

# KNOW YOUR “WEINGARTEN” RIGHTS

YOU HAVE THE  
RIGHT TO UNION  
REPRESENTATION



In order to address a disputed Unfair Practice Charge (UPC) with the Public Employment Relations Board (PERB), the District and CSEA have agreed upon the following joint communication to educate managers and employees about “Weingarten” rights. Named after a 1975 United States Supreme Court decision, employees have the right to a union representative when the following three conditions are met:



**1** The Employer conducts an Investigatory Interview



**2** The employee has a reasonable belief that the interview could result in discipline



**3** The employee asks for union representation before or during the interview

The following guidance is based on the California Public Employee Relations Board’s (PERB) application of Weingarten rights.

## A. INVESTIGATORY INTERVIEW



An interview is “investigatory” when the employer seeks information from an employee that could form the basis for discipline. PERB distinguishes investigatory interviews from:

- Routine supervisory conversations
- Instructional meetings
- Performance counseling without fact-finding
- Meetings solely to deliver discipline already decided

If the employer is eliciting facts, asking the employee to explain conduct, or gathering information to determine whether misconduct occurred, the interview is investigatory.



## B. REASONABLE FEAR OF DISCIPLINE

An interview is “investigatory” when the employer seeks information from an employee that could form the basis for discipline. PERB distinguishes investigatory interviews from:

- Routine supervisory conversations
- Instructional meetings
- Performance counseling without fact-finding
- Meetings solely to deliver discipline already decided

If the employer is eliciting facts, asking the employee to explain conduct, or gathering information to determine whether misconduct occurred, the interview is investigatory.

## C. AFFIRMATIVE REQUEST FOR REPRESENTATION



PERB consistently holds that Weingarten rights are not self-executing. The employee must clearly request union representation. The employer has no duty to advise the employee of this right.

A request need not use legal terminology but must reasonably communicate a desire for representation (e.g., “I’d like my union rep here”).

Absent a request, the employer may proceed with questioning.

## D. EMPLOYER OBLIGATIONS AFTER A VALID REQUEST



Once a valid Weingarten request is made, the employer must choose one of three lawful options:

1. Grant the request and delay the interview until a representative is present
2. Terminate the interview and proceed without employee questioning
3. Offer the employee the choice to continue without representation or end the interview

The employer may not:

- Deny the request and continue questioning
- Retaliate against the employee for requesting representation
- Use coercive tactics to discourage the request

## E. ROLE AND LIMITS OF THE UNION REPRESENTATIVE



PERB recognizes that a union representative may:

- Assist the employee in understanding questions
- Clarify facts
- Provide advice to the employee
- Offer relevant information to management

However, the representative may not obstruct the interview, answer questions on the employee’s behalf, or transform the interview into collective bargaining.

## F. REPRESENTATION IN OTHER CIRCUMSTANCES



In addition to rights provided under Weingarten Rights, union members may also have the right to representation in other circumstances established by the collective bargaining or applicable labor laws. These situations can include meetings involving grievances, evaluations, accommodation discussions, disciplinary appeals, or other matters that may affect an employee’s wages, hours, or working conditions, even if the meeting is not investigatory in nature.



KNOWING YOUR RIGHTS HELPS ENSURE A FAIR AND RESPECTFUL WORKPLACE

If you believe your Weingarten rights have been violated, contact your CSEA union representative.

