

I. Introduction

Officials and staff members in local governments and other public entities are uniquely exposed to potential violence and harassment from aggrieved members of the general public, political gadflies, and the like. While citizens obviously have certain constitutional rights to express their views at public hearings and visit City Hall, the law protects individuals from unwarranted “harassment” and violence when someone “crosses the line”.

Additionally, public entities B like any other employer under the “workplace violence” injunction statute B have certain remedies to protect their employees from unwarranted harassment from ex-spouses, stalkers, and the like. This paper seeks to (1) define the circumstances that constitute “harassment” and “workplace violence”, justifying the issuance of an injunction; (2) outline the statutory procedures to be followed when obtaining a harassment injunction; and (3) provide some practice tips to consider when obtaining a harassment injunction.

II. What Constitutes “Harassment”

A. Statutory Language

1. General Harassment Statute

The standards and procedures for obtaining injunctions and temporary restraining orders (TRO) against “dangerous” persons are codified in California Code of Civil Procedure §§ 527.6, and 527.8.¹ Section 527.6 governs general harassment injunctions, and Section 527.8 governs workplace violence injunctions.

Under the general harassment injunction statute, Section 527.6(a) states that “[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.”

Section 527.6(b) defines “harassment” as any “**unlawful violence, a credible threat of violence**, or 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.**” (emphasis added). Section 527.6(b) further defines “harassment” as a “course of conduct [which] . . . would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.”

“**Unlawful violence**” is 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.” CCP § 527.6(b)(1).

¹ Unless referenced otherwise, all statutory references herein shall mean and refer to the California Code of Civil Procedure.

“Credible threat of violence” is “a knowing and willful statement or course of conduct that would place a reasonable person in fear of his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” CCP § 527.6(b)(2).

“Course of conduct” is “a pattern of conduct composed of a **series of acts** over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. **Constitutionally protected activity is not included within the meaning of >course of conduct.**” CCP § 527.6(b)(3) (emphasis added).

2. Workplace Violence Statute

CCP § 527.8, governing workplace violence injunctions, essentially mirrors the provisions of CCP § 527.6, the general harassment injunction statute. CCP § 527.8(a) states:

“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 prohibiting further unlawful violence or threats of violence by that individual.” (emphasis added)

CCP § 527.8(d) includes “the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency” as an “employer” having rights to seek a workplace violence injunction to protect an aggrieved employee. The term “employee” includes “the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers”, and also includes “a volunteer or independent contractor who performs services for the employer at the employer’s worksite.” *Id.*

The workplace violence statute’s definitions of “unlawful violence,” “credible threat of violence” and “course of conduct” under CCP § 527.8(b) are identical to the general harassment injunction statute. Similarly, the workplace violence statute expressly contains prohibitions against restraint on constitutionally protected activities, and other protected rights. Specifically, Section 527.8 (c) states in relevant part:

“Nothing in this section shall be construed to permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 [governing picketing and labor disputes] or any other provision of law.”

3. Summary of Statutory Provisions and Practice Tips

Some important general conclusions can be drawn from the foregoing statutory provisions:

- “Harassment” and “workplace violence” are subject to a “reasonable person” standard
- “Harassment” and “workplace violence” consists of a “pattern of conduct composed of a series of acts over a [short] period of time”
- The “harassment” injunction statute arguably provides broader protection than the “workplace violence” statute, *i.e.*, the “harassment” injunction statute provides protection beyond the workplace, and can enjoin activities which “seriously alarms, annoys, or harasses the person”. However, both statutes require a strong showing of offensive, non-legitimate conduct to justify the issuance of a TRO and injunction.

» **Practice Tip** *Deciding whether to proceed under the general harassment injunction versus the workplace violence statute is often times a difficult decision involving many factors, including political issues, such a public entity’s [non]endorsement of such a proceeding. As a general rule, the general harassment injunction is a broader remedy extending beyond the workplace, and also provides for the recovery of attorney’s fees and costs to the prevailing party. CCP § 527.6(i).*

» **Practice Tip** *Time is of the essence when considering the filing of these petitions. The longer you wait to file from the time of the harassment or violence, your chances of obtaining a TRO and injunction will diminish. Act quickly!*

» **Practice Tip** *Make sure staff members keep recordings of all threatening voice-mails, detailed phone messages, and detailed accounts of threatening conversations or events. A court’s decision to issue a TRO and an injunction will be based largely on attached declarations and exhibits filed with the petition. Attached is a sample declaration.*

» **Practice Tip** *If the petitioner is a public official or a public entity, courts will be especially reluctant to issue any injunction unless the “harassment” or “workplace violence” **clearly** exceeds the reasonable boundaries of constitutionally protected activities, and serves no legitimate purpose. Make sure that the declaration(s) submitted with a petition clearly and strongly address these critical points.*

» **Practice Tip** *Courts are reluctant to issue harassment and workplace violence TROs and injunctions based upon an isolated incident, and often times require a showing of two or more unlawful “incidents” place over a relatively short period of time. Make sure that the declaration(s) submitted with a petition clearly detail the time, place, and severity of the “incidents.”*

» **Practice Tip** Courts will be careful to balance a citizen’s constitutional rights versus an aggrieved party’s rights to be free from unwarranted harassment or potential violence. You should be prepared to offer a carefully tailored TRO and injunction order for the court’s consideration to balance these competing goals. Here is a sample proposed order which may balance these competing rights under the appropriate circumstances:

“Defendant shall have the right and opportunity to attend City Hall and any public hearings for official business purposes. However, defendant shall give at least 24-hour notice to the City’s police department prior to any such attendance, and defendant’s attendance, if any, at City Hall or public hearing(s) shall be with a law enforcement officer. Defendant’s attendance at City Hall shall be no longer than forty-five (45) minutes, and attendance at any public hearing shall be no longer than ten (10) minutes. If defendant wishes to speak at any such public hearing, defendant shall be given priority.”

III. Procedures for Obtaining Harassment and Workplace Violence TROs and Injunctions

A. Obtaining the Temporary Restraining Order

The harassment injunction and workplace violence statutes have virtually identical procedures for obtaining TROs. For example, the “harassment” injunction statute, section 527.6(c),² states in relevant part:

“A temporary restraining order may be issued **with or without notice** upon an affidavit that, to the satisfaction of the court, shows **reasonable proof of harassment** of the plaintiff by the defendant, and that great irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court’s discretion, **for a period not to exceed 15 days**, or, if the court extends the time hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.” (emphasis added).

Immediately upon the filing of a petition and the granting of a TRO, you must personally serve the petition and TRO on all parties, and you may request that the TRO order be served on appropriate law enforcement agencies. Specifically, sections 527.6(g) and (h) of the harassment injunction statute state:

“Upon filing of a petition for an injunction under this section, **the defendant shall be**

² The workplace violence statute, Section 527.8(e), contains virtually identical provisions, but does not contain the express “with or without notice” provision.

personally served with a copy of the petition, TRO, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.” . . . (h) **The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted,** to the law enforcement agencies within the court’s discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment. ¶ An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of the reported harassment involving the parties to the proceeding.”

CCP §§ 527.6(g) and (h) (emphasis added).³

» **Practice Tip** *The decision to give notice of the hearing for a TRO is often difficult. If there is a great fear that providing notice of the TRO hearing will greatly increase the chance of further harassment, you should **not** give notice. Otherwise, courts prefer B for due process considerations B litigants giving all parties notice of any hearings. In any event, after the issuance of a TRO, you are required to personally serve the TRO, and give notice of the upcoming hearing on the issuance of an injunction.*

» **Practice Tip** *Most courts have only one department which hears temporary restraining order and harassment injunctions. You should call the court to find out in advance which courtroom to file the TRO papers, and where to attend the TRO application hearing. The hearing for the TRO should happen the same day as the petition filing, so be prepared to personally attend the courthouse to concurrently file the petition and argue the TRO application hearing.*

» **Practice Tip** *Most TROs involve domestic violence situations, and as such, these courts are used to certain forms, rather than custom-typed pleadings. You should check with the court clerk to determine the court’s preference on this issue.*

» **Practice Tip** *It is a good idea to use the court endorsed forms to ensure that each and every substantive and procedural requirements are met for the proper issuance of a TRO and injunction.*

B. Obtaining the Injunction

Courts are generally required to schedule a hearing on the issuance of an injunction

³ Sections 527.8 (h) and (i) of the “workplace violence” injunction statute contain parallel provisions.

within 15 days of the issuance of a TRO. At that time, there will be a “mini-trial” on the merits of the harassment or workplace violence injunction. Thus, you should be prepared to make available live witnesses, and provide compelling testimony to justify the issuance of an injunction.

As detailed below, a harassment or workplace violence injunction may be effective for up to 3 years. However, upon showing of good cause, the injunction may be extended. Moreover, if appropriate, attorney’s fees and costs may be statutorily recoverable for obtaining the TRO and injunction under the general harassment injunction statute, but not for the workplace violence injunction statute. Finally, both statutes provide that any willful disobedience of any temporary restraining order or injunction is punishable under Section 273.6 of the Penal Code (misdemeanor, punishable by a fine of not more than \$1,000.00, up to 1 year county jail, or both).

The harassment injunction statute specifically details the procedural and substantive requirements for the issuance of an injunction, stating in relevant part:

“Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by **clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment.** An injunction issued pursuant to this section shall have a duration of **not more than three years.** At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.”

CCP § 527.6(d) (Emphasis added).⁴

» **Practice Tip** *Based upon the high burden of proof, i.e., “clear and convincing” evidence, required for the issuance of an injunction, it is a good idea to have witnesses personally attend the injunction hearing, depending on the relative strength of any opposition.*

» **Practice Tip** *If you believe that the defendant (the harassing party) will be present at the injunction hearing, and may pose a threat of violence to you or any witnesses, advise the bailiff of your concerns immediately upon checking in with the court clerk.*

» **Practice Tip** *The issuance of a TRO is subject to a “reasonable proof” standard, whereas the issuance of an injunction must satisfy a high “clear and convincing” standard. Despite these different standards, the declaration(s) supporting the TRO and the injunction*

⁴ Sections 527.8 (f) of the “workplace violence” injunction statute contain parallel provisions.

*should be equally **compelling**, as it saves time and money for the filing of a single set of declarations. Moreover, the court will be inclined to grant a TRO if, based upon the declaration(s), it would also be inclined to grant an injunction.*

IV. Conclusion

Courts are generally receptive to the issuance of TROs and injunctions to protect public officials' and employees' right to be free from unwarranted harassment and violence. However, you must act fast, and gather sufficient declarations and exhibits to support your case, and satisfy your "clear and convincing" burden of proof. Additionally, you should be prepared to offer some carefully tailored remedy in the proposed TRO and injunction order, designed to protect the defendant's constitutional rights.

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