

Investigatory interviews—rights and warnings

Letter carriers have the right to union representation in investigatory interviews conducted by managers, postal inspectors or USPS Office of Inspector General (OIG) agents. It is important to understand your rights in these situations, but it is also critical to understand the different types of warnings a postal inspector or an OIG agent may issue you when an investigatory interview crosses over into the realm of a possible criminal investigation.

The 1975 U.S. Supreme Court decision in *NLRB vs. J. Weingarten* gives each employee the right to representation during any “investigatory interview which he or she reasonably believes may lead to discipline.” These rights are commonly referred to as Weingarten rights. The Postal Service is not required to inform you of these rights. A steward cannot exercise these rights for you. If you are asked a question by management that you believe could lead to discipline, you are responsible for requesting your shop steward. Management is required to provide a steward upon request.

Once a steward has been provided, you have the right to a private discussion with the steward before the interview continues. You also have the right to a steward’s assistance, not just a silent presence. The employer would violate your Weingarten rights if it refused to allow your representative to speak, or tried to restrict the steward to the role of a passive observer.

When an investigatory interview is being conducted by law enforcement officers, such as postal inspectors or an OIG agent, an employee may be read warnings. The most well-known warning is Miranda. Most people are familiar with this warning from watching crime programs on television. The Miranda warning is:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning.

Once this warning is given, anything you say can be used in a court of law to try to prove guilt. If you are given a Miranda warning, you should consult with an attorney before answering any questions. Postal inspectors and OIG agents often present a PS Form 1067, Warning and Waiver of Rights and request that employees sign it. By signing this form, postal employees waive their Miranda rights. Letter carriers should not sign PS Form 1067 without first consulting with an attorney. If you do sign a PS Form 1067, anything said from that point forward can be used against you in a court of law.

Since **ELM Section 665.3** requires all postal employees to cooperate with postal investigations, the Postal Service may take disciplinary action against an employee when he or she fails to cooperate during a normal investigatory interview

that does not cross the threshold into a criminal investigation. This would appear to put the employee in an impossible position. Should an employee answer questions even if the answers may result in criminal charges, or should the employee refuse to answer, risking the possibility of discipline for “failure to cooperate” in an investigation?

This problem was resolved by the federal courts in the *Kalkines* and *Garrity* decisions.

The *Kalkines* warning requires employees to make statements and cooperate, even if it could lead to being disciplined or discharged, but provides criminal immunity for their statements. An example of a *Kalkines* warning, though the exact wording may vary, could read something like this:

You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements.

This warning means the employees must be truthful, but can do so without their answers being used against them in criminal proceedings.

A *Garrity* warning advises suspects of their criminal and administrative liability for any statements made, but also advises suspects of their right to remain silent on any issues that may implicate them in a crime. An example of a *Garrity* warning, though the exact wording may vary, could read something like this:

You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings.

The *Garrity* warning helps to ensure suspects’ constitutional rights. It also allows federal agents to use statements provided by suspects in both administrative and criminal investigations. If you are given a *Garrity* warning, you should consult with an attorney before answering any questions.