



How Cities Can Protect Employees Through Workplace Violence Restraining Orders

CHARLES G. BAKALY IV, ESQ. | RICHARDS, WATSON & GERSHON
LEAGUE OF CALIFORNIA CITIES – CITY MANAGERS CONFERENCE
FEBRUARY 6, 2020 – NAPA, CALIFORNIA



Presentation Roadmap

1. Overview, Legislative History, Purpose, and Definitions
2. Petition Process
3. Case Examples
4. Final Thoughts

Overview

A WVRO is a civil court order that imposes the following on the subject individual:

- Personal conduct orders;
- Stay-away orders;
- Firearms prohibitions; and
- Other orders as determined by the court

Legislative History

- **ENACTMENT:** In 1994, the California Legislature enacted the Workplace Violence Safety Act; codified as California Code of Civil Procedure section 527.8 (“Section 527.8”)
- **INTENT:** According to its authors, the express intent of Section 527.8 was to address the “growing phenomenon” of workplace violence in California
- **PURPOSE:** 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

Purpose

Section 527.8 allows an employer (e.g., a city) to petition the court for a temporary restraining order (“TRO”) and/or WVRO on behalf of an employee (or employees) who has (or have) suffered **unlawful violence** and/or a **credible threat of violence** in the workplace (so long as act not constitutionally protected)

Definitions: “Unlawful violence”

“Any **assault** or **battery**, or **stalking** ... , but shall not include lawful acts of self-defense or defense of others”

Definitions: “Credible threat of violence”

“A knowing and willful **statement** or **course of conduct** that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose”

Definitions: “Course of conduct”

“A pattern of conduct composed of a series of acts over a period of time ... evidencing a continuity of purpose, including:”

- following or stalking an employee to or from work;
- entering the workplace;
- following an employee during hours of employment;
- making telephone calls to an employee; or
- sending correspondence to an employee by any means (e.g., e-mail, interoffice mail, etc.)

Petition Process: Step 1

Determining whether to file a petition:

- Fact gathering: talk to employee(s), witness(es), supervisor(s), legal counsel;
- Cooperation of the victim(s);
- Identify subject individual;

Petition Process: Step 2

Drafting petition papers:

- Petition for Workplace Violence Restraining Orders (WV-100)
 - Affidavit detailing description of conduct
 - Declaration(s) of victim(s), witness(es), and/or supervisor(s)
- Confidential CLETS Information (CLETS-001)
- Notice of Court Hearing (WV-109)
- Temporary Restraining Order (WV-110)
- Civil Case Cover Sheet (CM-010)

Petition Process: Step 3

Filing petition papers:

- All forms and supporting papers must be filed with the appropriate court (check court website)
- If TRO is requested, the court will usually grant or deny the request on the same day of filing
 - A TRO may be issued if the petition provides reasonable proof that (1) an employee has suffered unlawful violence and/or a credible threat of violence and (2) **great or irreparable harm would result to the employee if the TRO is not issued**

Petition Process: Step 4

Serving the subject individual:

- Any adult who is not a party to the action may execute service of process (e.g., police officer, deputy sheriff, process server, etc.)
- All papers must be served (along with additional forms)
- Must complete and file Proof of Personal Service (WV-200)
- Service must be executed at least 5 days before the hearing

Petition Process: Step 4

Prepare for hearing:

- The hearing will usually be set 21 days after the petition is filed
- If a TRO is issued, it remains in effect until the hearing (once the subject individual is served)
- Coordinate witness testimony and other evidence
- Be prepared for a contested hearing

Petition Process: Step 4

Hearing:

- Court must find by **clear and convincing evidence** that subject individual engaged in **unlawful violence** or made a **credible threat of violence**
 - e.g., substantially more likely than not to be true; high probability of truth
 - *higher* than “preponderance of the evidence”
 - *lower* than “proof beyond a reasonable doubt”

Petition Process: Step 5

WVRO is issued:

- If issued, a WVRO will impose the following on the subject individual:
 - Personal conduct orders;
 - Stay-away orders;
 - Firearms prohibitions; and
 - Other orders as determined by the court

Petition Process: Step 5

Personal conduct orders: subject individual may not:

- Harass, molest, strike, assault, batter, abuse, destroy personal property or, or disturb the peace of the employee;
- Commit acts of violence or threaten the employee;
- Follow or stalk the employee during work hours;
- Contact the employee, either directly or indirectly, in **any** way;
- Enter the employee's workplace;
- Take any action to obtain the employee's address

Petition Process: Step 5

Stay-away orders: subject individual must stay at least [100] yards away from:

- Employee
- Employee's workplace, home, school, vehicle, etc.
- Employee's children
- Any other location(s) requested in petition

Petition Process: Step 5

Firearms prohibitions:

- Subject individual may not own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition

Case Examples

1. Citizen in public library
2. Citizen in public park
3. Citizen in City Hall
4. Elected City Clerk

Final Thoughts

- 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