



Garrity Rights

Garrity Rights: An Overview

The Fifth Amendment to the United States Constitution states that the government cannot compel a person to be a witness against him/herself.

Because public employees are employed by the government, they are protected from being compelled to incriminate themselves during investigatory interviews involving on-the-job conduct which may also be criminal in nature. However, if they are threatened with dismissal for refusal to respond to questions (i.e., they are effectively compelled to cooperate), their statements cannot be used to pursue criminal prosecution.

This immunity is known as Garrity Rights, after a 1967 US Supreme Court case, *Garrity v. New Jersey*. Garrity Rights represent a balance between the employer's rights to conduct their administrative investigation, and the employee's Constitutional rights against compelled self-incrimination.

Garrity Rights: Applied *(continues on next page)*

Example: An accountant is under investigation from their state agency for falsifying records and skimming public funds. *Can the employee be forced to answer questions, and subsequently disciplined by the agency and prosecuted criminally? Can the employee stand on the Fifth Amendment and refuse to answer questions?*

For Garrity Rights to apply, the employeeee must:

- ☐ be ordered to answer questions, and
- ☐ be threatened with severe economic sanctions (usually dismissal) for refusal to cooperate with questioning (i.e., insubordination)

Example: *The accountant meets with management, who advises that they must cooperate with questioning, and if not, they will be fired. The employee admits to wrongdoing and is disciplined accordingly. But since the answers were compelled, this grants immunity from having their statements used to pursue criminal prosecution.*

If the employee chooses not to respond despite this immunity, they may be fired for insubordination (refusal to cooperate with the investigation) and criminally prosecuted.

Garrity Rights: Applied *(continued)*

For Fifth Amendment Rights to apply, the employer must:

- ☐ make clear that participation in the interview is voluntary, and
- ☐ state that refusal will not lead to penalties related to insubordination

Example: The accountant meets with management, who advises that participation in questioning is completely voluntary and that the employee will not face penalties for refusal to respond. The employee declines to respond to questions, asserting their rights under the Fifth Amendment.

If the employee chooses to respond, and admits to wrongdoing, they may be disciplined for their actions and criminally prosecuted

For more examples and other information, see: <http://www.garrityrights.org/>

Public Employees' Garrity Rights in Practice

Employers should disclose the nature of allegations before proceeding with any investigatory interview. If the allegations are potentially criminal, the employee should seek legal advice. In the interview, the following applies:

- The employer should advise the employee that answers to questions will not be used against them in criminal proceedings.
- If not explicitly stated, the employee or steward should seek confirmation from management that the investigation is administrative and for disciplinary purposes only.
- Some employers use a "Garrity Statement" (Warning, Advisement, etc.) which lays out in writing the conditions needed to compel the employee's cooperation with the investigation, while protecting his/her constitutional rights. Sample language [here](#).*
- Absent such a statement, the employee may claim Garrity by asking, "Am I being ordered to answer questions as a condition of my employment?"
 - If yes, the employee must respond, but is protected by Garrity
 - If no, the employee may decline to respond, citing the Fifth
- Even without Garrity protections, the employee should still answer specific, direct, and narrow job-related questions as long as the employer does not compel a waiver of constitutional rights (i.e., would not cause the employee to incriminate him/herself).

Garrity Rights: Summarized

Ordered to Comply (refusal = insubordination)	Threat of Severe Sanction for Insubordination (usually dismissal)	DOES GARRITY APPLY?
✓	✓	✓ GARRITY APPLIES
<p><i>If you cooperate with questioning to preserve your employment (i.e., you are coerced into responding), you may not be criminally prosecuted on the basis of those responses.</i></p>		
✓	✗	✗ GARRITY DOES NOT APPLY
<p><i>If you cooperate with questioning to avoid consequences short of dismissal or significant economic impact, that is not usually considered "compelled" and Garrity immunity does not apply.</i></p> <p><i>If you refuse to cooperate with questioning (i.e., take the Fifth), your employer may still discipline you for insubordination, such as by issuing a written reprimand.</i></p>		
✗	✗	✗ GARRITY DOES NOT APPLY
<p><i>You may decline to answer questions that might incriminate you (i.e., take the Fifth), but you should still respond to specific, narrow, and job-related questions.</i></p> <p><i>Discipline and/or criminal prosecution may still occur depending on what evidence is discovered elsewhere.</i></p>		

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*<http://www.garrityrights.org/garrity-warnings.html>