

GARRITY RIGHTS DISCUSSED

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“Garrity Rights” are often referred to in the context of an investigation of public employees. These rights are based on a U.S. Supreme Court case, known as *Garrity v. New Jersey*, 385 U.S. 493 (1967). In that case, the Supreme Court set forth some rules for interrogating public employees. The Court held that public employees could not be forced, under threat of discipline, to violate the principles of compulsory self-incrimination.

This decision established what has become known as "Garrity Rights" for public employees, generally including government workers and law enforcement personnel. The *Garrity* case involved police officers that had been convicted in state court of the crime of conspiracy to obstruct justice. The police officers' conviction had been a result of a state investigation of the alleged crime. During the investigation, the officers were given a choice between providing answers to prosecutors' questions about the alleged crime or refusing to answer and taking the chance of losing their jobs.

The officers, under this type of coercion, agreed to answer the questions posed and were then convicted based on these statements. The Court held that the 14th Amendment to the U.S. Constitution prohibited coerced statements like these from being used in a later criminal prosecution.

The *Garrity* rule is somewhat similar to *Miranda* rights, but for public employees. The burden is placed on an employee to assert their *Garrity* rights. These rights can and should be asserted whenever an employee believes they are being investigated for possible criminal conduct. Otherwise an employee may subject themselves to criminal liability.

Once an employee has asserted their *Garrity* rights, management must usually (1) direct or order an employee to answer the question; (2) attempt to make the question specific and related to the employee's employment; and/or (3) advise the employee that the answers will not and cannot be used against him/her in a criminal proceeding, nor the fruits of those proceedings. However, in practice this process may not be as simple as it seems.

It is important to understand that *Garrity* rights attach only under certain circumstances. Important to the *Garrity* rule is the following: (1) whether the employer actually ordered or required the employee to respond to questions; and (2) whether the employee was compelled by the threat of discipline to answer. Protections do not attach if you voluntarily give a statement. Absent compulsion, not only does the employee generally have no obligation to respond to the questions, but there is no immunity given for the later use of the employee's answers in a subsequent criminal prosecution.

Garrity does not protect public employees from employment discipline. An employee can be ordered to discuss a matter that will be held against them later in their employment.

For example, assume that an employee is under investigation for theft from work. The employee then is interviewed and asserts his or her *Garrity* rights to the public employer's investigator. The investigator then orders or otherwise requires the employee to answer his or her questions anyway. The employee then explains that he or she was involved in the theft and admits to the wrongdoing. *Garrity*, if asserted properly, may protect you from having those statements used against you later by a prosecutor, but will not protect an employee from being later disciplined or terminated from their employment.

Many investigators are not familiar with *Garrity* rights and are sometimes surprised when they are actually asserted by an employee or his/her attorney. It is not unusual for the investigator to be completely unaware of the meaning of *Garrity* rights. When these issues arise it is well-advised for the employee to contact an attorney immediately for legal advice and/or representation. Questions regarding specific *Garrity* issues should be directed to an attorney.

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