



Employment Law Bulletin

May 2017

When Providing a Safe Workplace Means Going to Court

All employers have a duty to provide a safe working environment for their employees. Safety policies, procedures, and guidelines are carefully crafted for that very purpose. But when a disgruntled former employee or customer engages in threatening behavior, or an employee has been threatened in a domestic dispute that may impact his or her safety in the workplace, employers must seriously consider taking additional steps to proactively ensure the safety of their employees and limit liability. An important option to consider in those circumstances is filing a Petition for Workplace Violence Restraining Order (WVRO). The Petition for a WVRO allows an employer to request an immediate Temporary Restraining Order (TRO) against a person who has made a serious threat or endangered the safety of one or more employees. If granted, the TRO remains in place and a hearing date is scheduled for the court to decide whether to issue a three year Permanent Injunction against the accused individual.

The Petition and Request for TRO can be filed against an employee, customer or any other person so long as the employer can make a "prima facie" showing that the accused person made a credible threat or engaged in a threatening or violent course of conduct that affected employees at the workplace. A credible threat is recognized as a knowing and willful statement or course of conduct that places a reasonable person in fear for his or her safety, or the safety of his or her immediate family. This type of behavior includes stalking, making harassing telephone calls, sending harassing correspondence either by mail, email or fax, and/or other harassing behavior that seriously alarms or annoys an employee. The unlawful conduct can be workplace specific or have nothing to do with the work environment itself so long as the employee has been placed in reasonable fear for his or her safety at the workplace. In addition, the fear must be imminent, making it critical to file the Petition soon after the threatening event or events have occurred.

Upon the filing of the Petition, a judge will evaluate the evidence of the unlawful conduct submitted with the Petition. If the court determines that a credible threat has been

made and/or the conduct justifies the TRO, the TRO will be granted. Once the TRO is granted, the Court will set the matter for a hearing to determine whether a Permanent Injunction should be issued. If there is "clear and convincing evidence" the accused person has engaged in violent or harassing behavior and that great or irreparable harm would result to an employee without issuance of the injunction, the injunction should be granted. If granted, the offender will be ordered to abide by several terms, including a stay away from the employer's workplace and an order that the person have no contact with any employee. The offender will also be ordered to surrender any firearms to law enforcement. If good cause is shown, the injunction may also include protection for family or household members who reside with a protected employee.

The Petition, TRO application, and Permanent Injunction hearing process is complicated. Compiling and presenting the "right" evidence to meet the legal standard can be confusing and time-consuming. In addition, the law mandates that petitioner/employers follow particular timelines and service requirements before the matter can be taken under consideration by the court. Because time is of the essence with WVROs, swift action is required and doing it right the first time is imperative. For these reasons, we recommend the following:

1) Document every incident involving violent, harassing, or threatening conduct against your employees or workplace. The documentation should include the dates and facts of each encounter as well as witness contact information. This documentation will be the evidence submitted to the court in support of the Petition and contemporaneous collection is vital to the success of the request.

2) Contact us to assist you with this process as soon as you realize you need a WVRO.

Updated DFEH Sexual Harassment Brochure

Last month, the California Department of Fair Employment and Housing (DFEH) updated its brochure on Sexual Harassment. Most notable changes include the deletion of images in favor of more explanation and a broader definition of "sexual harassment." The employer's duties are clearly outlined and include adopting a complaint procedure that designates someone other than the employee's supervisor to receive reports of harassment. The brochure also contains links to Facebook, Twitter and You Tube. The DFEH permits distribution of the brochure to employees by email and posting on the company intranet.

There is no time like the present to refresh employee awareness about sexual harassment and your complaint procedure so that you learn of issues and can stop them before they create liability for your company. Compare the DFEH's modernized brochure against the existing policy, update your policy to current standards (if necessary), and distribute the updated version quickly and simply. You can find the new DFEH brochure at: http://www.dfeh.ca.gov/files/2017/05/DFEH_SexualHarassmentPamphlet.pdf

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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