



LEHR MIDDLEBROOKS  
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**“It’s My Right . . .”**

...is the beginning of a sentence supervisors may hear from members of their team. Often, the supervisor in that situation does not know whether the employee’s statement is correct, but worries it may be. Here are the most frequently asserted “rights” which are **not**, in fact, the employees’ rights:

1. To audio/video record a conversation. Right? *Wrong*. The confusion is that if the person recording a conversation complies with a one-party or two-party consent state law, the recording is not illegal eavesdropping (*i.e.*, a criminal offense). However, just because it’s not a criminal offense does not give the employee the right to record a conversation at work. Not only may a supervisor prohibit such a recording, the supervisor may require the employee to show that their cell phone is turned off. Furthermore, an employer may record meetings (often not a good idea) without permitting the employee to do so.
2. To have representation/a witness during an investigation or disciplinary meeting. Right? *Wrong*. In a unionized setting, the employee has the right to request union representation if the interview is investigatory and may lead to the discipline of that employee. This is known as the *Weingarten* right. Note that the employer does not have to notify the employee of this right nor does the employee have this right if the purpose of the meeting is just to issue discipline, not investigate. Often, the scope of *Weingarten* is addressed in a collective bargaining agreement. In a non-union setting, the employee does not have the right to have someone else present during an investigatory or disciplinary interview.
3. To rearrange paid or unpaid break time (often to permit a late arrival or early departure). Right? *Wrong*. It is the supervisor’s decision to alter employee schedules, not the employee’s.
4. To have a cell phone at work. Right? *Wrong*. No, there is no “right” for an employee to have a cell phone at work. Just as more schools are requiring “phones off” during class, employers have the right to require “phones off” during non-break time and in work areas at any time. Employers could go so far as to prohibit cell phones on the premises. Sometimes cell phone abuse leads to a broad policy implementation or change. I suggest evaluating whether a global solution is necessary for a local problem. An employer does not need to have a broadly applicable policy to prohibit a cell phone abuser from having a cell phone at work.
5. To have a gun inside the building or in the employee’s vehicle in the parking lot. Right? *Wrong*. Check state law on this. Some states permit an employee to have a gun in the employee’s vehicle, provided certain conditions are met. However, most states will allow an employer to prohibit an employee from carrying a gun on the employee’s person and in other work and break areas, even if the employee has an applicable concealed carry license.

If you have any questions or would like additional information, please contact Richard Lehr at 205-323-9260 or [rlehr@lehrmiddlebrooks.com](mailto:rlehr@lehrmiddlebrooks.com).