

# Ensuring workplace safety with protective orders

The scene is all too common: A disgruntled employee is fired for poor performance. On his way out, he threatens his manager and co-workers. Fortunately, situations like this usually end with the terminated employee cooling off, filing for unemployment and getting on with his life.

But what happens when the employee doesn't let it go?

One deterrent in the war against workplace violence is a restraining order—a court order requiring an individual to stay away from your premises.

## Issues to consider

Before pursuing a petition for a court to issue a restraining order, weigh the following issues:

**What is the nature of the threat?** Has an employee actually suffered unlawful violence? If so, pursuing a restraining order should be a priority. If there has been no actual violence, assess the risk that violence will occur, and the nature of any threats made. In almost all situations, you should adopt a “better safe than sorry” approach.

**What is the source of the threat?** While all companies have a duty to provide a safe working environment for their employees, there is an added sense of responsibility when the source of a threat of violence comes from (or can be traced to) the company itself. In such situations, immediate steps must be taken to protect workers from violence perpetrated by former employees.

**Does the target want protection?** The likelihood of receiving a restraining order depends heavily on the willingness of the potential victim to receive protection.

If the threat of workplace violence is credible, but the target employee refuses to cooperate in the process of securing a restraining order, seriously consider suspending her or him. That sounds harsh, but you must consider the well-being of your other employees who aren't a part of the dispute.

## How the process works

Consult your attorney, local law enforcement authorities or both to begin the process of securing a restraining order.

You will probably be required to provide a description of the facts supporting your petition, along with affidavits signed by witnesses to the events described in the petition.

Your local court will generally issue a temporary restraining order prohibiting any contact with the target employee, pending a subsequent hearing for the purpose of securing a permanent restraining order. Both the employer and the person to be restrained may present evidence.

If the court finds the threat of violence to be credible (or finds that violence has already occurred) it can order a permanent restriction on access to both the company and the target employee for specific period, often three years.

## **Practical impact**

### **Restraining order isn't a surefire violence deterrent**

An order prohibiting contact will do little to stop a person determined to commit violence. The value of a restraining order is that it subjects the offending party to an immediate contempt-of-court citation, which can lead to jail time.

In addition, certain violations of the order by the restrained party can constitute a federal criminal offense—e.g., if he or she owns or uses a gun—potentially sending the restrained party to prison for up to 10 years.

While it is not a perfect antidote to workplace violence, employers facing a known threat should consider seeking restraining orders when the threat of harm seems credible.