



Workplace investigations: know your rights

The Employer's authority to conduct workplace investigations is rooted in legislation, policies and guidelines, the collective agreement, jurisprudence, legal advice, and the principles of natural justice.

An awareness of these instruments and principles is essential when supporting members facing investigation.

Know your rights at meetings and investigations arising out of workplace incidents

The Employer may choose to examine, in some manner, events that occur in the workplace or with a connection to the workplace when there may have been a violation of certain legislation and/or Employer policies (including Codes of Conduct).

The Employer's examination can take a number of forms:

- fact-finding meeting
- security intelligence report
- internal inquiry
- administrative investigation
- public inquiry
- disciplinary investigation
- disciplinary meeting

This is intended to provide a useful resource for both our members and their representatives in knowing their rights and responsibilities during any of the processes involving meetings and investigations.

WHEN IS AN EMPLOYEE ENTITLED TO HAVE A REPRESENTATIVE ATTEND A MEETING?

If a member believes that the investigation or meeting may result in the imposition of discipline, then the member may choose to obtain Union representation before participating.



A CEIU member is entitled to Union representation at any meeting:

- when there is a disciplinary hearing or disciplinary decision being delivered.
- where any question relating to the member's legal rights under the collective agreement or otherwise may arise.

The member's responsibility:

1. Before attending a meeting, the member should:

- find out the purpose of the meeting, ideally in writing, and whether there exists any possibility of disciplinary, criminal or civil action being taken against him or her;
- determine if any specific allegations or charges have or will be made against him or her;
- insist upon Union representation if he or she reasonably believes that disciplinary action may be taken at, or eventually result from, the meeting.

2. If Union representation is not immediately available, the member should:

- insist that the meeting be rescheduled to a time when a Union representative is available; and
- decline to participate in any meeting until he or she has Union representation.

3. In preparing to attend the meeting the member should:

- reconstruct the incident in his or her mind, review any notes and have a consistent story to tell; and
- review the incident with the Union representative.

4. At the start of the meeting, with the assistance of the Union representative, the member should:

- determine the purpose of the meeting and the issues to be discussed; and
- determine if allegations or charges have or will be made against him or her.

5. During the meeting:



- if the member refuses to answer questions, he or she could face disciplinary action for insubordination.
 - A member who refuses to cooperate with any investigation conducted under the authority of the Inquiries Act is liable, on summary conviction, to a fine not exceeding four hundred dollars (\$400).
 - At any later disciplinary hearing, an adverse inference may be drawn about the value of any explanation or alibi offered by the member that he or she had earlier refused to provide.
- Before providing answers, the member should listen carefully to the question and think about the question and his or her answer. The member should ask that the question be repeated or rephrased if he or she is not sure what it means.
- The member should only answer the question that is asked and say no more than is necessary. Be concise. Additional information should not be volunteered. The member should not guess at an answer if his or her memory is incomplete. In these instances, it is appropriate to state: "I do not remember."
- The member should remain as calm as possible and avoid antagonistic or combative behaviour.
- The member should request a break or adjournment if the meeting becomes controversial or aggressive; or becomes too difficult or lengthy.
- The member should also request a break if he or she needs to privately discuss a question or issue with the Union representative or simply needs to get some fresh air.
- A written statement may be produced from the member's answers. The member should not approve any statement until he or she has carefully reviewed it word by word. The member should take as much time as is necessary to review the statement and instruct the person conducting the meeting of the changes that are required.

The Union Representative's Responsibilities:

1. When the Union representative is asked to accompany a member to a meeting, the Union representative should:



- determine the nature of the meeting;
 - seek approval from their supervisor to take time away from their work to attend the meeting;
 - privately review the facts surrounding the incident with the member;
 - privately review with the member the advice contained in parts 3, 4 and 5 above;
 - privately inform the member of the role of the Union representative in parts 2 and 3 below.
2. At the meeting the Union representative should first:
- inform management that the member has the right to Union representation;
 - adjourn the meeting and instruct the member not to answer any questions if management challenges the right of the member to Union representation;
 - assist the member in clarifying what the purpose of the meeting is, what issues are to be discussed, and what allegations or charges have or will be made against the member.
3. The role of the Union representative at the meeting is to:
- ensure that management fully honours all provisions of the collective agreement and all related Union-management agreements;
 - generally, ensure that the meeting is conducted in a fair manner and that the member is not subjected to duress or discomfort;
 - diplomatically and respectfully challenge improper questions;
 - assist the member in clarifying unclear questions;
 - remind the member to only answer the question that is asked;
 - prevent the member from being harassed or abused;
 - ensure that breaks are taken at regular intervals;
 - ensure that breaks are taken as needed to discuss privately with the member issues that arise during the meeting;



- ensure that the meeting is adjourned if the member becomes tired or distraught;
- maintain a complete and logical record of the meeting. Provide a copy to the member afterwards.

WHEN SHOULD AN EMPLOYEE SEEK LEGAL REPRESENTATION?

Upon being called to a meeting the member should:

- discuss the purpose of the meeting with a Union representative;
- insist upon legal representation if there exists any possibility for criminal or civil action being taken against him or her;
- insist upon legal representation if he or she has received a misconduct notice under Section 13 of the Inquiries Act or believes that a meeting or investigation:
- may result in broader legal liability, such as exposure to a criminal charge or civil action alleging, for example, negligence or civil assault; or
- is being conducted by the Minister, the Deputy Head, as a Public Inquiry or by an external agency such as the police;

If legal representation is not immediately available, the member should:

- Insist that the meeting be rescheduled to a time when legal counsel is available; and
- decline to participate in any meeting until he or she has legal representation.

Things to note:

- The member should meet with a Union representative and discuss retaining a lawyer before participating in any investigation.
- When a member is potentially facing criminal charges, that member should obtain legal advice before providing information to anyone.
- As a general principle, a member is entitled to retain a lawyer at his or her own expense whenever he or she sees fit to do so. It should be noted that a lawyer hired by a member may not have standing to represent the member in some circumstances such as grievances related to the collective agreement.

In many situations a Union representative is more familiar with and in a better position to enforce the member's rights than an outside lawyer. In other situations, it may be



necessary for a member to retain legal counsel.

IS IT POSSIBLE TO HAVE LEGAL REPRESENTATION PAID FOR?

As a matter of course, the CEIU does not pay for legal counsel for individual members. The *Treasury Board Policy on the Indemnification of and Legal Assistance to Crown Servants* provides that employees of the federal public service **may** be eligible to receive legal services at public expense.

An employee may request the provision of legal counsel at public expense in a variety of circumstances arising from the performance of his or her duties, including if he or she is charged with an offence or is required to appear before a judicial, investigative or other inquest or inquiry.

The Treasury Board Policy indicates that if an employee has acted honestly and without malice within the scope of his or her employment and has met reasonable departmental expectations, he or she shall receive legal assistance in any of the following circumstances:

- he or she is required to appear before or be interviewed in connection with a judicial, investigative or other inquest or inquiry;
- he or she is sued or threatened with a suit;
- he or she is charged or likely to be charged with an offence; or
- he or she is faced with other circumstances that are sufficiently serious as to require legal assistance.

The preferred option is that counsel from the Department of Justice assist the member. When the Department of Justice determines that there is a conflict of interest or where the employee is charged with an offence, consideration may be given to the employee engaging private counsel.

We strongly recommend that members request assistance from a local Union representative when faced with having to attend meetings and investigations arising out of workplace incidents.

Policies and legislation can and do change. This makes it all the more important that CEIU members consult a local Union representative should they find themselves facing investigation.