



Will Nonunion Employees Have Weingarten Rights In The Workplace Soon?

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Any employers who have unions are (or at least should be) readily familiar with “Weingarten rights.” For those who are unfamiliar, [these rights](#) stem from a decades-old U.S. Supreme Court case that held an employee represented by a union has the right, upon request, to union representation in any investigative interview that could reasonably lead to discipline of that employee.

In other words, those workers can have a union steward attend and help “represent” them at any such meeting. While this is something nonunion employers traditionally have not had to navigate, a change could soon be on the horizon.

The National Labor Relations Board (NLRB) recently released an [advice memo](#) in which it signaled it is evaluating whether to extend Weingarten rights to nonunion employers. In that memo – which dealt with Starbucks – the NLRB notes that the incident at issue was not a good vehicle for seeking this change, but it implies the agency will be looking to make this move when an appropriate case presents itself. That is, it looks to be only a matter of time.

There was a brief period in the early 2000s in which the NLRB held nonunion employers – like their union brethren – had a duty to honor requests for representation in interviews that may lead to discipline. That was short-lived, however, and for nearly 20 years nonunion companies haven’t had to deal

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with this additional workplace nuance. The consequences for refusing representation when Weingarten rights apply can be significant, as failure to honor a valid request can lead to any ultimate discipline being invalidated.

Employers can take some solace in knowing the NLRB has placed some limits on Weingarten representation over the years. For example, it has held a company can, in some circumstances, eject a Weingarten representative from an investigatory interview where the representative raises objections and continually interrupts an employer's questions. In other words, a Weingarten representative does not have carte blanche to interfere with a company's right to conduct an effective investigation.

Nevertheless, the fact the current NLRB may be looking to expand this right to nonunion workforces once again may signal it will be more lenient when it comes to the type of conduct allowed by representatives in such meetings. Accordingly, this is an issue all employers should watch.