

RIGHT TO UNION REPRESENTATION DURING INVESTIGATIVE INTERVIEWS

Prepared by:

Kainen, Escalera & McHale, P.C.

21 Oak Street, Suite 601

Hartford, CT 06106

Telephone: (860) 493-0870

Facsimile: (860) 493-0871

www.kemlaw.com

https://twitter.com/kem_law

<https://www.facebook.com/kainenescaleramchale>

© 2019 Kainen, Escalera & McHale, P.C.
ALL RIGHTS RESERVED

The information provided in this Employer Guide is made available by Kainen, Escalera & McHale, P.C. for educational purposes only and should not be considered legal advice. This information should not be used as a substitute for seeking counsel from a licensed professional attorney in your state nor is it provided for the specific purpose of soliciting your business on any particular matter. It is not intended to provide specific advice or answers to your individual circumstances or legal questions. Reproduction or redistribution is permitted only with attribution to the source.

UNDERSTANDING A UNIONIZED EMPLOYEE'S RIGHT TO UNION REPRESENTATION DURING INVESTIGATIVE INTERVIEWS

- A. A unionized employee has the right to union representation at investigatory interviews which the employee reasonably believes might result in disciplinary action. (*NLRB v. J. Weingarten Inc.*).
- B. The employee must request representation in order for this right to arise. An employer may refuse to permit union representation by either terminating the interview or by making continuation of the interview voluntary on the part of the employee.
- C. During the interview, a union representative: (i) is permitted to assist the employee by asking for clarification of ambiguous or vague questions or answers; (ii) may suggest, but not insist, on additional lines of inquiry; and (iii) may properly object to questions that may be construed as harassing.
- D. There are certain limitations on what a union representative can do during the interview. For example, the union representative cannot require the employer to enter into negotiations over the problem being discussed. Also, the union representative may not, by either unduly provocative questions, the time, manner of his conduct, or through efforts to obstruct rather than provide clarification, transform the meeting into an adversarial confrontation between the union representative and the employer. With these limitations in mind, public employers should remember that the Connecticut State Board of Labor Relations (SBLR) has definitively ruled that an employer may not insist that a union representative remain silent during an investigatory interview. A union representative may not interrupt an employer's inquiries with objections to questions asked more than once and may not advise an employee not to answer questions deemed repetitive. Indeed, it is within the employer's prerogative to investigate employee misconduct in its facilities without interference from union officials.
- E. An employee does not have an absolute right to a pre-interview conference with a union representative during work time. The National Labor Relations Board (NLRB) has ruled that the right to a pre-interview conference arises in the following two circumstances: (1) Where an employee has not had an adequate opportunity prior to a *Weingarten* interview to consult with the union representative on his or her own time, the employer must permit the employee and the representative to confer privately on company time in advance of the interview; (2) If a union representative is instructed that he/she may only act as a witness at a *Weingarten* interview, the employer's rejection of a pre-interview conference violates an employee's *Weingarten* rights. However, the SBLR has not ruled on this question.

The information provided in the Employer Guide is made available by Kainen, Escalera & McHale, P.C. for educational purposes only. It is not intended to provide specific legal advice to your individual circumstances or legal questions. You acknowledge that neither your reading of, nor posting on, this site establishes an attorney-client relationship between you and our law firm, or any of our attorneys. This information should not be used as a substitute for seeking competent legal advice from a licensed professional attorney in your state nor is it provided for the specific purpose of soliciting your business on any particular matter. Readers of this information should not act upon anything communicated in it without seeking professional counsel.