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LIUNA Local 1776
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CHECKLIST

Weingarten Rights Checklist

Questions for employees, or their representatives, to ask when an employee is questioned during an investigation.

BEFORE ANSWERING

Questions to Ask

1. Is this an investigatory meeting?
2. Under whose authority is this investigation being conducted?
3. Is this a civilian or a military investigation?
4. Can you give the employee a copy of your appointment letter or orders, and tell them what the investigation is about? (For military investigations, see AR 15-6, June 22, 2025.)
5. Is the employee's participation voluntary or required? If it is voluntary, the employee is free not to answer questions.
6. Is the employee only a witness, or a respondent or the target of the investigation?
7. Is the investigation criminal or administrative? See the next column.

Criminal or Administrative?

a. **Administrative:** the employee has to cooperate with the questioning.

b. **Criminal:** if the employee is told they are a respondent, target or witness in a criminal investigation, they can invoke their Fifth Amendment protection and should immediately ask for a lawyer before going any further. (For military investigations: AR 15-6, para. 3-13d(7), and DA Form 3881.)

c. A union representative is not a lawyer: do not try to represent the employee in a criminal investigation. Recommend they contact a lawyer before saying anything more. The employee does not have to answer until their request for a lawyer is granted. If the investigator then changes the investigation from criminal to administrative, go to (d).

d. If the investigation is administrative but there is doubt about the investigator's intent (they say administrative, but it could turn criminal), ask the investigator for a signed, written Kalkines warning before the employee answers. It means the employee's answers, and anything learned from them, cannot be used against them in a criminal case. Don't let the employee answer until it is signed.

SAMPLE

Kalkines Warning

INVESTIGATOR _____ EMPLOYEE _____

You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements.

INVESTIGATOR SIGNATURE _____ EMPLOYEE SIGNATURE _____ DATE _____

YOUR RIGHT

About the Weingarten Right

In 1975 the Supreme Court ruled that a bargaining unit employee has the right to a union representative in an investigatory interview (*NLRB v. J. Weingarten, Inc.*). For federal employees, Congress wrote the right into law in 1978: 5 U.S.C. 7114(a)(2)(B). Agencies must tell employees about it once a year (7114(a)(3)), but management does not have to remind you at the meeting. To invoke it:

a. **It must be an investigatory meeting:** management, or someone acting for it (the Inspector General, labor relations, JAG and so on), is questioning the employee. Usually it is part of a criminal or administrative investigation, but less formal questioning by a manager or supervisor can qualify.

b. **The employee must reasonably believe discipline could result.** If you are the subject (the alleged wrongdoer), you clearly do. If you are not, you still may: for example, if you saw the misconduct and didn't report it.

c. **Ask clearly.** If both (a) and (b) are true, the employee must make a clear, unambiguous request: "I want a union representative before I answer your questions." Anything less, like "Do you think I need a union representative?", doesn't count.

d. **Once you ask,** management must let the representative attend, end the interview, or let you choose to go on without one. It can't keep questioning you without your representative.

For employees of the military departments, especially National Guard and Reserve dual status technicians, it can be more complicated, because they can become targets or witnesses in a military investigation. What matters is the employee's status while being questioned: a civilian employee has a Weingarten right no matter who is running the investigation.