

Can employees plead the Fifth Amendment during an investigative interview?

Q. Our company recently discovered some theft in our operation. We called an employee in for an investigative interview. He claimed to have consulted with an attorney and refused to answer our questions on the grounds that he could not be forced to incriminate himself under the Fifth Amendment of the U.S. Constitution. What are our choices? — T.L., New York

A. The Bill of Rights to the Constitution protects citizens from their government. The Fifth Amendment protection against self-incrimination is to prevent the government (law enforcement and prosecutors) from coercing information from its citizens, who are presumed innocent until proven guilty.

The amendments are not applicable to protect one citizen (including a corporation) from another. Employees have a duty to cooperate in any lawful company investigation.

Therefore, you can terminate an employee who refuses to answer questions based on the Fifth Amendment or any other reasons. It is advisable, in such a situation, to explain to the employee that termination could be the consequence of refusing to answer and failing to cooperate with the investigation.