

When Do Employee Weingarten Rights Kick In?

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**David J.
Pryzbylski**
Partner

Since the landmark *Weingarten* U.S. Supreme Court decision in 1975, union-represented employees covered by the National Labor Relations Act (NLRA) have been entitled to union representation during certain investigatory interviews. Specifically, when an employee is brought in for an investigatory interview that could lead to disciplinary action of that employee, he or she has the right to a union representative being present for the interview as well, if such representation is requested. This has come to be known as “*Weingarten* Rights,” and they currently only are available to union employees. But when do such rights kick in? Is it immediately after employees vote a union into the workplace? Is it weeks, or even months, later when a union is formally “certified” by the National Labor Relations Board (NLRB) as the employees’ official bargaining representative? An [NLRB advice memo](#) publicly released on August 15 sheds light on this issue. In the memo, the NLRB General Counsel’s office specifically states that such rights go into effect immediately after a union receives a majority of votes in a representation election – **not** at the later date when/if the union is certified. This is important for employers to understand because the failure to provide *Weingarten* representation during a covered interview can result in the NLRB invalidating any resulting discipline, including discharges, and order it to be rescinded. The board [frequently issues decisions](#) related to [Weingarten rights of employees](#), and this case serves as an important reminder that companies with unions must take care to ensure they take these rights into account and handle them appropriately when doing an investigation to ensure discipline is not later upended by the board.

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