

# Know Your Rights: The Weingarten Rules

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*Note: A portion of the following material was adapted from a Solano Faculty Association publication.*

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I wanted my first article as your full-time dispute resolution officer to outline the rights you have when it comes to any possible disciplinary action. It is of the utmost importance that you are aware of these before anything occurs, rather than trying to figure out your rights after any allegations have been brought or possible disciplinary action has been discussed by management. Understanding these rights will also help you better determine if and when you want to contact your SCFA dispute resolution officers for assistance.

The Weingarten rules were created by a landmark 1975 Supreme Court case that upheld employee rights in formal and informal disciplinary proceedings. To put it simply, the Weingarten rules protect the rights of unionized employees in disciplinary encounters with supervisors. The rules apply to any meeting between employee and manager, which the employee reasonably believes may lead to disciplinary action. Even exchanges between employee and manager that begin with routine matters may be subject to the Weingarten rules if the manager begins to ask hostile questions or begins a line of questioning that investigates possible employee wrongdoing or unsatisfactory job performance.

## WHAT RIGHTS DO YOU HAVE?

### The Right to Representation

The first Weingarten rule is the right to union representation in all management interviews with employees that investigate employee wrongdoing or unsatisfactory performance and that the employee reasonably believes may lead to disciplinary action. However, an important point to keep in mind is that the Weingarten rules are not like the Miranda rules, which require the police to inform a suspect of his rights. A manager has no legal obligation to inform you of your Weingarten rights. The burden is on you, the employee, to explicitly request union representation.

### The Right to Decline to Answer Questions

If the manager continues to ask you questions after you've invoked your right to union representation, you have the right to decline to answer until the union representative arrives. The trick, of course, is to keep your cool and decline to answer but do so in a firm but civil manner (this is very important).

Once you've requested representation, you can't legally be disciplined for declining to answer questions without your union representative. If you're called to a possible disciplinary meeting, you should attend, even without an assurance that your union representative will be present.

If your representative isn't there when the manager begins any questioning, you should request that questioning be delayed until she/he arrives or ask that the meeting be rescheduled when all parties can attend.

Should management penalize you in some way for refusing to answer questions, you can grieve the action or file an unfair labor practice complaint with the California Public Employee Relations Board (PERB).

I strongly encourage you to keep a card handy in your wallet with the following statement printed on it in the event you find yourself in this situation.

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I request that my union representative be present at this meeting. Until my union representative arrives, I respectfully choose not to participate in this discussion."

If you become emotional and defensive, you will most likely make things much worse. When you invoke your right to representation, be certain to be explicit and direct.

### The Right to Know the Nature of the Complaint

Under Weingarten, you and your representative have the right to know what alleged misconduct the manager is investigating. If your union representative is present, you may be considered "insubordinate" if you don't answer the questions a manager poses. However, before answering, you should check with your representative to make sure the questions are appropriate and legal. You are not obliged to answer "abusive, misleading, or harassing" questions.

Also, you should not answer questions if there is any chance that your alleged misconduct may be of a criminal nature. If you or your union representative believes that criminal charges are even a remote possibility, you should immediately contact CTA for legal representation and re-fuse to answer all questions until you receive legal advice. If there is any criminal conduct involved, you should not discuss your situation with anyone else, including your union representative, until you've had a chance to obtain advice from a lawyer.

### The Right of Your Union Representative to Help You

Under the Weingarten rules, your union representative can:

- witness what is said during the meeting and prevent or correct any later misrepresentations;
- object to confusing, abusive, or misleading questions and any efforts to intimidate you (although the representative may not disrupt the manager's questioning);
- raise extenuating circumstances that may reduce the seriousness of or eliminate the complaint against you altogether;
- advise you against making "fatal admissions" or against denying everything and thus appearing guilty; and
- counsel you against outbursts of temper and against informing on your colleagues.

Of course, invoking your right to union representation may increase the chances of resolving the dispute quickly. However, since management has no obligation to inform you of these rights, my strong message to you is that

if you have any doubt about whether you should ask for union representation, that doubt probably means you should invoke your rights.

These rights were not simply granted by management; many people fought in our courts to win these rights for all of us. And your SCFA dispute resolution officers are here to ensure your rights are being respected.