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## Employers May Interview Employees Without Coworkers Present In Non-Union Workplaces

Reversing its own four-year-old precedent, the National Labor Relations Board (NLRB) recently ruled in *IBM Corporation* that non-union employees are not entitled to have a coworker present during certain investigatory interviews:

- In *NLRB v. Weingarten* (1975), the U.S. Supreme Court held that unionized employees have a right to union representation at interviews that may lead to disciplinary action against them. Such *Weingarten* rights were expanded by the NLRB in 1982 to include non-union employees and later overruled by the Board in 1985 and 1988.
- In 2000, the NLRB's *Epilepsy Foundation of Northeast Ohio* decision again extended *Weingarten* rights to non-union employees, allowing such employees to have a co-worker present where they "reasonably believe" an interview may lead to discipline.
- Now, the *IBM Corporation* decision, which was decided in a 3-2 vote by the five-member Board, holds that employers are not required to allow employees to have a co-worker present during interviews in workplaces that are non-union.
- The decision was based heavily on the NLRB's recognition that an employer must be able to conduct "thorough, sensitive, and confidential" investigations in the modern workplace.
- The decision emphasized that employers need to conduct such investigations to avoid liability under numerous federal and state laws. For example, such laws encourage an employer to conduct a prompt and thorough investigation in response to an employee's harassment complaint.
- Equally compelling, the NLRB recognized that, unfortunately, there have been many changes in the workplace environment, including concerns raised by incidents of workplace violence, since it decided *Epilepsy Foundation*. In some instances, a confidential investigation, which might be impaired if others are allowed in investigatory interviews, may be the only chance to avoid tragedy.

TIP

The *IBM Corporation* majority was based largely on a crucial point that all employers should remember: Employers should promptly, thoroughly, and *confidentially* investigate instances of possible workplace misconduct, inappropriate behavior, or threats of violence.



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