

Know when to speak and when not to speak

Garrity Rights protect public employees from being compelled to incriminate themselves during investigatory interviews conducted by their employers (CID, Internal Affairs, ie). This protection stems from the Fifth Amendment to the United States Constitution, which declares that the government cannot compel a person to be a witness against him/herself for a public employee, the employer is the government itself. When questioned by their employer, they are being questioned by the government. Therefore, the Fifth Amendment applies to that interrogation if it is related to potentially criminal conduct. Garrity Rights stem not just from the Fifth Amendment, but also the

Fourteen Amendment. While the Fifth Amendment could be said to apply only to the federal government, the “equal protection” clause of the Fourteen Amendment makes the fifth amendment applicable to state, county, and municipal governments as well (determined by the United States Supreme Court in 1964’s *Malloy v. Hogan*). Garrity Rights originate from a 1967 United States Supreme Court decision, *Garrity v. New Jersey*. The Fourteen Amendment makes this applicable not just to the federal government, but to state and local governments as well. Garrity Rights apply to the right of a public employee not to be compelled to incriminate themselves by their employer.

Loudermill Rights require due process before a public employee can be dismissed from their job. These rights are based on the 1985 United States Supreme Court decision *Cleveland Board of Education v. Loudermill*. Generally, these rights require a public employer to offer to have a “pre-termination” meeting with the affected employee; at this meeting, the employer presents their grounds for termination, and the employee is given the opportunity to respond. Like Garrity Rights, these rights only apply to public sector employees because they are employed by the government itself. All DSABC members are provided with legal representation by CLEAT. For any questions call 800-752-5328.

Know your rights when you are the subject of an investigation

1. The right to counsel. Do not make any statement until you have met with your attorney.
2. The right not to make any statement to your department (written or oral) without first being ordered and being given a Garrity or Administrative Warning.
3. The right not to be compelled to speak with a prosecutor.

As a condition of employment you are required to abide by the rules and regulations. You must answer questions, give statements, and submit reports at the order of an investigating officer, or become subject to disciplinary action for refusal to obey. It is suggested that you include the Garrity statement when making statements or submitting reports concerning complaints from citizens, or when you are suspected of the law or the rules and regulations. By doing so you will ensure that your statements and reports cannot be used as evidence against you in any proceeding before an agency bound by the rules of evidence. The procedure suggested is lawful and proper. Each individual officer must decide for themselves if they are going to use it. Our advice is that we use the procedures at all times. This way there will be no special stigma on its use. Remember that it is better to be safe than sorry, and it’s better to have it and not need it than to need it and not have it at all.