

Right to have a witness during discipline

Q. We have a nonunion shop. It is not uncommon for our employees to insist that they have the right to have a witness present during investigatory interviews and disciplinary action meetings. I have heard conflicting answers to whether employees in a nonunion facility have the right to have a witness present during investigatory and disciplinary interviews. Can you clear up the confusion for me?

A. You certainly have good reason to be confused about the issue. The National Labor Relations Board, which interprets the National Labor Relations Act, has flip-flopped on this issue over the years. Its most recent announcement on this issue (in 2004) reversed precedent and held that nonunion employees do not have the right to a witness during an investigatory interview that might lead to discipline. Therefore, controlling law does not require employers to allow nonunion employees to have a witness present during such interviews—at least for the time being!