

The 12 Days of California Labor and Employment Series – Day 9 “Expansion of Bases for Restraining Orders in the Workplace”

3 min read

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By: Mellissa A. Schafer

In the spirit of the season, we are using our annual “12 days of the holidays” blog series to address new California laws and their impact on California employers. On the ninth day of the holidays, my labor and employment attorney gave to me nine ladies dancing and SB 428.

Current Law on Workplace Restraining Orders

Currently, an employer may seek a temporary restraining order and an injunction on behalf of an employee who has suffered 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 on behalf of the employee and other employees of the employer.



Unlawful violence has been defined as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.”

A credible threat of violence is defined as “a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person’s safety, or the safety of the person’s immediate family, and that serves no legitimate purpose.”

If one of the two events noted above is present, the employer may seek a temporary restraining order. To do so, the employer must show reasonable proof that an employee has suffered unlawful violence or a credible threat of violence and that great or irreparable harm would result to an employee if the order is not issued.

A temporary restraining order cannot be issued to the extent that the order would prohibit constitutionally protected speech, specified activities related to dispute resolution between employers and employee organizations, or other laws.

SB 428

Prior to the enactment of SB 428, only unlawful violence or a credible threat of violence allowed an employer to seek a temporary restraining order. SB 428 expands the current law to also include harassment as another basis to obtain a TRO.

Harassment is defined as “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress.”

SB 428 becomes effective on January 1, 2025. When it goes into effect, an employer will need to show reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent and that great or irreparable harm would result to an employee or clear and convincing evidence of all of the following:

- That an employee has suffered harassment by the respondent.
- That great or irreparable harm would result to an employee.
- That the course of conduct at issue served no legitimate purpose.
- That the issuance of the order is not prohibited by subdivision (c).

What is unique about SB 428 and its inclusion of harassment is that the law is not tied solely to protected categories under the Fair Employment and Housing Act but can include anyone regardless of sex, age, race, etc.

A temporary restraining order is not permitted regarding speech or other activities that are constitutionally protected, protected by the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.), protected by Chapter 11.5 (commencing with Section 3555) of Division 4 of Title 1 of the Government Code, or otherwise protected by Section 527.3 or any other provision of law.

Lastly, the bill also requires an employer seeking such a temporary restraining order to provide the employee whose protection is sought the opportunity to decline to be named in the order before filing the petition.

Next Steps for Employers

Employers should take note of this additional recourse that will be available on January 1, 2025, to help them respond to workplace violence issues and ensure a safe workplace environment.

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