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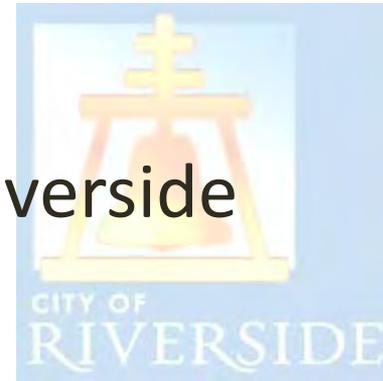
**Addressing Violence and Credible
Threats of Violence in the
Workplace:**

*A Guide to the Workplace Violence
Safety Act*

Today's Presenters

- **Gregg M. Gu**

Deputy City Attorney, City of Riverside



- **David King**

Attorney, Jenkins & Hogin LLP



Overview

1. Introduction
2. Legal standard of the Workplace Violence Safety Act of 1994
3. The process for obtaining a temporary restraining order and permanent injunction
4. Special considerations for public entity employers
5. Questions and answers

Introduction

Workplace violence is violence or the threat of violence against workers. It can occur at or outside the workplace and can range from threats and verbal abuse to physical assaults and homicide.



Introduction

- In 2011, **17%** of fatal working injuries (**780**) were attributed to a result of violence
- **458** were homicides, **242** were suicides
- Men made up majority of fatal workplace injuries (**680**)

Source: U.S. Bureau of Labor Statistics



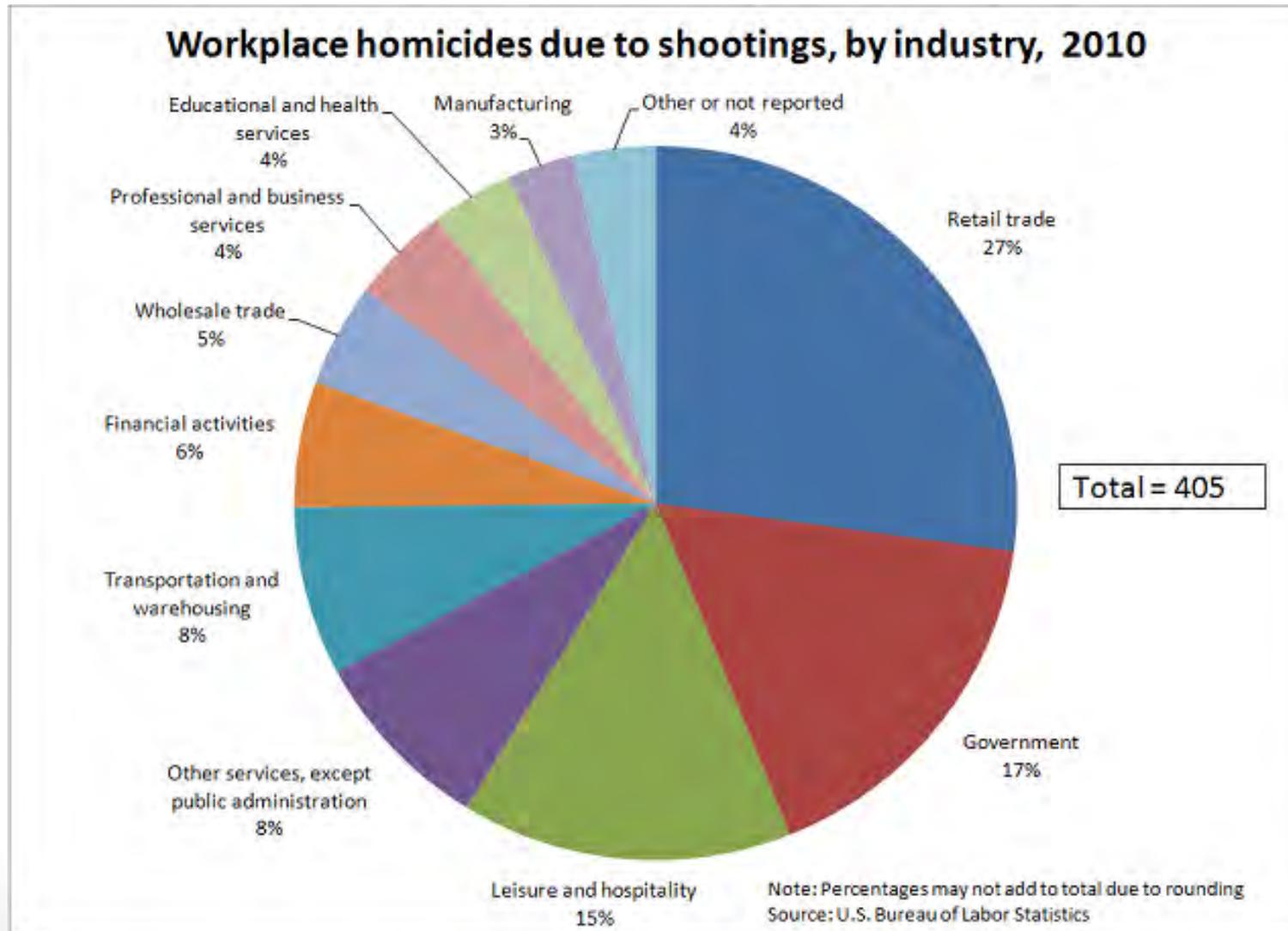
Introduction

According to OSHA, the following workers are especially vulnerable to workplace violence:

- Workers who exchange money with the public
- Workers who deliver passengers or services
- Gas and water utility employees

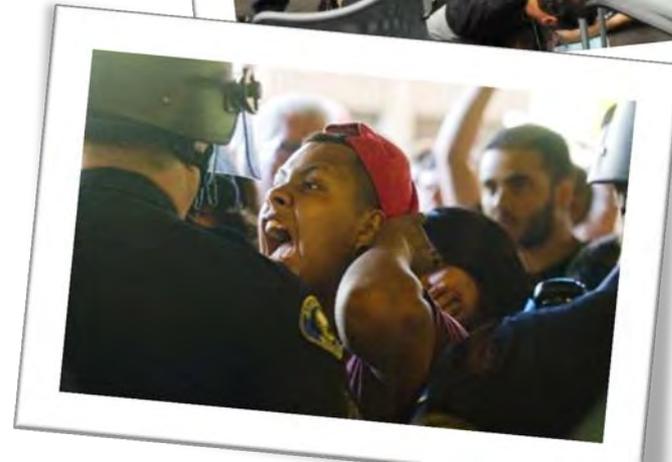
Source: OSHA Fact Sheet: Workplace Violence, 2002

Introduction



Introduction

- As public employees, you are the **face of local government**
- Potential for dealing with people upset over:
 - City Council decisions
 - Service/billing issues
 - Code enforcement violations
 - Law enforcement actions
 - 5150s
- Disgruntled employees



Introduction

Los Angeles Times

6 Wounded in Shootout at Riverside City Hall

Violence: Mayor, 2 council members are hit before suspect is shot by police. Two officers are also hurt.

October 07, 1998 | TOM GORMAN | TIMES STAFF WRITER



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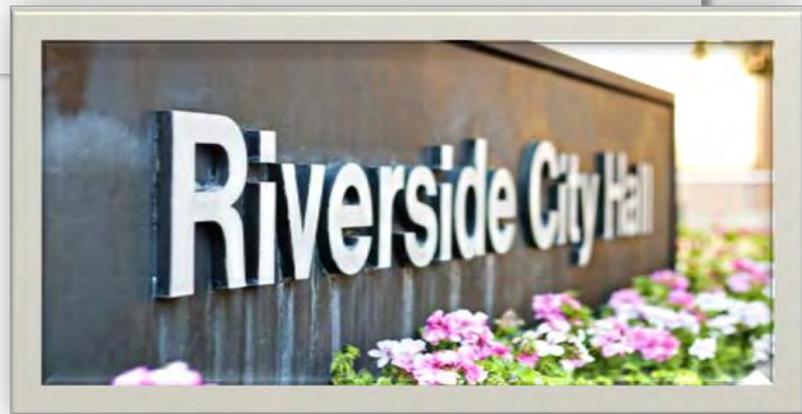
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Recommend

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RIVERSIDE — Six people were wounded Tuesday morning, including the mayor and two City Council members, after a dismissed recreation department chess coach opened fire with a handgun in a City Hall conference room and was finally shot by police in a terrifying close-quarters gun battle.

Authorities said the suspect, a U.S. postal carrier, entered the room shortly before a scheduled city government meeting at 8 a.m.



Introduction

CNN.com U.S. > story page

Mayor, 3 others wounded in California shooting

Alleged gunman also hurt in Riverside attack

October 6, 1998
Web posted at: 7:57 p.m. EDT (2357 GMT)

RIVERSIDE, California (CNN) -- A gunman burst into the Riverside City Council chambers minutes before the group's regularly scheduled meeting Tuesday morning and opened fire, wounding the mayor, two council members and a policeman, authorities said.

Council member Laura Pearson suffered a leg wound in the attack, and council member Chuck Beaty was shot in the jaw and shoulder. Mayor **Ron Loveridge** was grazed by a ricocheting bullet.

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BBC NEWS

News in Audio News in Video Newyddion Hosocrn Noticia

Tuesday, October 6, 1998 Published at 22:33 GMT 23:33 UK

World: Americas

US city hall shooting drama



A policeman is rushed to hospital after the shootout

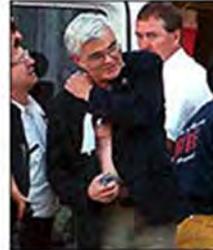
A gunman has opened fire in a Californian city hall building injuring five people including the mayor.

Two council members and a policeman were also wounded in the drama at Riverside, 60 miles (100 kilometres) east of Los Angeles. One is in critical condition.

Eleven people were injured by shards of flying glass.

The gunman was identified as Joseph Neale, 48, a former city employee who was sacked by the parks department four years ago.

He was shot and wounded by police during a gun battle in the room where he had tried to take the mayor and council members hostage.



Mayor Loveridge: 'I thought I might die'

One councillor was hit in the face and shoulder during the first burst of gunfire. Police said he was in critical condition.

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Legal Standard



Legal Standard

- Provides **California employers** with a legal remedy to prevent violence in the workplace
- Specifically, court may grant a Temporary Restraining Order (“TRO”) and a permanent injunction (lasts up to 3 years)

Legal Standard

- What is a restraining order or permanent injunction? It is a court order that legally protects the subject from physical or emotional abuse.
- Results in criminal prosecution for violation



Legal Standard

- The Workplace Violence Safety Act is **one of many tools** available to employers:
- **Criminal complaint**
- **Criminal restraining order**
 - Potential crimes: Threatening or inflicting unlawful injury upon public officers or employees (Pen. Code §71); Disruption of public meeting (Pen. Code §403); Disturbing the peace (Pen. Code §415); Criminal threats (Pen. Code §422)

Legal Standard

- Other tools available to employers:
- **Cease and Desist Letter** (“Knock it off” letter)
- **Civil petition for TRO or permanent injunction** (C.C.P. § 527.6)

Legal Standard

“Any employer, whose employee 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, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.”

California Code of Civil Procedure § 527.8(a)

Legal Standard

- “1. Any employer,
2. whose employee
3. has suffered unlawful violence or a credible threat of violence
4. from any individual,
5. that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.”

California Code of Civil Procedure § 527.8(a)

Legal Standard

“Any employer...”

- May seek a TRO and injunction on behalf of their employee.
- “...every person engaged in any business or enterprise that has one or more persons in service...” Cal. Lab. Code §350
- Includes public agencies or private corporations. C.C.P. §527.8(a)(3)

Legal Standard

“...whose employee...”

- “...every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay...” Cal. Lab. Code §350.
- Includes elected, appointed public officers.
- Includes a volunteer or independent contractor who performs services for the employer at the employer’s worksite.

Legal Standard

“...whose employee...”

- Protection may be sought on behalf of “any number of other employees.” C.C.P. §527.8(a)
- Protection may be sought for “additional protected persons,” such as the employee’s family or household members.

Legal Standard

“...has suffered unlawful violence or a credible threat of violence...”

- Unlawful violence includes assault, battery, or stalking
- Does not include a lawful act, such as self defense or defense of others



Legal Standard

“...has suffered unlawful violence or a credible threat of violence...”

- “Credible threat of violence” is a **knowing and willful statement or course of conduct** that may place a reasonable person in fear for his/her safety and serves no legitimate purpose.
- “Course of conduct” is a “**pattern of conduct** composed over a series of acts over a period of time, **however short**, evidencing a continuity of purpose” (e.g., stalking, repeated telephone calls).

Legal Standard

“...has suffered unlawful violence or a credible threat of violence...”

- No minimum number of incidents required
- Threat does not need to name particular employee seeking protection
 - Case example: Supervisor may seek TRO if employee threatened to bring a gun to work and shoot employees (*USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436, 442-43)

Legal Standard

“...has suffered unlawful violence or a credible threat of violence...”

- Standard: whether **“reasonable person”** would be placed in fear for his or her safety
- Aggressor need not intend his or her conduct to be actionable

Legal Standard

“...credible threat of violence...”

- Case example:
 - County of San Bernardino Department of Children and Family Services
 - Protect “all employees and staff”
 - Mother screamed obscenities at employees, lunged at social worker, made threatening phone calls, stalked an employee



(In re M.B. (2011) 201 Cal.App.4th 1057)

Legal Standard

“...credible threat of violence...”

- Case example:
 - City of San Jose
 - Protect deputy city clerk from resident who told clerk he would “take matters into my own hands”
 - Resident had history of threatening conduct and made regular appearances at city hall



(City of San Jose v. Garbett (2010) 190 Cal.App.4th 526)

Legal Standard

“...credible threat of violence...”

- Case example:



- City of Palo Alto
- Protect employee and members of his family from utilities department co-worker
- Subject to discipline, co-worker threatened to shoot employee, his wife and new baby if he lost his job

(City of Palo Alto v. SEIU (1999) 77 Cal.App.4th 327)

Legal Standard

“from any individual...”

- Limited to natural persons
- Does not apply to corporate entities, groups, or associations

Legal Standard

“...that can reasonably be construed to be carried out or have been carried out at the workplace...”

- If a nexus to the workplace exists, the TRO/injunction can extend protection to the employee’s home, school of the employee’s children.
- If employee has been the subject of threats or violence only **outside the workplace**, the employee should seek a restraining order pursuant to C.C.P. §527.6.

The Process



The Petition Process – Overview

- Investigation
- Cease and desist letter alternative
- Prepare Petition with Judicial Council forms and declarations
- TRO vs. Permanent injunction
- Filing it with the Court



The Petition Process – Overview

- What to serve on Respondent
- Respondent's Answer
- Hearing on Petition within 25 days from filing date
- Judgment in Employee's favor
- Judgment in Respondent's favor
- Calendar follow-up for expiration of Order
- Consider petition for renewal as necessary

The Process – Investigation

- Complaint from Employee
- Police report
- Physical evidence
 - Video/photographs
 - Physical injury
 - Property damage
 - Documents



The Process – Investigation

- Interviewing the Employee
 - Are you afraid for your safety here at work?
 - If necessary, will you testify against the aggressor in court?
- Interviewing witnesses
 - Support for or detract from the allegations of the Employee



The Process – Cease & Desist Letter

- “Knock-it-off” letter
 - Informs the wrongdoer that the agency is aware of his/her bad conduct and any further acts against the agency’s employees will result in a Petition to the court or criminal prosecution

The Process – Cease & Desist Letter

- Aggressor clearly engaged in inappropriate conduct
 - No physical violence
 - Very generalized or vague statement against no one in particular
 - Not clear whether a credible threat was made
 - Misconduct directed at no particular person
- Burden in court: Employee must present “Clear and Convincing Evidence” to prevail on a petition

The Process - Preparing the Petition

- Judicial Council forms (“WV”)
 - www.courts.ca.gov/forms.htm
 - “Workplace Violence Prevention” series
 - Copies of forms attached in Appendix
 - WV-100 “Petition for Workplace Violence Restraining Order”
 - Petitioner = victim/employee
 - Respondent = aggressor
 - Section 8 if /WV-100 describe threatening or violent conduct
- Separate Declaration of Petitioner
 - If space on form is insufficient

The Process - Preparing the Petition

- Supplemental Declarations
 - Declaration is a written statement by the declarant attesting to events they perceived and are within their personal knowledge.
 - Witnesses to the violence, credible threats or other bad conduct
 - Authenticate evidence
 - Photographs or videos
 - Reports
 - Other tangible evidence

The Process - Preparing the Petition

Relief Sought

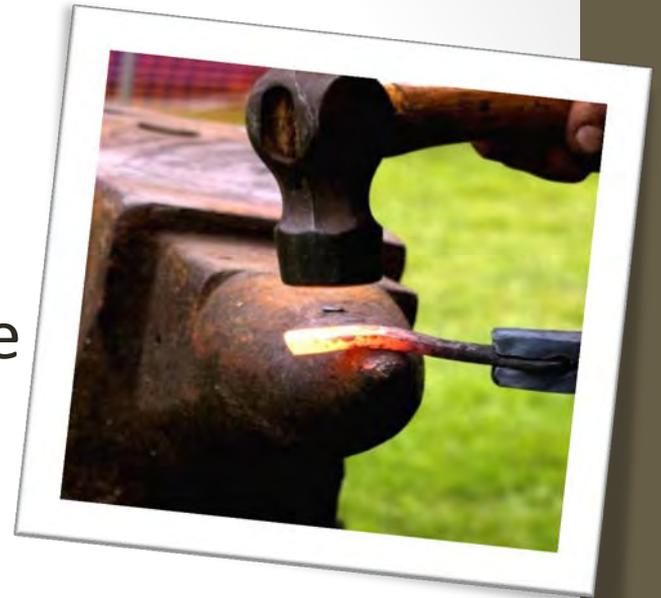
- Form WV-100, Section 9
 - Personal Conduct Orders
 - What physical conduct do you want the Respondent to be prohibited from committing against Petitioner (check all boxes that apply)
 - Stay-Away Orders
 - A court order for the Respondent to stay a certain distance from Petitioner, Petitioner's family, workplace, vehicle, among other things.

The Process - Preparing the Petition

- Form WV-110 Temporary Restraining Order (CCP. Sec. 527.8(f))
 - Allows personal conduct and stay away orders to be implemented immediately (upon filing of the petition) and will cease upon hearing of the Petition
 - Respondent must relinquish any firearms and ammunition during the TRO period
 - Granted or denied upon court's review of the Petition
 - Must file the WV-110 to obtain interim TRO

The Process – Filing the Petition

- When to file – **“Strike while the iron is hot”**
 - File your Petition as soon as practicable after the occurrence
 - Court can’t grant a TRO until the petition is filed
 - The more time elapses without the petition filed, the more exposed your employee is and others in your agency
 - Respondent thinks that he/she has gotten away with his/her conduct and may be emboldened to continue his/her conduct against Petitioner or others in your agency



The Process - Filing the Petition

- What to file with the Court
 - WV-100 Petition
 - WV-110 TRO
 - WV-130 Restraining Order After Hearing
 - CLETS-001 Confidential Information for Petitioner
 - Supplemental declarations
 - Court clerk will stamp/write when date, time and place of the hearing will be on the forms

The Process - Serving the Petition

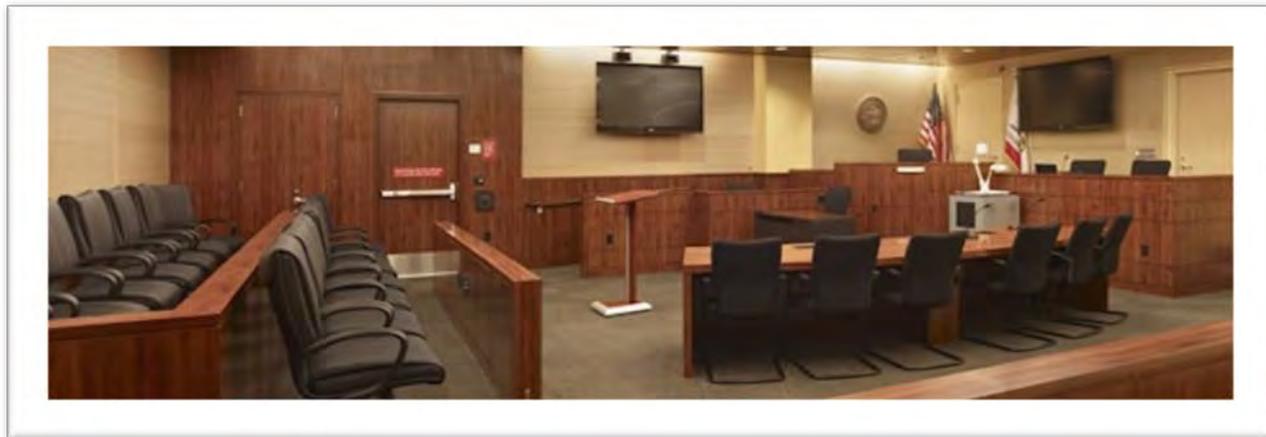
- Service upon Respondent
 - Petition (WV-100); TRO (WV-110); Notice of Hearing (WV-109); and any declarations
 - Personal service at least 5 days before hearing (Sec. 527.8(m))
 - Or a shorter time upon showing of good cause

The Process - Serving the Petition

- *Practice pointer* – If your TRO is granted, ensure that the court inputs the temporary order into CARPOS (California Restraining and Protective Order System) through **CLETS** (California Law Enforcement Telecommunications System) or Agency counsel will be directed to deliver to local law enforcement

The Process – Hearing/Trial

- Who should go?
 - Agency counsel, Petitioner, and any supporting witnesses
- Relaxed evidentiary standard – **hearsay okay** (*Kaiser Foundation Hospitals v. Wilson* (2011) 201 Cal.App.4th 550)



The Process – Hearing/Trial

- Local preference as to format for trial
 - Petitioner's case-in-chief including witnesses
 - No cross-examination by Respondent
 - Inquiry by court, if any
 - Respondent's case-in-chief
 - Respondent's witnesses
 - No cross-examination by Petitioner
 - Inquiry by court, if any
- Judge will make a ruling at the close of Respondent's evidence

The Process – Judgment

- If court rules in favor of **Employer/Employee**
- Court may sign the order as-is or may modify it
- Court may enter order into CLETS, or Agency counsel will be required to serve copy of order on law enforcement agency
- Employee should carry certified copy of order on his/her person



The Process – Judgment

- Service of copy of the order on Respondent
 - If Respondent is present at hearing, no further service is necessary
 - Good practice dictates a copy be served by First Class Mail
- Respondent barred from possession of firearms or ammunition for duration of order

The Process – Judgment

- If court rules in favor of **Respondent**
- TRO expires
- Have employee continue to record any further contacts with Respondent
- Consider relocating the employee(s) affected by Respondent
- Consider increased security or police patrols
- Consider protective measures
- Evaluate whether to re-file if violence or credible threats of violence are made

The Process – Judgment

- *Practice pointer* – unsuccessful C.C.P. § 527.8 petitions are **not subject to malicious prosecution claims** (*Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416)
 - Courts concerned malicious prosecution claims would frustrate Act's streamlined procedure
 - Potential to dissuade victims of harassment

Special Considerations



Special Considerations

- Free Speech & other Constitutionally Protected Activities
 - Granting of a TRO or injunction may not:
 - Prohibit speech or other activities
 - Prohibit cases involving or growing out of labor dispute



Special Considerations

- *Practice pointer* – C.C.P. §527.8 petitions are subject to **anti-SLAPP** (strategic lawsuit against public participation) motions (*City of L.A. v. Animal Defense League* (2006) 135 Cal.App.4th 606)



Special Considerations

- May not be able to completely deny access
- Free speech and other Constitutional protections
 - May need to address City Council
 - Pay bills
 - Other *legitimate* business with entity



Special Considerations

- Reasonable restrictions on access
 - Making an appointment prior to any visit
 - Subject to pat down search for weapons
 - Escorted by security
 - Subject-employee advised of visit and moved for duration of visit
- Agency and aggressor may need to find workable solution

Special Considerations

- Public Agency's Duties?
 - The Workplace Violence Safety Act not intended to expand or modify a duty of an employer to provide a safe workplace for employees
 - Unless crime in workplace is highly foreseeable, employers cannot be expected to insure against it
 - Employer not required to take “all conceivable” steps to ensure safety

Special Considerations

- Public Agency's Duties:
 - Duty to implement injury prevention programs
 - Duty to warn employees of predictable threats
 - Duty to take reasonable steps to address credible threats



Special Considerations

- What if the aggressor is a city employee?
 - Administrative leave if employer has reasonable proof that employee may credible threat
 - Threats do not obligate employer to terminate employee regardless of procedural guarantees secured by collective bargaining and in MOU (*City of Palo Alto v. SEIU* (1999) 77 Cal.App.4th 327)

Special Considerations

- Whistleblower protection:
 - Because courts have established public policy that employers address potential workplace violence, employers may not retaliate against employees who report harassment
 - Otherwise, employer may be subject to wrongful termination claim

Special Considerations

- What the city can do to prevent workplace violence:
 1. Foster a supportive, harmonious work environment
 2. Train supervisors, employees how to resolve conflicts
 3. Develop effective policies to protect employees from harassment



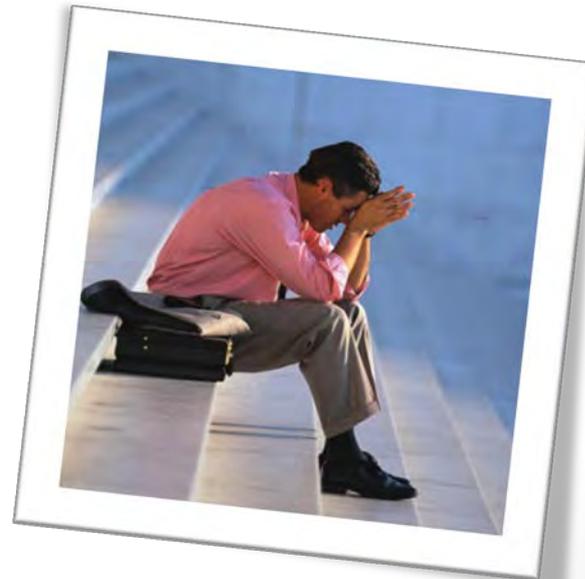
Special Considerations

- What the city can do to prevent workplace violence:
 4. Establish procedures for handling grievances
 5. Implement security programs that protect employees
 6. Provide employees safety education programs

Special Considerations

- What the city can do to prevent workplace violence:
7. Provide job counseling for employees who have been laid off or fired
 8. Train supervisors how to recognize signs of a troubled employee
 9. Set up a crisis plan.

(Source: Workplace Violence Prevention, Officer Richard Fuentes)



Special Considerations

- **Resources:**

- 1. U.S. Department of Homeland Security**

(<http://www.dhs.gov/active-shooter-preparedness>)

- 2. U.S. Department of Homeland Security, Emergency Management Institute (EMI)**

(<http://training.fema.gov/EMIWeb/IS/courseOverview.aspx?code=is-907>)

- 3. U.S. Department of Labor, Occupational Safety & Health Administration (OSHA)**

(<https://www.osha.gov/SLTC/workplaceviolence/otherresources.html>)

- 4. California Department of Human Resources**

(<http://www.calhr.ca.gov/state-hr-professionals/Pages/model-workplace-violence-and-bullying-prevention-program.aspx>)

- 5. National Domestic Violence Hotline**

(<http://www.thehotline.org/>)

1-800-799-7233

TDD: 1-800-787-3224

Conclusion

- Workplace Violence Safety Act is a valuable tool to protect your employees
- Higher burden of proof (clear and convincing)
- Must show that an employee has been subjected to violence or a credible threat of violence
- May be able to obtain an injunction for up to three years
- Any injunction may not infringe upon the Respondent's constitutionally protected rights



Questions