

FIFTH AMENDMENT APPLIES TO INTERROGATIONS OF PUBLIC EMPLOYEES ("GARRITY RIGHTS")

Public employees have certain constitutional rights that apply in their employment that may not apply to private employees. For example, in Garrity v. New Jersey, the Supreme Court held that statements obtained in the course of an investigatory interview under threat of termination from public employment couldn't be used as evidence against the employee in subsequent criminal proceedings. If, however, you refuse to answer questions after you have been assured that your statements cannot be used against you in a subsequent criminal proceeding, the refusal to answer questions thereafter may lead to the imposition of discipline for insubordination. Further, while the statements you make may not be used against you in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work related charge.

To ensure that your Garrity rights are protected, you should ask the following questions: 1) If I refuse to talk, can I be disciplined for the refusal? 2) Can that discipline include termination from employment? 3) Are my answers for internal and administrative purposes only and are not to be used for criminal prosecution?

If you are asked to provide a written statement regarding the subject of the interview, the following statement should be included in your report:

"It is my understanding that this report is made for internal administrative purposes only. This report is made by me after being ordered to do so by my supervisor. It is my understanding that refusing to provide this report could result in my being disciplined for insubordination up to and including termination of employment. This report is made pursuant to that order and the potential discipline that could result for failing to provide this report."