

WHAT IS AN INVESTIGATORY INTERVIEW?

Employees have Weingarten rights only during investigatory interviews. An **INVESTIGATORY INTERVIEW** occurs when a supervisor questions an employee to obtain information, which could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has **reasonable belief** that discipline or other adverse consequences may result from what he/she says, the employee has a right to request Union Representation. Investigatory interviews usually relate to subjects such as:

- absenteeism
- damage to company property
- drugs
- falsification of records
- tardiness
- theft
- violation of safety rules
- accidents
- drinking
- fighting
- insubordination
- sabotage
- work performance
- vulnerable adult

Not every management initiated discussion is an investigatory interview. For example, a foreman may talk to a worker about the proper way to do a job. Even if the boss asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversation to clarify work assignments or explain safety rules.

Nevertheless, even an ordinary "shop-floor" type discussion can change its character if the supervisor is dissatisfied with the employee's answers. If this happens, the employee can insist on the presence of a Union Representative before the conversation goes any further.

When a supervisor calls an employee to the office to issue a warning or other discipline, this is not part of the investigation and the employee is not entitled to Union Representation. The supervisor is merely announcing they arrived at decision and is not questioning the worker. This meeting could be transformed into an investigatory interview, if the supervisor begins to ask questions to support the decision.

Unfortunately, if the employer neglects to offer Union Representation in an investigation that leads to discipline, the discipline is not automatically overturned. In 1984, the National Labor Relations Board (NLRB) ruled that overturning a discipline would be tantamount to "*an unwarranted 'windfall' for guilty workers.*" The standard Weingarten penalty is now limited to a bulletin board posting in which the employer promises not to repeat its violation.