

Preventing Workplace Violence

How California Public Entities Can Protect Their Employees Through Workplace Violence Restraining Orders

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Acts of workplace violence are on the rise throughout the United States. In many cases, the perpetrators intentionally target public entities and their employees. One certainly cannot forget the mass shootings at the Inland Regional Center in San Bernardino in December 2015 and the Virginia Beach Municipal Center in May 2019. California public entities must take proactive measures to protect their employees from unlawful violence and credible threats of violence at the workplace. One of these proactive measures involves petitioning the courts for what is commonly referred to as a workplace violence restraining order (“WVRO”).

In 1994, the California State Legislature enacted the Workplace Violence Safety Act, which is codified as section 527.8 of the California Code of Civil Procedure (“Section 527.8”). According to its authors, the express intent of Section 527.8 was

to address the “growing phenomenon” of workplace violence in California. Section 527.8 was signed into law for the purpose of enabling public and private sector employers to prevent violence against their employees by petitioning the courts for injunction relief.

Section 527.8 allows an employer to petition the court for a temporary restraining order (“TRO”) and/or WVRO on behalf of an employee who has suffered unlawful violence and/or a credible threat of violence at the workplace. The statute defines “employer” as a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. “Unlawful violence” includes assault, battery, or stalking, while a “credible threat of violence” is a knowing and willful statement or course of conduct that serves no legitimate purpose and that would place a reasonable person in fear for his or her safety.

An employer who has reason to believe that an employee has suffered unlawful violence and/or a credible threat of violence at the workplace may petition the court for a TRO and/or

WVRO against the respondent (i.e., the offending person). If a request for a TRO is made, the court must either grant or deny the request on the same day that the petition is filed. A TRO may be issued if the petition provides reasonable proof that an employee has suffered unlawful violence and/or a credible threat of violence, and that great or irreparable harm would result to the employee if the TRO is not issued. Once the petition is filed, and regardless of whether a request for a TRO was granted or denied, the court will set the hearing for the petition to take place within 21 days. If a TRO was issued on the date of filing, the terms therein will remain in effect until the hearing date. Before the hearing, the respondent may file a response to the petition that either explains, excuses, justifies, or denies the alleged unlawful violence or credible threat of violence.

If, at the conclusion of the hearing, the court finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence against the employee, a WVRO shall be issued for a period of up to three years.

An issued WVRO will contain a number of personal conduct and stay-away orders, which may be tailored by the court to the specific facts of the case. For example, the restrained individual may be prohibited from contacting the protected employee in any way and must also stay at least 100 yards away from the employee and his or her workplace. The WVRO must also contain a mandatory firearms and ammunition prohibition. Further, if the restrained person intentionally disobeys any of the



orders within the WVRO, he or she may face criminal prosecution pursuant to section 273.6 of the California Penal Code.

A number of scenarios may lead to a public agency employer's WVRO petition. For example, in 2018 a city in Riverside County obtained a WVRO against an individual who physically assaulted two young female employees at a public library. In 2019, a city in Los Angeles County obtained a WVRO against its elected City Clerk after

numerous credible threats of violence were made against multiple employees at City Hall.

Section 527.8 supports the explicit public policy which requires employers to both provide a safe and secure workplace and also to take reasonable steps to address credible threats of violence in the workplace. Petitioning the court for a TRO and/or WVRO is an important, proactive measure that should be utilized by public entities to comply with public policy and, most importantly, to protect their employees.

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