# KNOW YOUR WEINGARTEN RIGHTS

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If the union could teach just one thing to its members, it would have to be about “Weingarten Rights”—the right of unionized workers to have a steward or someone else from the union present if the person is in a situation where he or she may be disciplined.

The Civil Service Reform Act of 1978 provides that an 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.  The [Master Labor Agreement (MLA)](http://afgecouncil214.org/content/master-labor-agreement-mla) between AFMC and the American Federation of Government Employees also provides for this right at Article 5, Section 5.03. This right is commonly referred to as an employee's "Weingarten right", after a 1975 Supreme Court [decision](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=420&page=251) involving a company of that name which granted this same right to workers in private industry. The provisions of both the Civil Service Reform Act and the MLA granting employees similar rights are based upon this decision; hence the nickname "Weingarten Right".

Many workers crumble in the face of questioning by their supervisor or a member of management. They get rattled and start explaining and making excuses and apologizing and often end up giving the employer ammunition to do whatever he or she wants. They often become like the suspects you see in cops shows on television: They ’fess up to things that maybe never even happened or say things in such a way that they worsen the problem rather than talk their way out of it.

With few exceptions, workers across North America enjoy the legal right to have a steward or other union representative present if they find themselves in any situation with management—a conversation, a discussion, an interrogation—that could lead to disciplinary action. But unlike Miranda rights, which police are supposed to tell criminal suspects about (“You have the right to remain silent. Anything you say may be used against you…”), employers do not have to tell employees about their Weingarten Rights.  Workers have to ask for them. And the only way they’re going to know they have that right, odds are, is if their union tells them.

If called to a meeting with management, read the following or present this information to management when the meeting begins.

**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. Until my representation arrives, I choose not to participate in this discussion.**

**Weingarten Rules**

These are the basic guidelines covering the use of Weingarten:

 •The employee must make a clear request for union representation before or during the interview. The worker cannot be punished for making such a request.  
 •The employer must either grant the request and delay questioning until the union person arrives; deny the request, but end the interview at once or give the worker the choice of going ahead without representation or ending the interview immediately.  
 •An employer who denies the worker’s request for representation and continues to ask questions is committing an [unfair labor practice](http://www.flra.gov/ulp) (ULP). The worker can legally refuse to answer questions in such circumstances.

If the supervisor obeys the law and waits to continue until the union’s representative arrives, the following rules apply:

 •Once the steward is on the scene, the supervisor must inform him or her about the subject matter of the interview—the type of misconduct under discussion.  
 •The steward and the worker should be allowed to talk privately before the questioning begins.  
 •The steward can speak during the interview and, if necessary, ask that questions be clarified. The steward cannot bargain over the purpose of the interview.  
 •The steward can advise the worker on how to answer any or all questions, can object to improper questioning, and has the right, once the questioning is ended, to provide additional information.

Be careful that you don’t give Weingarten more power than it has. The rights do not extend to meetings where no questioning is involved, but rather just one-way communication from the supervisor to the worker, or a discussion (without threat of discipline) about job performance.

At the same time, remember that workers do have the right to call their Weingarten rights into play if they have any reasonable expectation that a disciplinary action may result from the meeting. The key word here is may. If there’s the slightest concern that the session could bring about discipline, the worker has the right to ask for union help even though the supervisor who calls the employee in may not be intending to take such action.

If other workers have been disciplined for similar alleged situations, or if the worker being called in has had a previous discussion with the supervisor about discipline or is working under the threat of a performance warning letter, any of these things can cause a worker to think that discipline may be an outcome of the meeting.

One final thing: along with being there to support the worker, the steward can be very helpful by taking complete notes of what goes on during the interview. If the case becomes serious, the steward's notes can be invaluable in documenting who said what.

**Frequently Asked Questions:**

**Question**:  Do these rights also apply to interviews conducted by agents of the Office of Special Investigation (OSI), Security Police, or the Safety Office?

**Answer**: Yes, OSI, Security Police, and the Safety Office are all representatives of the Air Force. Under the law, if individuals from these offices are investigating a matter "which the employee reasonably believes....may result in disciplinary action against them, the same rules and guidance given to the supervisor applies to them.

**Question**: Does my request for representation in a Weingarten situation have to be in writing?

**Answer**: No. A simple oral request will suffice.

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

**Answer**: No. The right to be represented under the law applies to the union. Only the union (steward, officer, business agent, etc.) can represent an employee in a Weingarten situation.

**Question**: Do Weingarten rights apply to performance rating discussions?

**Answer**: No. These rights do not apply to performance rating discussions, discussion with an employee concerning his/her supervisory appraisal, or counseling sessions. Although these discussions might or might not lead to discipline, these discussions are not investigations.