

KALKINES WARNING

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“Garrity Rights/Warning,” does not, however, mean that government employees may not be asked to give a statement about potentially criminal acts. However, **“Kalkines,”** established an individual has the right:

- To know if information being solicited during an interrogation will be used against them in criminal prosecution. However, if given immunity from prosecution, the employee is required to cooperate in the investigation even if the information solicited could be used for discharging the employee. In Gardner v. Broderick, 392 U.S. 273 (1968), the United States Supreme Court held that the government may not discharge a public employee for refusing to waive his or her constitutional rights.
- The Court noted that the government could discipline an employee if it does not force the employee to give up his Fifth Amendment rights, such as by giving the employee **“prosecutorial immunity,”** (a guarantee that the information disclosed will not be used against the employee in a criminal prosecution).
- The Supreme Court also found, in Uniformed Sanitation Men Association v. Commissioner of Sanitation, 392 U.S. 280, 285 (1968), that public employees “subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.”
- In Kalkines v. United States, 473 F.2d 1391, 1393 (Ct. Cl. 1973), the U.S. Court of Claims elaborated on the Supreme Court's holdings in finding that an employee can be asked to “answer pertinent questions about the performance of an employee's duties ... when that employee is duly advised of his/her options to answer under the immunity granted or remain silent and face dismissal.” In other words, an employee who is given prosecutorial immunity should not expect to rely on his/her Fifth Amendment rights as a reason not to answer questions, and if he/she does not answer the questions the government may discipline him/her for failing to cooperate with the investigation.
- This rule is based on the Fifth Amendment's prohibition on governmental compulsion to make an individual disclose information that might be used against them in a criminal proceeding. It is counter balanced by the Supreme Court's holdings that the government has the right to have its employees answer questions about the performance of their official duties.