

Welcome once again to the Fort Belvoir OSJA Website. Today's topic is the ever popular "Weingarten Rights."

Many of you are probably familiar with that phrase. The name comes from a decision by the Supreme Court in the case of the *National Labor Relations Board v. J. Weingarten*. The right is codified in Section 7114(a) (2) (B) of Title 5 of the United States Code.

Under the Weingarten case and the statute codifying it, to give rise to Weingarten Rights all the following must exist:

1. A meeting or discussion is to occur.
2. The meeting will be between one or more managers (or management representatives) and one or more bargaining unit employees.
3. The purpose of the meeting is to seek information in either oral or written form (an investigative interview).
4. The employee or employees reasonably fear that disciplinary action might result from the meeting.

If all of these exist then welcome to the World of Weingarten (WOW!). And, contrary to common belief, unless these criteria are met, Weingarten Rights do not apply. So, remember not every meeting between management and bargaining unit employees will give rise to Weingarten Rights.

However, it is important to keep in mind that Weingarten Rights belong to the bargaining unit employee and generally it is up to the employee to invoke those rights. There is a big exception to this general rule though. If your negotiated agreement (or collective bargaining agreement) requires it you must give the employee a Weingarten warning before any such meeting. This is the labor law equivalent of a Miranda Warning. The relevant provisions in the contract covering your employees should guide you as to what you are required to do and say before meeting with the employee if it includes a Weingarten Warning requirement.

So by now you are asking yourself are there any general rules as to what types of meetings are or are not covered by Weingarten. The answer to that question is yes. In very broad terms if you are going to ask the employee questions designed to find out something about some event or issue and you may take some steps based on that information you need to consider Weingarten. Whether criminal or non-criminal matters are involved does not matter. Weingarten applies to both.

There are some general rules as to what meetings are not covered by Weingarten as well. Among those are meetings with employees regarding performance appraisals/evaluations and/or performance counseling. Although many believe it to be the case, mere delivery of a notice of a proposed disciplinary action or of a decision as to such an action is not subject to Weingarten Rights. The thing to remember here is mere *delivery* doesn't give rise to Weingarten Rights. If you start asking questions you may have just created a Weingarten situation.

So, the meeting is on. The employee has invoked his Weingarten Rights. You, the employee and his union representative are present. Did you ever wonder what the union representative can and can't do during the meeting? There are limits. The representative possesses the right to ask questions, involve himself in producing pertinent information and/or documents, and consult with the employee. However, he cannot disrupt the meeting (interview), insist on taping it, or answer for the employee. While the representative may try to get to tell you what you have on the employee you don't have any legal obligation to provide that information. We would tell you not to in most, if not all, instances.

So what is the moral of this story? Weingarten Rights don't apply as often as you might think they do. However you do need to think about the nature of your intended meeting and be familiar with the provisions of the union contract covering your employees before you move forward. And, if you have any questions about whether Weingarten Rights apply contact your friendly neighborhood LMER specialist or a Labor Attorney with the OSJA.

And now, drum roll please....what do the contracts for Fort Belvoir and Fort A. P. Hill provide? We know you are dying to find out so here it is.

Local Number	Pre-meeting Warning Requirement	Reference	Notice Requirement	Reference
273	No	Article 5, Section 2	Annual	5 USC Section 7114(a)(3)
571	No	Article 14	Annual	5 USC Section 7114(a)(3) and Article 15
1052	No	Article 11, Section 11a	Permanent posting on employee bulletin boards in BUE areas	Article 11, Section 11c
2902	No	Article 17, Section 5	Annual	5 USC Section 7114(a)(3) and Article 17, Section 5