

HR/LR Policy #1376

Right to Representation (Weingarten Rights)

Date Issued: 04/08/2003
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Rebrand Date*: 12/22/2017
Authority: Labor Relations

OVERVIEW

Objective

To clarify when employees have a right to union representation (Weingarten Rights).

Policy Statement

It is the policy of the State of Minnesota that when interviewing an employee who is covered by a collective bargaining agreement, when the questioning may potentially subject the employee to disciplinary action, the employee has the right to union representation during the interview.

Scope

This policy applies to:

- All employees of executive branch agencies (M.S. 43A.02, subds. 2 & 22) and
- Classified employees in the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association (M.S. 43A.04, subd. 1(a)).

Definitions and Key Terms

N/A

Exclusions

N/A

Legal References

NLRB vs. J. Weingarten, Inc., 420 US 251 (1975)

GENERAL STANDARDS AND EXPECTATIONS

This policy clarifies when an employee has the right to union representation (Weingarten Rights). Weingarten Rights are rights derived from a United States Supreme Court decision, which states that an employee being interviewed by

management is entitled to the presence of a union representative at the time of questioning when the questioning could subject the employee to disciplinary action.

Our current collective bargaining agreements incorporate the rights afforded in Weingarten by requiring that an employee be informed of their right to union representation prior to being questioned during an investigation that may lead to discipline of that employee. The rights afforded in the collective bargaining agreements and the Weingarten ruling applies only when the questioning of an employee could *lead to discipline*.

There is *no* right of representation:

- When an employee is questioned as a *witness* during an investigation, except where specifically authorized by a collective bargaining agreement or plan. For example, AFSCME Council 5 & Unit 8, MAPE and MNA collective bargaining agreements allow union representation of witnesses in cases of resident/patient abuse and for the complainant in investigations of sexual harassment;
- During the presentation of discipline;
- During a supervisory conference; or
- During a performance review.

For unrepresented employees and employees covered by plans other than the Managerial Plan, the principle of Weingarten is applied by allowing a *co-worker* to be present at such questioning. Weingarten does not apply to managers, and therefore the agency may conduct questioning of a manager in any situation without offering a representative.

Although the contracts and plans contain language allowing representation during the grievance/dispute resolution process, these provisions are separate from the right of representation afforded by Weingarten.

RESPONSIBILITIES

Agencies are responsible for the request:

Applying the provisions of this policy when interviewing employees in potential disciplinary situation.

MMB is responsible for:

Assisting agencies with all aspects of potential disciplinary situations

REFERENCES

Labor Contract Provisions, Managerial Plan

CONTACTS

Labor Relations Representative

**Date policy content moved to new document template featuring updated branding, logo, formatting, and corrections to typographical errors. No change to policy content.*