

IF YOU GET IN

**trouble . . .**

**Whether** you're "innocent or "guilty," one day you may find yourself called into your supervisor's office to answer questions. The grilling may be about an alleged problem with your job performance. Or it may be about serious misconduct, like an accusation that you've stolen property from work or cheated on a timesheet.

Your first thought may be "I haven't done anything wrong" or "I haven't done anything different than what folks do around here all the time, so there's no harm in answering a few questions." But many workers (like many criminal defendants) find themselves in hot water when an over-eager supervisor or company investigator deliberately twists perfectly innocent answers to questions or takes answers out of context to create a misleading impression. So better safe than sorry; educate yourself now about your basic rights in this area, so you can use them if you have to.

Unfortunately, in the workplace we don't have all the rights that we saw growing up when we watched someone in a movie or on TV getting questioned by the police. There's no workplace equivalent of the *Miranda* right to remain silent, or even notification of the right to have a lawyer (or union steward, in your case) present. If you're asked questions about a work-related matter, you

do have to give answers.

But you can—and should—provide yourself with the protection you will have if a union representative is present:

- ◆ your steward can learn beforehand what the questioning is going to be about;
- ◆ you can consult with your steward privately before the questioning starts;
- ◆ your steward can keep a written record of the meeting and serve as a witness afterward about what you said; and
- ◆ your steward can make sure the questioning stays within reasonable bounds.

Your rights to union representation are known as “*Weingarten* rights,” after a 1975 U.S. Supreme Court ruling. At first these rights applied only to private sector employees covered by the National Labor Relations Act. But through legislation and subsequent court decisions these basic protections are now generally extended to federal employees, as well as to many state and local government workers.

Under *Weingarten* you have the legal right to have a union representative (but not a lawyer) present during a meeting with management if *all* of the following conditions are met:

1. The meeting is an investigatory interview. This means that you are expected to answer questions in connection with an inquiry into possible wrongdoing or unacceptable behavior. *Weingarten* rights do not cover meetings where the communication is one-way; that is, when the purpose is merely to convey information to you or to notify you of a decision already made regarding discipline.
2. Disciplinary action *may* result from the meeting. The law requires only that disciplinary action—of any severity—is one possible result of the meeting.
3. You “reasonably believe” that disciplinary action may result. If there is a

legal dispute over whether your concern about possible disciplinary action is "reasonable," the determination will be made based on all the circumstances surrounding the meeting: Has your supervisor previously raised the possibility of discipline? Have other employees already been disciplined for what you're accused of? Are you already working under the threat of a performance warning letter?

4. You make a request for representation. This is another way *Weingarten* rights differ from *Miranda* rights: your employer generally is under no obligation to inform you of your right to be represented. It's up to you to know your rights, and to assert them.

So here's some practical advice if a supervisor wants to ask you questions about something on the job:

- ◆ Ask what the meeting will be about. If the answer confirms that the employer is indeed looking into something of a disciplinary nature, then insist on having a union representative present. You should say something along the following lines: "Since it seems to me that this meeting might lead to a disciplinary action being taken against me, I request that my union representative be present. If you will not allow this, I will respectfully decline to answer any questions unless you order me to do so." If it's not clear at first whether you might end up being disciplined, ask if there is "any possibility" that disciplinary action may result. If you get any answer besides "no," then insist on having a union representative present before going any further. (If someone isn't available then and there, ask for the meeting to be rescheduled for a time when a representative can be there.)
- ◆ If your request for representation is denied, think twice before you refuse to answer questions. It's risky to do that, since you then face the possibility of being disciplined for not answering work-related questions. Instead, it's usually wiser to make it clear that you will answer questions only if you are directed to do so. After proceeding under protest, you can consult your union steward about the best way to challenge the denial of representation.

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## Protection from Retaliation

It's easy enough for legislators to pass laws establishing workplace rights. And it's easy for you to read about them in this book. But everybody knows that in the Real World, it sometimes takes more than a little guts to exercise your rights. Everyone has seen examples, in the workplace and outside of it, where an individual speaking up then has to deal with the consequences of having made someone in a position of power unhappy.

If you are faced with making a decision about whether to assert your rights, or to just go on with things the way they are, there are few important considerations to keep in mind.

First, there are many legal protections available to those who speak up and invoke their rights. Section 7 of the National Labor Relations Act (see pages 90–92) provides legal protection against retaliation for those who speak or act with their co-workers to deal with their working conditions. Any retaliation by your employer can be challenged by filing an unfair labor practice charge with the National Labor Relations Board. (Laws governing labor relations for federal and other public employees also contain these protections.)

And remember that most of the laws discussed in this and the preceding chapter have their own provisions that make it illegal for your employer to retaliate against you in any way for exercising rights under that particular statute, including protection if you file a charge or complaint. Suppose, for example, you pursue a discrimination action, alleging that you were denied a promotion based on your race. After you've filed the charge, you find yourself moved to a lousy shift in a sister location seventy-five miles from your home. It may turn out in the end that you don't have enough proof to overturn the decision to deny you the promotion, but you may be able to get your shift and work location restored because that employer action will be found to be retaliation for your having filed the initial charge.

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### Risky, But Worth It

Be aware that there sometimes is a difference between what you know actually occurred and what you can prove as a matter of law. You'd be kidding yourself if you thought that there's never been an instance in which a worker was in fact retaliated against for having engaged in behavior that

is legally protected but was unable to prove that the retaliation took place. Still, don't let this prevent you from asserting your rights. There have been plenty more instances where the agency charged with enforcing a law moved aggressively against an employer trying to prevent an employee from asserting rights under that law. After all, if all employees are successfully intimidated into not using the provisions of the law, that agency becomes useless. (And again, remember your double layer of union protection: reprisals can be defended against through the grievance/arbitration procedure in a good number of union contracts.)

Also remember that, just as in all other aspects of life, there can be no forward progress without some degree of risk taking. True, you may be opening yourself up to some new problems on the job if you take action against existing problems. But if you do nothing, the two most likely outcomes are (1) the current problems will remain or (2) the current problems will just get worse.