

**WORKPLACE RESTRAINING
ORDERS**

Several states have proposed or enacted laws allowing employers to apply for restraining orders to prevent violence, harassment, or stalking of their employees. The laws vary in significant ways, such as whether the employer may seek a restraining order or injunction on behalf of itself rather than on behalf of the employee, and whether an employee who is the target of violence must be consulted prior to the employer's seeking a restraining order.

STATE LAWS

ARIZONA: [Ariz. Rev. Stat. § 12-1810](#).

Allows an employer or an authorized agent of an employer to petition for an injunction prohibiting workplace harassment on behalf of the employer or "any person who enters the employer's property or who is performing official work duties." The employer must make a good faith effort to provide notice to the person(s) targeted. The law specifies that it does not change the duties of the employer to provide a safe workplace, and that the employer will be immune from civil liability for seeking/not seeking an injunction except if it seeks injunction for illegitimate purposes.

ARKANSAS: [Ark. Code § 11-5-115](#) [*click open Arkansas Code; click open Title 11; click open Chapter 5; then click open Subchapter 1; then click on 11-5-115*].

Provides that "if an employer or employer's employee or invitee" has been a victim of unlawful violence, received a threat of violence that could be carried out at the work site, or been stalked or harassed by an individual at the work site, the employer may, in addition to or instead of filing criminal charges against the individual, seek a temporary restraining order (TRO), a preliminary injunction, or an injunction prohibiting further unlawful acts by that individual at the work site. The law specifies that the employer will be immune from civil liability for actions taken under the statute unless lack of good faith is shown by clear and convincing evidence, and any employer that does not seek such a restraining order "shall not be liable for negligence, nor shall evidence of the same be admissible as evidence of negligence."

CALIFORNIA: [Cal. Civ. Proc. Code § 527.8](#) & [§ 527.85](#).

If an employee has suffered violence or a credible threat of violence that can "reasonably be construed to be carried out or to have been carried out at the workplace," the employer may apply for a TRO and injunction prohibiting an individual from carrying out further acts of unlawful violence or threats against the employee. The TRO and/or injunction may also include "other named family or household members who reside with the employee." The law states that it does not change the duties of the employer. The time period between the issuance of the TRO and hearing on the injunction can be extended to 25 days. Section 527.85 expands the reach of the act to private postsecondary educational institutions. The chief administrative officer or designated employee of such an institution may seek a temporary restraining order and an injunction, on behalf of a student or students at the campus, if the student has suffered a credible threat of violence made off the campus by any individual which can reasonably be construed to be carried out or to have been carried out at the school campus or facility. The school official seeking the order must first obtain the written consent of the student who received the threats.

COLORADO: [§ 13-14-104.5 \(7\)\(b\)](#) [*scroll down*].

A court, upon finding that "an imminent danger exists to the employees of a business entity," may issue a civil



restraining order in the name of the business for the protection of the employees. The law specifies that the employer shall not be subjected to liability for failure to obtain a restraining order under this law.

GEORGIA: [Ga. Code Ann. § 34-1-7](#) [*enter “34-1-7” in the search bar towards the top left corner of the screen*].

“Any employer whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to have been carried out at the employee’s workplace,” may seek a TRO and an injunction on behalf of the employer prohibiting further unlawful violence or threats “at the employee’s workplace or while the employee is acting within the course and scope of employment with the employer.” The court may grant a TRO if the petitioner demonstrates that “great or irreparable harm shall result to an employee if such an injunction is not granted.” The law specifies that it does not change the duties of the employer.

INDIANA: [Ind. Code § 34-26-6](#) [*click on Title 34 and scroll down*].

On behalf of an employee, an employer may seek a TRO or injunction prohibiting further violence or threats of violence if: “(1) the employee has suffered unlawful violence or a credible threat of violence from the person; and (2) the unlawful violence has been carried out at the employee’s place of work or the credible threat of violence can reasonably be construed to be carried out at the employee’s place of work.” The law specifies that it does not change the duties of the employer.

NEVADA: [Nev. Rev. Stat. § 33.200-.360](#).

An employer or an authorized agent of an employer may apply for a temporary order for protection (TOP) and, if successful, an extended order for protection against “harassment in the workplace.” If an employer has knowledge that a specific person is the target of harassment in the workplace, the employer shall make a “good faith effort” to notify the person who is the target that the employer intends to seek an order for protection. “Harassment in the workplace” is defined as occurring when a person knowingly injures or harms, or threatens to injure or harm, the property or the physical or mental health or safety of a person and the action is targeted against an employer, an employee of the employer while the employee performs his or her duties of employment, or a person present at the workplace of the employer. The law specifies that it does not change the duties of the employer, and that the employer will be immune from civil liability for seeking an injunction if acting in good faith, and immune from liability for failure to seek an injunction.

NORTH CAROLINA: [N.C. Gen. Stat. 95-261](#).

An employer may seek a civil no-contact order on behalf of an employee who has been subject to unlawful conduct, such as physical injury or threats of violence, at the workplace. Prior to seeking such an order, the employer must consult with the employee who is the target of the violence to determine whether the employee’s safety would be jeopardized by participating in the process. An employee who is the target cannot be disciplined based on their involvement or lack of involvement in the process.

RHODE ISLAND: [R.I. Gen. Laws § 28-52-2](#).

If an employer or an employer’s employee or invitee has (1) suffered unlawful violence by an individual; or (2) received a threat of violence by an individual which can reasonably be construed as a threat which may be carried out at the worksite; or (3) been stalked or harassed at the worksite, the employer may seek a TRO, a preliminary injunction, and an injunction (“in addition to, or instead of, filing criminal charges”). The law specifies that the employer will be immune from civil liability for actions taken under the statute unless lack of good faith is shown by clear and convincing evidence, and that the employer is not negligent for failing to utilize the procedures.

TENNESSEE: [Tenn. Code §§ 20-14-101 to -109](#) [*click on Title 20, then Chapter 14*].

An employer whose employee has experienced violence or a credible threat of violence that can reasonably be construed to have taken place in the employee's workplace may seek a TRO and injunction on behalf of the employer, prohibiting "further unlawful violence or threats of violence by that individual at the employee's workplace or while the employee is acting within the course and scope of employment with the employer." The law specifies that it does not change the duties of the employer.

RECENT LEGISLATIVE PROPOSALS

The following legislation has been introduced in the current or prior legislative sessions. The contents of the bills vary and the status of a particular bill may change very quickly. For more information about each bill, check your legislature's website.

CONNECTICUT: [H.B. 5496](#), Gen. Assemb. Feb. Sess. (Ct. 2010).

This bill would allow an employer, whose employee has suffered from unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a restraining order on behalf of the employee and any other employees or animals at the workplace. The employer must provide a sworn affidavit about the threat or violence, and a hearing on the application will be held within 14 days. If the employer alleges an immediate and present physical danger, the court may issue an ex parte order. The bill died in committee.

HAWAII: [S.B. 1213/H.B. 1269](#), 28th Leg. (Haw. 2015).

This bill would allow employer to apply for a temporary restraining order and an injunction against "harassment in the workplace." Harassment would be defined as (1) an act or threat of physical harm, bodily injury, or assault; or (2) an intentional or knowing course of conduct that would reasonably cause emotional distress and that seriously alarms, disturbs or bothers the victim without serving a legitimate purpose. Prior to applying for the order, the employer would be required to consult with the victim. Victims who refused to participate in the process of obtaining an order or an injunction would be protected from facing disciplinary action. To receive relief, the employer's petition would have to specify that acts or threats of harassment had been, or were likely to be, carried out at the employer's premises or worksite. Employers would be immune from civil liability for initiating the proceeding; for investigating an incident for the purpose of determining whether to initiate the proceeding; or for failing to utilize the right to initiate the proceeding. S.B. 1213 was referred to Senate Committees on Judiciary and Labor and Public Employment. H.B. 1269 was referred to House Committees on Judiciary and Labor and Public Employment.

HAWAII: [H.B. 2028](#), 26th Leg. (Haw. 2012).

This bill, entitled the "Hawaii Workplace Violence Prevention Act," would allow an employer to petition for an ex parte restraining order or preliminary or permanent injunction in the circuit court of the employer's principal place of business against an individual, including a co-worker, who subjects an employee to violence or a threat of violence at the workplace. No civil liability shall exist for an employer to fail to invoke the provisions of this bill. In contrast to a prior similar bill, H.B. 2940 (2010), there is no provision requiring an employer to consult an employee prior to filing a petition. Rather, the bill provides that a presumption exists that violence or a threat of violence constitutes "irreparable harm." H.B. 2028 5(d). This bill also provides that an employee may apply for relief relating to workplace violence in the circuit court in which the employee resides on behalf of him or herself, or immediate family or household members. As of January 19, 2012, this bill was set for subsequent referral to the House Committee on Finance.

MISSISSIPPI: [H.B.331](#), Reg. Sess. (Ms. 2012).

This bill allows an employer to file a civil action seeking a temporary restraining order or preliminary or permanent injunction against a person subjecting the employer, employee or group of employees to unlawful conduct. The employer must allege a reasonable belief that the person may carry out further “unlawful conduct” at the workplace. This bill is similar to H.B. 1359 (Ms. 2010), and sets forth that “unlawful conduct” is comprised of assault, rape, sexual battery, stalking, cyberstalking, or a credible threat of violence. This bill died in committee on March 6, 2012.

NEW JERSEY: [A.1159](#), 213th Leg. (N.J. 2008).

An employer whose employee has been a “victim of an assault, harassment, stalking or has suffered a credible threat of violence from any individual, which can reasonably be construed to be carried out . . . at the work place” can seek a restraining order on behalf of the employee. If the alleged perpetrator of the violence or threats is also an employee of the employer, the court shall receive evidence concerning the employer’s decision to retain, terminate, or otherwise discipline that employee. An order may restrain the defendant from making “any communication likely to cause annoyance or alarm” with the victim or his or her family members, employer, or fellow workers; it may also require the defendant to pay a fine or reimburse the victim for “any reasonable medical expenses, including reasonable counseling costs” or prohibit the defendant from possessing a firearm. The Department of Labor shall develop a training course and curriculum for agencies involved in handling reports of violence in the workplace. The bill died in committee.

WASHINGTON: [H.B. 1591/S.B. 5552](#), 62nd Leg. (Wash. 2011) [*click on the 2011-12 tab towards the right-hand side of the screen; enter “1591” or “5552” in the search bar*].

This bill would allow an employer or the employer’s authorized agent to petition for a civil anti-harassment protection order to “restrain a person from engaging in unlawful harassment affecting the workplace...the court may consider respondent’s unlawful harassment of an employer, employee and other persons affecting a workplace.” Under this bill, “unlawful harassment” includes a “knowing and willful course of conduct directed at a specific person or employer, which seriously alarms, annoys, harasses, or is detrimental to such person or employer, and which serves no legitimate or lawful purpose.” An employer with knowledge that a specific person is a target of unlawful harassment must make a “good faith effort” to provide notice to the person prior to petitioning the court. If the unlawful harassment stems from domestic violence, sexual assault, or stalking, the employer is required to provide notice and obtain consent prior to petitioning the court. This bill was introduced in January 2011 and as of April 11, 2012, was reintroduced in the House Committee to the Judiciary. S.B. 5552 was reintroduced to the Committee on Labor, Commerce and Consumer Protection. A similar bill, S.B. 6024 died in the Senate in 2003.

This state law guide, with links to cited laws and bills, is available on the Legal Momentum website at www.legalmomentum.org/tags/state-law-guides. For more information, contact our Public Education Office (PEO), peo@legalmomentum.org, at (212) 925-6635.