for a steward.**

An employee's opinion of what is reasonable is fact sensitive and should be adjudicated on a case by case basis. Normally, this is easy to recognize, e.g., questions about sick leave usage, allegations of willful delay of mail, etc. Yet there are more camouflaged question, which may not raise initial suspicion, if in doubt ask for your steward.

Under the Supreme Court's Weingarten decision, the below standards apply to investigatory interviews:

- *An employee may request union representation before or at any time during an investigative interview.*
- *When an employee requests representation, management must select one of the two following options:*
 1. *Grant the request, and suspend the interview until such time union representative is present;*
 2. *End the interview.*
- *If the management denies the request and insists on continuing the interview, the employee is permitted to refuse to answer any questions.*

Important to note, a union steward cannot exercise Weingarten Rights on your behalf. Most people are familiar with "Miranda Rights". Different from Miranda Rights, management is not obligated to advise you of Weingarten rights, rather the employee must invoke them on their own.

Accordingly, you may believe that you're smart enough, you don't need a steward. Wrong, although you may be smart, you should never, under any circumstance, answer questions without representation.

M-01667, USPS Weingarten Card, provides in salient part:

USPS Letter October 24, 2007

Final letter and Weingarten card mailed to all managers and supervisors. Card text:

USPS Weingarten Card

USPS Supervisor Responsibilities Under Weingarten When Interviewing an Employee Where Discipline Might Result

Under the Weingarten rule, you must allow each employee the following rights in conducting an investigatory interview:

1. *Each employee has a right to be represented by a union steward during an investigatory interview (but not during an Article 16 "discussion"). If, before or at any time during the interview, an employee requests a union steward or in any other way indicates that he or she wants representation, you must do one of three things: (1) you must provide a steward, or (2) you must end the interview, or (3) you must offer the employee the choice of continuing the interview without a steward, or of having no interview at all and therefore losing the benefit that the interview might have given to him or her. When in doubt, it is better to provide a steward or contact Labor Relations immediately.*
2. *The supervisor must tell the employee and steward the purpose and subject of the meeting before the meeting begins. Then, if either the steward or the employee requests, adequate time must be given to them to talk privately before (or during) the interview.*
3. *During the interview, you must permit the steward to participate. He or she may ask questions, clarify the employee's answers, comment about the questions, discuss favorable facts, suggest others who have information, and advise the employee. The steward is not allowed to disrupt the meeting or tell the employee not to answer the question. If that happens, postpone the remainder of the meeting and consult you manager or Labor Relations immediately. [Emphasis added]*

As noted above, if either the steward or the employee requests time to talk privately before or in the course of the interview, then it must be provided.

If called to a meeting with management, U.S. postal inspectors or an Office of Inspector General (OIG) agent, read the following statement prior to the commencement of the meeting:

“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer or steward be present at this meeting. Without my union representative present, I respectfully choose not to answer any questions or participate in this discussion.”

This is your right! Use it!

Some of the information referenced above was taken from:

<https://www.nalc.org/news/the-postal-record/2019/december-2019/document/EVP.pdf>