

Disciplinary interviews and Weingarten rights

Prior to employees being disciplined by management, they generally will be given a pre-disciplinary interview (PDI) or an investigatory interview (II) by management. If you are given one of these interviews, there is no doubt that your supervisor or manager is looking for information to use against you so that they can issue you discipline.

All letter carriers, regardless of how long they have been employed, have Weingarten rights, which means you have the right to have a union steward present during a meeting in which management asks you questions that could lead to discipline. Exercising the right to union representation during an investigatory interview is one of the most important ways letter carriers can protect themselves during an investigation.

Weingarten rights have been afforded to employees due to federal labor law from the Supreme Court ruling *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975). After that ruling, which led to what is known as the Weingarten rule, each employee has the right to representation during any investigatory interview that they reasonably believe could lead to discipline.

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 they threw away deliverable mail. Other situations may not be as obvious. For example, what if a supervisor casually asks why you were absent from work last week? Should

you request that a steward be present in this circumstance? Generally, if you are asked a question concerning something you allegedly did wrong, you can reasonably believe that discipline could result, and you should request a steward.

The Weingarten rule applies during any investigatory interview—whether management is searching for facts and trying to determine the employee's guilt, or is deciding whether or not to impose discipline. Management could ask these questions during a closed-door meeting, through text messaging, a phone conversation or an informal conversation at the supervisor's desk. In any situation, if the employee reasonably believes that discipline could result, they have Weingarten rights.

Stewards can assist you in any investigation by management and help ensure that you get your "day in court." If called to a meeting with management, U.S. postal inspectors, or an Office of Inspector General (OIG) agent, politely read the following statement to the person you are meeting with before the meeting starts:

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 representation present, I respectfully choose not to answer any questions or participate in this discussion.

Although Section 665.3 of the *Employee and Labor Relations Manual* requires postal employees to cooperate with postal investigations, carriers still have the right under Weingarten to have a steward present before answering questions. In the event a steward is not made readily available or if a stew-

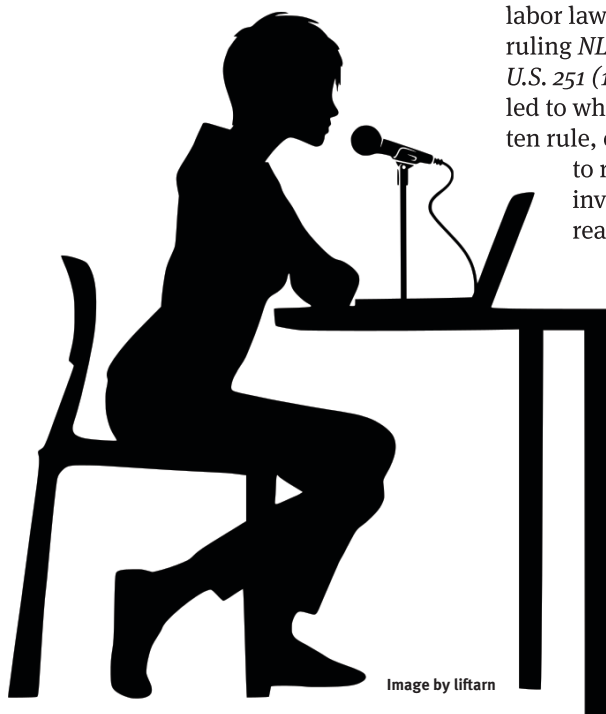


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ard is not present after you have asked for one, you may respond that you will be happy to cooperate in any investigation, but you will answer questions only once a steward is provided.

Be mindful that a steward cannot exercise Weingarten rights on the employee's behalf. And unlike Miranda rights, which involve criminal investigations, the employer is not required to inform the employee of the Weingarten right to representation. You must ask for representation. If you are new to the Postal Service, you might not be aware of this requirement. Occasionally, unscrupulous managers take advantage of employees who are unaware that they must request a steward. You can ask at any point during an interview, even if you didn't request it in the beginning. No matter how smart you think you are, no matter how innocent you are, you should never under any circumstances participate in an investigative interview without a steward present.

In a Weingarten interview, the employee has the right to a steward's assistance, not just a silent presence. The employer would violate an employee's Weingarten rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer.

Employees also have the right under Weingarten to a pre-interview consultation with a steward or another union representative. Federal courts have extended this right to pre-meeting consultations to cover Inspection Service interrogations as well. No matter who is questioning you, if you believe the questioning could lead to discipline, then you have the right to have union representation present during the questioning.

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, these rules apply. Employees may request union representation before or during the interview. If the employer denies the request for union representation, and questions the employee, it commits an unfair labor practice and the employee may refuse to answer questions.

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Disclaimer: *The above recommendation is not legal advice. If you believe that you may be the subject of a criminal investigation, you should consult an attorney.*

If a postal inspector or OIG agent interviews you, you might be given additional warnings. Most people are familiar from television with Miranda warnings, but there are other warnings that every letter carrier should be familiar with. Garrity and Kalkines are two other types of warnings:

A Garrity warning advises suspects of their criminal and administrative liability for any statements made but also advises suspects of their right to remain silent on any issues that may implicate them in a crime.

A Kalkines warning requires employees to make statements and cooperate, even if it could lead to being disciplined or to being discharged, but it provides criminal immunity for their statements.

If a carrier is given any of these warnings—Miranda, Garrity or Kalkines—and there is reason to believe that the carrier might be subject to criminal prosecution, the individual should consult an attorney immediately, in addition to exercising their Weingarten rights. For more information on Weingarten rights and the warnings mentioned above, read pages 23-27 of the 2023 *Letter Carrier Resource Guide* found at nalc.org/resourceguide. **PR**

All new NALC members receive a card explaining their Weingarten Rights.