

The Weingarten Rules: What They Do and Why You Should Know Them

The Weingarten rules were created by a landmark 1975 Supreme Court case that upheld employee rights in formal and informal disciplinary proceedings (See “The Boss Never Promised You a Rose Garden” below for more details about the Weingarten case). Okay, so just what are these Weingarten rules and how do they apply to California public employees? *To put it simply, the Weingarten rules protect the rights of unionized employees in disciplinary encounters with supervisors.* Although the Weingarten ruling originally applied only to private sector employees, the California Public Employee Relations Board (PERB) extended the Weingarten rules to all California public employees, including, of course, community college faculty. *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. Again, if the employee has a reasonable expectation that disciplinary may result, Weingarten applies to the exchange between manager and employee.

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. This right to representation is also guaranteed in our union contract and in SJDC board policy. 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. Once you’ve requested representation, you can’t legally be disciplined for declining to answer questions without your union rep. If you’re called to a possible disciplinary meeting, you should attend, even without an assurance that your union rep will be present. If your rep isn’t there when the manager begins his questioning, you should request that questioning be delayed until the rep 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 on the basis of the union contract or file an unfair labor practice complaint with PERB.

The Right to Decline to Answer Questions (continued)

Some unions have printed up cards that members carry with them. These cards briefly list the Weingarten rights on one side and print this statement on the other: "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 say, "it's all about a couple of bullies, a gutsy woman named Collins, and a brouhaha over free chicken lunches", your manager may look a bit puzzled. When you invoke your right to representation, be certain to keep it clear and direct.

The Right to Know the Nature of the Complaint

Under Weingarten, you and your rep have the right to know what alleged misconduct the manager is investigating. Your right to know the nature of the complaint against you is also guaranteed by our union contract and by board policy. If the rep 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 rep 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 rep believes that criminal charges are even a remote possibility, you should immediately contact CTA for legal representation and refuse 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 rep, 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 rep can witness what is said during the meeting and prevent or correct any later misrepresentations. Although the rep may not disrupt the manager's questioning, he or she can object to confusing, abusive, or misleading questions and to efforts to intimidate you. The rep can raise extenuating circumstances that may reduce the seriousness of or eliminate the complaint against you altogether. The rep may advise you against making "fatal admissions" or against denying everything and thus looking guilty. He or she can counsel you against outbursts of temper and against--in a moment of madness--informing on your colleagues. Our union contract and board policies also allow the union rep to advise and defend the employee. But they do not specify the permitted activities of the union rep as the Weingarten rules do.

Beyond Weingarten: the Right to Appeal an Unfavorable Disciplinary Decision

The Weingarten ruling doesn't address the appeal process. However, our union contract and board policy guarantee you the right to explain or rebut any information placed in evidence against you or any accusation made against you. If a disciplinary decision finds you at fault, you have a period of time during which you can decide either to accept the disciplinary finding or to file a notice of appeal. You may appeal a manager's decision to the superintendent-president of the college. If you do so, you may have the superintendent-president hear your appeal, or with the help of the union, choose a hearing officer acceptable to you, the union, and the superintendent-president. If you are dissatisfied with the ruling of either the hearing officer or the superintendent-president, you may appeal to the board of trustees. Normally any appeal beyond the board of trustees would require you to file suit in superior court. However, if you find the board's ruling unsatisfactory, you may appeal to the California Community College Chancellor's Office *under two circumstances*: you have filed a cross complaint against the district for "unlawful discrimination" (referred to in our contract as an "affirmative action complaint") or the complaint against you is "unlawful discrimination and harassment". Of course, invoking your right to union representation may protect your due process rights and resolve the dispute long before an appeal is necessary.

As I said earlier, the Weingarten rules are not like the Miranda rules that 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 the employee to explicitly request union representation. I suppose the moral of this story is that if you're in 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; they had to be won. Many people have fought so that you have the tools to defend yourself--including Leura Collins at store 98 in Houston, Texas.

Written by Sam Hatch for the Crisis Committee at San Joaquin Delta Community College, with the assistance of attorney Dale Brodsky.

The Boss Never Promised You a Rose Gardenbut She's got to Respect the Weingarten Rules

One of the most important Supreme Court rulings on employee rights started in June of 1972 at store 98 in Houston, Texas, part of a large chain of convenience stores run by J. Weingarten, Inc. The reluctant heroine of this drama was Leura Collins, a lunch-counter clerk at store 98 and a member of Retail Clerks Union Local No. 455. Collins was called into the manager's office to speak with the manager and a corporate "loss-prevention" investigator who had been working undercover the last two days, hoping to catch employees pilfering. The detective had had no luck. But a co-worker of Leura Collins reported to another manager that she had seen Collins take a \$2.98 box of chicken and place only a dollar in the register. During the interview, Collins requested union representation several times. Her requests were ignored. Despite persistent questioning, Collins was able to establish to the satisfaction of her interrogators that she had only purchased a dollar's-worth of chicken but had placed it in the larger (\$2.98) container because the store was out of the smaller containers.

Now in tears, she blurted out that she had never had more than a free chicken lunch from the Weingarten Company in all her years of employment. This admission started the grilling again. Had she been taking chicken lunches since she moved from store 2 to store 98? Again, Collins asked for a union representative. Again, no response. The Weingarten investigator drew up a statement that asserted that she owed the company \$160 for the chicken lunches she hadn't paid for--a considerable sum for a lunch-counter clerk in 1972. The investigator insisted that Collins sign it. She refused. As it turned out, store 2 had a policy of granting employees a free lunch, and there was no corporate policy against free lunches. In fact, one of her interrogators, the manager of store 98, and other managers and employees at the store had been helping themselves to free lunches for some time.

Finally, Leura Collins was allowed to leave, but the manager told her not to discuss the matter with anyone. Fortunately, for employees all around the country, she contacted her union, and the union filed an unfair labor practice complaint with the National Labor Relations Board (NLRB), which the board upheld. The regulations protecting employee rights issued by the NLRB were finally confirmed in the 1975 Supreme Court ruling, *NLRB versus Weingarten, Inc.* Why the Weingarten rules were not called the Collins' rules is one of the mysteries of the law. But at least, we've solved one of the mysteries of the universe: yes, there is such a thing as a free lunch--if it's chicken and if the manager gets one, too.

Sources of Information about Your Rights in Disciplinary Proceedings

- *National Labor Relations Board vs. Weingarten, Inc.* (1975). The text of the Supreme Court Case is available at findlaw.com: <http://laws.findlaw.com/us/420/251.html> . However, you can find reliable summaries of the Weingarten rules at: <http://www.cwa3603.net/Weingarten.htm> in the website of the Communications Workers of America. Also at http://www.cueunion.org/general_info/weingarten.php in the website of the Coalition of University Employees (CUE).
- Articles VIII, XXVIII, XXIX of the SJDCTA contract deal with faculty rights during disciplinary proceedings. The contract is available on the college website in the Accreditation Self-Study Evidence Gallery in the Office of Planning, Research, and Regional Education. The web address for the gallery is: http://deltacollege.edu/dir/planning/accred_study_evidence/evidence_sources.html . When you get to the gallery, double click “bargaining unit contracts” and look for the relevant articles in the faculty contract.
- Board policies and procedures BP/AP 3410, BP 3430, P 3780 and P 3782 present the board’s view of faculty rights during disciplinary and grievance procedures. These, too, are available on the college website at the web address above. When you arrive at the evidence gallery, double click “policies and procedures (board policies and administrative procedures)” and use the table of contents to find the relevant policies.
- Sections 87660 to 87683 of the ed. code define the rights of a faculty member who is accused of misconduct that may result in suspension or dismissal. Sections 3543 to 3543.8 of the Government Code (“Rights, Obligations, Prohibitions, and Unfair Practices”) define a faculty member’s rights in disciplinary matters, including issues that may not rise to the level of suspension or dismissal. Both these segments of California law leave room for collective bargaining to work out due process in greater detail. You can find these sections of the Ed. Code on Findlaw.com at: <http://caselaw.lp.findlaw.com/cacodes/edc.html> . This address will put you into the table of contents for the Ed. Code; just scroll down to the relevant sections and double click. The following is the address of the relevant sections of the California government code: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=gov&codebody=&hits=20>
- Bogue, Bonnie and Liz Joffe. *Pocket Guide to Workplace Rights of Publish Employees*. Berkeley: Regents of the University of California, 2005. This little volume (170 pages) is available from the California Public Employee Relations Program, Institute of Industrial Relations, University of California Berkeley. It can be ordered for \$12.00 online at <http://cper.berkeley.edu>. It contains summaries and explanations of the relevant statutes, PERB rulings, and case law.
- Uyehara, Emi. *Pocket Guide to Due Process in Public Employment*. Berkeley: Regents of the University of California, 2005. Also Vendrillo, Carol A. and Eric Borgerson. *Pocket Guide to Unfair Practices: California Public Sector*. Berkeley: Regents of the University of California, 2006. These volumes can also be ordered for \$12.00 apiece online at <http://cper.berkeley.edu>. They contain summaries and explanations of the relevant statutes, PERB rulings, and case law. All three of these pocket guides provide are carefully indexed. The *Pocket Guide to Unfair Practices* also has a useful glossary.