

WEINGARTEN RIGHTS (Employee's Right to Union Representation)

The right of employees to have Union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the "***Weingarten Rights.***"

- Employees have "***Weingarten Rights***" only during investigatory interviews, when a supervisor questions the 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 a reasonable belief that discipline or other adverse consequences may result from what he/she says, the employee has the right to Union representation.
- Management is **not required** to inform the employee of his/her "***Weingarten Rights;***" it is the employee's responsibility to make the request for representation.

When the employee requests a shop steward or a Union representative, Management has three options:

1. Grant the request and wait until the shop steward or a Union representative arrives,
 2. Discontinue the interview, or
 3. Offer the employee the choice of either continuing the interview without a shop steward or Union representative or discontinuing the interview.
- An agent from the Office of Inspector General (OIG) or the Postal Inspection Service will often assert that the only role of a Union representative during an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel employees during the interview.
 - The Supreme Court has also ruled that during an investigatory interview Management must inform the Union representative of the subject of the interrogation. The representative must be allowed to speak privately with the employee before the interview. During the questioning, the steward can interrupt to clarify a question or to object to confusing or intimidating tactics. He/she cannot tell the employee what to say, but may advise him/her to stop answering questions and consult with an attorney.

Special Note: "***Rights Before Postal Inspectors***" cards can be purchased from APWU's Website at www.apwu.org. Go to the top of the page; click on the APWU Store (It's in black, on the right side). Next, point your cursor on General Merchandise; stroll down to Publications; click on item number 301, proceed to order information; cards cost 75 cents each. For additional product or order information, contact Kelly Press by email at smelakehiwot@thekellycompanies.com.

MIRANDA RIGHTS
(Your Right to Remain Silent)

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court's historic decision, the Court ruled that before a law enforcement officer may question an individual regarding the possible commission of a crime, he/she must read the individual his/her "***Miranda Rights***" and must also make sure that the individual understands these rights. Therefore, law enforcement agencies have created a basic set of simple statements that can be read to accused persons prior to questioning:

- **You have the right to remain silent and refuse to answer questions.** The individual must be informed in clear and unequivocal terms that he/she is not legally required to answer questions or to give a statement.
- **Anything you say may be used against you in a court of law.** The individual must be warned of the consequences of his/her statements.
- **You have the right to consult with an attorney before speaking to us and to have an attorney present during questioning now or in the future.** The right to have an attorney present during the interrogation is a protection of the individual's Fifth Amendment privileges.
- **If you desire to have an attorney present and cannot afford one, an attorney will be appointed to you, free of charge.** Without this additional warning, the individual's right to consult with an attorney would only apply if he/she has the funds to obtain one.
- **Do you understand your rights as I have read them to you?** The individual answers yes or no.
- **Knowing and understanding your rights as I have read them to you, are you willing to answer my questions without an attorney present?** *If the individual says, "No," the questioning must stop. The individual should refuse to answer any questions, until the attorney is present.*
- However, the law enforcement officer is allowed to ask routine questions without reading the individual his/her "***Miranda Rights***," such as: What's your name, address, date of birth, and Social Security number? This information may be necessary to help determine a person's true identity.

GARRITY RIGHTS/WARNING

The Fifth Amendment to the U.S. Constitution provides that no person shall be compelled in any criminal case to be a witness against himself/herself. This means that a person may not be required or coerced to disclose any information that he/ she reasonably believes may be used (or lead to other evidence that may be used) in a criminal prosecution against him/her.

- If a person is coerced into disclosing information, that information is not admissible in court against him/her.
- In addition to the basic Fifth Amendment rights, Postal Service employees have additional rights under the Fifth Amendment as public sector employees. These workplace rights arise because in the public sector the government acts as both law enforcement agency and employer.
- Developed through a series of United States Supreme Court cases beginning in 1966, these rights are generally known as "**Garrity Rights**," after the Supreme Court's decision in Garrity v. New Jersey, 385 US 493 (1967).
- In that case, several New Jersey police officers were targeted during an internal investigation of ticket fixing. The officers were told that they must respond to questions during the investigation or face discharge for insubordination. In order to keep their jobs, the officers complied and answered the questions. The statements made by the officers were then used in criminal prosecutions against them.
- In overturning the convictions, the Supreme Court held that threatening the police officers with discharge was coercive -- in violation of the Fifth Amendment.
- This case now stands for the principle that using the threat of discharge or any other substantial economic penalty against public sector employees during an investigation of potentially criminal matters is coercive and that any consequent disclosure is inadmissible in a criminal trial of the employee.

KALKINES WARNING

“*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/her constitutional rights.
- The Court noted that the government could discipline an employee if it does not force the employee to give up his/her 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.
- In getting this information from employees, the Fifth Amendment is not violated so long as the government also grants the employee immunity from criminal prosecution based upon that information. If an employee is given immunity, but nonetheless decides not to answer questions, the government may discipline the employee for not answering the questions.

- Any such discipline would, of course, be subject to the grievance procedure pursuant to the collective bargaining agreement. Therefore, an employee can always decide whether to answer questions or not to answer questions.
- As regards the “*Kalkines Warning*,” for example, if an employee is actually provided immunity from prosecution, the employee nonetheless may choose not to answer questions and instead deal with the consequences of being disciplined.
- It should be noted that the mere assertion by an agent from the Office of Inspector General (OIG), that an employee is being granted “immunity” is not the same as an actual grant of immunity from a prosecutor.
- Questions regarding possible criminal prosecution, custodial vs. non-custodial interrogations, and immunity, are legitimate questions that may best be addressed by legal counsel.
- There is no violation of any Postal Service policy or regulation if an employee, who is being subject to an interrogation by law enforcement agents of the Office of Inspector General (OIG) or the Postal Inspection Service, chooses to remain silent pending consultation with a steward, Union representative and/or an attorney, as appropriate.
- In addition, there is no such violation if an employee chooses not to sign any forms or statements during an interrogation.