



# Weingarten Rights

What to know and what to do in the event of an investigatory interview with your employer.

## What is an investigatory interview?

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An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his or her conduct. Remember, not every conversation with a supervisor qualifies as an “investigatory interview.” Consider: Is the investigation about your OR about a co-worker?

## How to invoke the right.

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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 employee’s responsibility to make a clear request for union representation before or during the interview. You cannot be disciplined for making such a request or coerced into waiving your Weingarten right.

## What happens next?

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When an employee asks for representation, the employer must choose from among three options:

1. Grant the request and delay questioning until the union representative arrives;
2. Deny the request and end the interview immediately; or
3. Give the employee a choice of:
  - a) having the interview with representation; or
  - b) ending the interview.

If the employer denies the request for union representation and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer.

## What is my representative’s role?

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Employers sometimes assert that the only function of a representative at an investigatory interview is to observe the discussion—to be a silent witness. Case law does not support this position. Instead, the representative must be allowed to advise and assist the employee in presenting the facts.

## What is the right?

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