



June 18, 2004

Non-Union Employees May No Longer Assert *Weingarten* Rights

In a reversal of its prior position, the National Labor Relations Board recently held in *IBM Corp.* that non-union employees are not entitled to have a coworker present at an interview that may lead to discipline. (The right to have a coworker present at any interview that the employee reasonably believes might result in discipline is known as the *Weingarten* right). By reversing its 2000 decision in *Epilepsy Foundation of Northeast Ohio*, the Board returned to earlier precedent which held that the *Weingarten* right does not extend to a workplace where the employees are not represented by a union.

The Board based its decision to reverse *Epilepsy Foundation* - which provided that union and non-union employees could assert *Weingarten* rights - on the following policy considerations: (1) in a non-union workplace, coworkers do not represent the interests of the entire work force; (2) without a union, coworkers cannot redress the imbalance of power between employers and employees; (3) unlike a union representative, a coworker generally is unskilled in labor matters, and likely will be chosen due to his or her relationship with the interviewee, and this personal or emotional connection to the interviewee may impede the investigation; and (4) unlike a union representative, a coworker has no legal duty not to reveal or misuse information obtained in the employee interview, and therefore may compromise the confidentiality of an investigation.

In *IBM Corp.*, the Board recognized that *Epilepsy Foundation's* extension of *Weingarten* rights to non-union employees put employers in the difficult position of having a duty to promptly and discretely investigate workplace complaints without the ability to speak directly and confidentially to its employees. *IBM Corp.* is a victory for employers, as employers now may speak directly to their non-union employees when conducting such investigations.

* * *

If you have any questions regarding this case or workplace investigations generally, please contact a member of the Labor & Employment Practice Group in one of our offices.

Los Angeles	San Diego	San Francisco
Charles F. Barker (213) 617.4168	David B. Chidlaw (619) 338.6614	Douglas J. Farmer (415) 774.2906
Elicia N. Bernstein 617.5582	John D. Collins 338.6613	Rachelle Hong 774.2980
Geoffrey D. DeBoskey 617.5547	Julie A. Dunne 338.6510	Lara Villarreal Hutner 774.2903
David Fishman 617.4118	Guy N. Halgren 338.6605	Otis McGee, Jr. 774.3249
Jason R. Gasper 617.5499	Samantha D. Hardy 338.6640	Krista L. Mitzel 774.2997
Douglas R. Hart 617.5497	Stacey E. James 338.6581	Kevin D. Reese 774.2989
Derek R. Havel 617.5424	A. Andrew Peterson 338.6624	Michael W. Scarborough 774.2963
Kelly L. Hensley 617.5441	Kim Snyder 338-6506	
Tracey A. Kennedy 617.4249	Mary P. Snyder 338.6503	Del Mar Heights
Melissa P. Lopez 617.4290	William V. Whelan 338.6588	Richard M. Freeman (858) 720.8909
Richard L. Lotts 617.4119	Tara L. Wilcox 338.6608	Matthew S. McConnell 720.8928
Daniel McQueen 617.4270		Carole M. Ross 720.8925
Kristine Moon 617.5523	Orange County	
Richard J. Simmons 617.5518	Greg S. Labate (714) 424.2823	Santa Barbara
Dianne Baquet Smith 617.4265	Mary E. Lynch 424.2826	Jeffrey Dinkin (805) 879.1828
Beth S. Sonnenklar 617.4187	Ryan D. McCortney 424.2830	Deborah Martin 879.1838
Brandyn Stedfield 617.5514		
Natalie C. Trask 617.4229		
Jennifer B. Zargarof 617.4243		

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP			
LOS ANGELES (213) 620-1780	SAN FRANCISCO (415) 434-9100	ORANGE COUNTY (714) 513-5100	SAN DIEGO (619) 338-6500
SANTA BARBARA (805) 568-1151	WASHINGTON, D.C. (202) 218-0000	WEST LOS ANGELES (310) 824-0097	DEL MAR HEIGHTS (858) 720-8900
WWW.SHEPPARDMULLIN.COM			