

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Supervisory and Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 7
Employees' Right to Representation

The question: You tell your employee that you want to meet with him or her about something. Your employee tells you that she or he will not meet with you unless a union representative is present. Is the employee correct?

The answer: "Whenever an employee is required to meet with a supervisor and the employee reasonably anticipates that such a meeting will involve questioning leading to disciplinary action, he/she shall be entitled to have a Steward present if he/she so requests. It is not the intention of this provision to allow the presence of a Steward during the initial discussions of an employee's performance evaluation."

This language is contained in all MOUs with employee organizations in the County, but what does it mean? Let's break it down to get a clearer look at it:

1. **The employee is required to meet.** This is clear. When you indicate that you want the employee to come to your office at a certain time, you have required the employee to meet with you.
2. **The employee reasonably anticipates that such a meeting will involve questioning.** Not every meeting involves questioning. You may tell the employee you wish to meet to give him or her a document (i.e., a letter of counseling/warning/ reprimand) and that there will be no questioning. You may wish simply to counsel the employee or give him or her your observation about something. If you tell the employee up front that there will be no questioning, then the employee cannot reasonably anticipate that it will occur.
3. **Questioning leading to disciplinary action.** This section is interpreted in the most general sense, that is, the employee can reasonably expect discipline as the result of any meeting in which she or he will be questioned. This refers to the employee's Weingarten Rights.

4. He/she shall be entitled to have a Union Steward present. . .

The manager should try to schedule the meeting with enough advance notice to give the employee an opportunity to obtain a Union Steward. In doing so, there are two things which must be considered. First, it is a manager's responsibility to conduct the investigation and get the employee's point of view as quickly as possible so that any appropriate action can be taken. Second, it is the employee's right to have a Union Steward present. The practical course of action here is to give the employee a few alternate dates and times (two or three), a few days in advance. This is a fair way to balance the needs of both management and employees. However, if the steward is not available even though you have given her or him several options for meeting times, you are not restricted from meeting with the employee. On several occasions, employees have been told not to meet with management unless a particular steward or representative is present. Since Unions have more than one representative serving their unit, it is not reasonable that a meeting be delayed due to one person's unavailability. Your reasonable attempts should be documented in the file for future reference.

5. . .if he/she so requests.

It is the employee's responsibility to request representation, it is not the manager or supervisor's responsibility to inform the employee of this right. Again, based upon the employee's Weingarten Rights, he/she can request union representation for an investigatory interview.

SUMMARY

As in all Employee Relations issues, it is important to be fair and honest. If you want to meet with an employee about something, be clear with the employee about the nature of the meeting. If the matter you wish to discuss with the employee may lead to disciplinary action, depending on the employee's responses, make sure the employee is afforded the opportunity to have the Steward there. If, however, you have requested a meeting with an employee, and he or she refuses to meet with you, contact your Employee Relations Analyst, who will assist you in determining the employee's rights, and advise you of alternatives.