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What are Weingarten rights?

- Weingarten rights guarantee an employee the right to union representation whenever an employer's investigatory interview could lead to discipline.
- Weingarten rights were established in a 1975 United States Supreme Court decision, *NLRB v. Weingarten, Inc.*
- In Massachusetts, the Massachusetts Department of Labor Relations extended Weingarten rules to apply to all public employees, regardless of union or non-union employment status. This is covered under M.G.L. Chapter 150E.

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Situations that give rise to Weingarten...

- Employee is in a meeting with their supervisor and is being issued a warning through the employer's disciplinary procedure.
- Supervisor is investigating an employee's alleged work performance or other misconduct and discipline of any kind is a possible result.
- Supervisor is investigating alleged misconduct or inadequate work performance and calls a meeting to elicit facts or get the employee's "side of the story."
- Supervisor is investigating an incident or allegation and the employee being questioned has a **reasonable expectation** that discipline may result.

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Best Practice...

- Notify the employee of their right to have a union representative at the time you schedule the disciplinary/investigatory meeting.
- If the purpose of the meeting shifts during the course of the meeting, stop the meeting, and notify the employee of their right to have a union representative.

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Situations that DO NOT give rise to Weingarten...

- The purpose of the meeting is to convey work instructions, training, or needed corrections.
- The supervisor has clearly notified the employee, prior to the meeting, that no discipline or adverse consequences will result.
- The employee initiates the discussion after the employer has made it clear that the matter may have disciplinary consequences.

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What constitutes a *reasonable expectation* that discipline may result?

- **Objective test:** Is the employee reasonable in believing that discipline might result?
- **Factors to consider:** Has the supervisor provided any oral/written warnings about the conduct in question? Has the employee been under scrutiny previously? Have other employees been disciplined for conduct similar to that being investigated at the meeting?

Questions?

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