

# Kimball, Tirey & St. John LLP

## Work Place Violence Restraining Orders – An Effective Tool in the Prevention of Workplace Violence

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Our law firm is experiencing a dramatic increase in the number of calls we receive concerning an irate tenant who is displaying signs and threats of violence. These threats are directed at on-site management, maintenance personnel or even independent contractors hired to perform work on the property. This article addresses one unique course of action that is available in these disturbing situations: The Work Place Violence Restraining Order.

Under California law, the employer can request a judge to issue an order to protect an employee from suffering violence or “credible threats of violence.” These orders are called Work Place Violence Restraining Orders (“WVROs”). This law differs from other civil harassment laws in California that permit victims to petition the Court for civil harassment orders where the victim of the harassment must file for the harassment order themselves.

### **Employee Requirement**

WVRO's are only appropriate if the party who is to be protected is an “employee” of the employer. However, a WVRO may also be obtained for volunteers or independent contractors who perform services for the employer at the employer's worksite.

### **Scope of Protection**

Once a WVRO is obtained, its protections are quite broad. The WVRO can be effective for up to three (3) years for the employee and for up to fifteen (15) days for certain family or household members.

The court can order that the restrained Defendant refrain from contacting the employee by telephone, sending correspondence or email to the employee, stalking, battering or following the employee during work hours.

In addition, the court has broad discretion to issue stay away orders and can order that a restrained Defendant must stay away from the employee's workplace, residence, vehicle, school or place of child care of children of the employee and other locations frequented by the employee. Violation of the WVRO can result in a fine and imprisonment for up to one year.

One caveat is that the violence or threat of violence must “reasonably be construed . . . to have been carried out at the workplace.” However, this doesn't mean that the threat or violence has to necessarily occur in person at the workplace. For instance, a credible threat which the employee receives on a work email may form the basis for a WVRO.

### **Activities not Protected**

Also, it is important to note which activities are *not* protected under WVRO law. While annoying and bothersome behavior can interfere with employee performance and productivity, WVRO law

expressly protects against violence or credible threats of violence *only*. Behavior or incidents that don't meet this litmus test should be addressed in other ways.

### **Steps Required to Obtain a WVRO**

To obtain a WVRO, the employer must file a petition with the court that asks the court to issue the order and informs the court of the basis of the WVRO. Along with the petition, the employer can request that the court issue a temporary restraining order, which makes the WVRO effective pending a court hearing on the matter.

After the petition is filed, the court will set a hearing date for the matter within fifteen (15) days from the filing of the petition. The Defendant will have a chance to file papers contesting the WVRO and can appear at the hearing to argue against the issuance of the WVRO. The hearing itself is conducted in a manner similar to any court trial where counsel, or the parties themselves if unrepresented by counsel, are given an opportunity to testify, cross-examine witnesses and present documentary evidence. After the presentation of all evidence, the court decides whether or not the WVRO should be issued. If the court finds "by clear and convincing evidence" that the Defendant engaged in unlawful violence or made a credible threat of violence, then the court will issue the WVRO.

### **Records and Documentation**

Documentation is especially important when attempting to obtain a WVRO. This can mean keeping a log or creating a report whenever an employee is threatened with violence. Any threatening letters, emails or other correspondence should also be retained. In this regard, it is important for the employer to have policies in place to document and retain all reports of violence or threats of violence in the workplace. These records can eventually be used as evidence at the WVRO hearing and can be used to bolster testimony and create a more convincing case.

### **Develop a Program to Prevent Workplace Violence**

An idealistic policy statement, in isolation, is woefully inadequate to address and prevent violence in the workplace. Indeed, each employer should have a comprehensive program in place to prevent workplace violence. The components of a workplace violence prevention program can include:

- A statement of the employer's "no threats and violence" policy and complementary policies, such as those regulating harassment and drug and alcohol use;
- A physical security survey and assessment of risks on the workplace premises;
- In-place procedures to address threats and threatening behavior and may include policies addressing when the employer should consider obtaining a WVRO on behalf of a threatened employee;
- Designation and training of an incident response team;
- Crisis response measures; and
- Consistent enforcement of behavioral standards, including effective disciplinary procedures.

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Any workplace prevention program should also include follow-up measures to constantly integrate new employees into the program and make them aware of the contents of the program. Also, periodic or yearly assessments of the program should be conducted to promote continuous improvement. While WVRO's are a powerful tool in the prevention of workplace violence, they are just one piece of an effective workplace violence prevention program.

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