

## Weingarten Rights, Garrity Rights, and Loudermill Rights

Weingarten Rights, Garrity Rights, and Loudermill Rights are entirely separate and distinct rights that can be easily confused because they often come into play at the same time.

- **Weingarten Rights** apply to the right of a unionized employee to request union representation for any investigatory interview conducted by their employer, in which the employee has the reasonable belief that the discussion could lead to disciplinary action. These rights are based on the 1975 United States Supreme Court decision *NLRB v. J. Weingarten Inc.* The Weingarten decision itself applies only to private sector employees, but the federal government and many states have extended similar rights to public employees via legislation, court decision, and/or rulings by state labor boards. In some cases, unionized public employees have enshrined Weingarten Rights into their collective bargaining agreements.
- **Garrity Rights** apply to the right of a public employee not to be compelled to incriminate themselves by their employer. These rights are based on the 1967 United States Supreme Court decision *Garrity v. New Jersey*. Garrity Rights apply only to public employees because the government itself is their employer.
- **Loudermill Rights** require due process before a public employee can be dismissed from their job. These rights are based on the 1985 United States Supreme Court decision *Cleveland Board of Education v. Loudermill*. Generally, these rights require a public employer to offer to have a "pre-termination" meeting with the affected employee; at this meeting, the employer presents their grounds for termination, and the employee is given the opportunity to respond.

Like Garrity Rights, these rights only apply to public employees because the government itself is their employer, and the Constitution only applies to actions taken by the government.

A private sector employee – for example, a manufacturing worker – possesses only Weingarten Rights, and only if the private sector employee is in a unionized workplace.

A public sector employee possesses Garrity Rights and Loudermill Rights because their employer is the government, regardless of whether he/ she works in a unionized workplace. The same public sector employee may possess rights similar or identical to Weingarten Rights, provided they work in a unionized workplace.



**How Weingarten Rights, Garrity Rights, and Loudermill Rights Work Together**

Below is a scenario in which all three sets of rights could coexist. This scenario demonstrates that public employees and their representatives must have a clear understanding of these three sets of rights – not only an understanding of how they are separate and distinct, but also an understanding of how their functions can overlap.

- ✓ A public employee in a bargaining unit is summoned to their supervisor's office for questioning. Having a reasonable belief that the questioning is an investigatory interview for determining possible disciplinary action, the employee invokes his/ her **Weingarten Rights** and requests union representation for the meeting.
- ✓ Once the union representative arrives, and the questioning begins, it becomes clear that the investigation involves potentially criminal misconduct. Therefore, the union representative and the employee secure an affirmation from the supervisor stating that the questioning is for disciplinary purposes only, that the employees' answers will not be used in a criminal proceeding, and that failure to answer will result in termination. Now, the employee is protected by their **Garrity Rights**.
- ✓ A few days later, the employee receives notification that management wishes to meet again, and that they believe they have grounds for terminating the employee for misconduct based on the employee's answers provided at the investigatory interview. The notification states that at this meeting, management will explain why they think they have grounds for termination, and the employee will have the opportunity to respond. These steps satisfy the employee's **Loudermill Rights**.

