

REPRESENTING MEMBERS IN WEINGARTEN MEETINGS

A SHOP STEWARD'S GUIDE



STEWARD'S RIGHTS

This step-by-step guide is designed for NUHW shop stewards to learn how to effectively represent their members by understanding their rights as stewards and their members' rights – Weingarten rights – in investigatory meetings.

Under the National Labor Relations Act, shop stewards have rights above and beyond those of other employees. When you are a shop steward and acting in the capacity of a shop steward, you are considered an equal to management.

WHAT DOES BEING EQUAL TO MANAGEMENT MEAN?

As an employee you are subordinate to your management, meaning that you are required to do what is asked of you. If you have a concern, you'll grieve it later.

When you are acting in the role of a steward, representing members regarding a workplace issue, you are an advocate for the union legally representing your members. As a result, you have the right to argue aggressively for your position without any fear of discipline. Aggressive advocacy is not always necessary or even appropriate depending on the situation, but it is not insubordination.

UNDER WHAT CIRCUMSTANCES DO I ACT IN THE ROLE OF A SHOP STEWARD?

You are acting in a representational capacity when you argue a contract matter, attempt to resolve a member's problem, investigate a complaint, request information, present a grievance, or dispute a manager's decision.

YOUR RIGHTS AS A STEWARD

- to grieve about unfair treatment
- to investigate grievances, including meeting with members and witnesses
- to organize and encourage your co-workers to take action in support of a grievance
- to request information from the employer
- to be present in disciplinary meetings with management and a co-worker that might lead to discipline
- to be present in grievance meetings with management

WEINGARTEN RIGHTS FOR UNIONIZED WORKERS

In 1975 the U.S. Supreme Court, in a case involving the National Labor Relations Board and a company called J. Weingarten Inc., declared that unionized employees have the right to union representation in a meeting with management when the employee believes the meeting might lead to disciplinary action against him or her.

To exercise your Weingarten rights, an employee **must** request a union steward or a union representative be present in the meeting. The employer has no obligation to ask whether the employee wants a steward or union representative, unless it is bargained in the contract.

WHAT MEMBERS NEED TO DO: ASK MANAGEMENT!

When an investigatory interview occurs, the following rules apply:

RULE 1: The employee must make a clear request for a union representative or steward before the interview begins. Management cannot punish an employee for making this request.

If a member is called into a meeting with their supervisor, department director, or HR, the member must first ask management:

“Can this meeting or discussion in any way lead to my being disciplined or terminated?”

If the answer is **yes** or **possibly**, inform management:

“I request that my union steward or representative be present for the meeting. Once they arrive or are available, I’ll participate in the meeting.”

RULE 2: After the employee makes the request, the employer must choose from among three options:

1. Grant the request and delay questioning until a union representative arrives and has a chance to consult privately with the employee, or,
2. Deny the request and end the interview immediately, or
3. Give the employee a choice of either having the interview without a representative or ending the interview.

RULE 3: If the employer denies the request for union representation and continues to ask questions, it has committed an unfair labor practice and the employee has a right to refuse to answer the questions. The employer may not discipline the employee for such refusal.

EXAMPLES OF WEINGARTEN MEETINGS

Examples of issues that management may want to meet about or discuss that could result in discipline and/or termination. Weingarten rights *apply* in these examples.

Absenteeism/tardiness

Accidents

Damage to company
property

Drinking/drugs

Falsification of records

Fighting

Insubordination

Poor attitude

Theft

Violations of safety rules

Work performance

Patient complaint

Examples of topics that do not usually result in discipline and/or termination. Weingarten rights *do not* apply in these examples.

Meetings with management to convey instructions and training, or communicate corrections related to work processes

When management has informed the employee prior to the meeting that no discipline can result from the meeting

When the employer issues the actual discipline (e.g., giving a written warning or termination papers)

A NOTE ON DISCIPLINE

If management plans to issue an employee a written warning, to suspend an employee, or to terminate an employee, the law does not require management to allow an employee to have a union steward present, unless it is in the contract, or is the usual practice of the facility. Weingarten rights apply in investigatory meetings, not when an employer has already determined that it will issue discipline.

STEWARDS' RIGHTS AND RESPONSIBILITIES

PREPARING IN ADVANCE OF A WEINGARTEN MEETING

Meet before the meeting to ask the member if they know what the meeting is about. If they do know, ask them what happened. Advise the member to:

- Only answer the question they are asked and keep answers short and to the point
- If they do not know the answer, say they do not know
- Tell the truth and be factual
- Do not need to volunteer information that management has not asked

DURING A WEINGARTEN MEETING

You have the following rights as a steward when you are in Weingarten meetings representing a member:

- Ask about the meeting's purpose
- Ask for clarification of a question before the member responds
- Ask management to restate or reframe question if the member does not understand the question
- Stop management from misleading, harassing, or abusive behavior toward the member
- Take a recess during the meeting if you need to speak privately to the member

Take notes on the following:

- Reason and purpose for the meeting
- Key questions the supervisor asked
- Who was present at the meeting
- Names of any witnesses mentioned or referred to
- Copies of any documents management presented or referred to

WHAT STEWARDS SHOULD NOT DO

- Insist that the meeting end
- Provide information to management that harms a member
- Speak in a negative or derogatory way to a member during the meeting
- Discuss the member's issue with other members for purposes of gossiping
- Serve as management's witness

AFTER A WEINGARTEN MEETING

- Update your notes immediately following the meeting
- Make sure you have the member's contact information and that he/she has your contact information
- Advise your union organizer if you need additional assistance
- Determine if any issue occurred that leads you to believe the contract has been violated, and if so, advise your union organizer to discuss filing a grievance

CHECKLIST FOR STEWARDS

PREPARING THE MEMBER BEFORE A WEINGARTEN MEETING

- Meet with the member before the meeting to get their version of the incident, if they know what the meeting is about
- Explain to the member that they only need to answer truthfully to management's question and keep their answers short and to the point
- Explain to the member that they don't have to volunteer information

DURING A WEINGARTEN MEETING

- Ask about the purpose and subject of the meeting
- Request clarification questions prior to the member responding
- Ask the supervisor to clarify any question that the member does not understand
- Stop the supervisor from misleading, harassing, or abusing the member
- Request a caucus if you need time to speak privately with the member

KEY ELEMENTS TO INCLUDE IN YOUR NOTES

- Reason and purpose for the meeting
- Key questions the supervisor asked
- Individuals present at the meeting
- Names of any witnesses the member or management mentioned
- Copies of any documents management presented or referred to

AFTER A WEINGARTEN MEETING

- Exchange contact information with your member
- Ask if they have any other information or questions about the meeting
- Ask if they have any other information that could help support their position
- Make sure the member gets you any documents that may be relevant
- Tell them to let you know if management contacts them again regarding this issue
- Let your organizer know about the Weingarten meeting and the issue