

Right to Representation

In certain *limited* circumstances an employee is entitled to have a union representative present during a discussion with management. This is often referred to as *Weingarten* rights. Its name comes from the 1975 U.S. Supreme Court case, *NLRB v. Weingarten, Inc.*, granted union employees the right to request the presence of a union representative at an investigatory interview that could result in discipline. The National Labor Relations Board (NLRB) has recently ruled that this right must be extended *only* to bargaining unit employees. Employees who are not in a bargaining unit cannot *demand* representation at such investigatory interviews.

The purpose is to ensure that all of the facts favorable to the employee are brought forward to the employer before discipline is imposed.

What does the rule mean for supervisors?

- An employee has the RIGHT to insist on the presence of a co-worker or union representative at an INVESTIGATORY INTERVIEW that the employee REASONABLY BELIEVES may result in DISCIPLINARY ACTION being taken AGAINST HIM/HER (the “Weingarten Right”).
- Notifying an employee of his/her right under the Weingarten Right is NOT an obligation of the employer. *It is up to the employee to request/exercise this option.*
- If you are meeting with an employee for purposes of an “interrogation/interview” that may result in disciplinary action, and the employee asks to have a representative present, you MUST stop all questioning until a representative can be present. It is the employee’s responsibility to get a representative and to re-schedule the meeting within a timely manner. If a delay will mean that you will not be able to issue a suspension within the three-day time limit, ***please contact Staff Relations immediately.***
- When a meeting is held with an employee for purposes that are not reasonably expected to result in discipline, such as a meeting to impose a disciplinary action, issue a notice of layoff or a PRD meeting, the employee does not have the right to have a co-worker or union representative present.
- With investigatory meetings, the representative may request the right to talk to the employee prior to the meeting with management; this request must be honored.
- If no representative is available, the meeting should *generally* be postponed. If a delay will mean that you will not be able to issue a suspension within the three-day time limit, ***please contact Staff Relations immediately.*** Also, there are exceptions in drug and alcohol cases – please contact Staff Relations in such cases.
- The Weingarten Right does not extend to witnesses; these individuals do not reasonably expect disciplinary action to be taken against them. Nor does the

- rule apply to investigations conducted by the campus police.
- The representative cannot answer for the employee. Nor can the representative interfere with questioning, such as telling the employee not to answer.
- If the meeting expands to more than just you and the employee, make sure there is at least one other management representative present in case of disputes over what occurred at the meeting.

It is important that you follow these points whenever there is an investigatory meeting with an employee and the subject of that investigation makes a representation request. This right is reflected in both our nonexempt and exempt 2004 Memoranda of Understanding with the union in Article 15, Section 3. If at any time you or your supervisors are unclear as to how to proceed, exercise on the side of caution and **contact the Staff Relations Office at Extension 5-0001.**