

Code of Civil Procedure

Section 527.8

(a) 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 order after hearing 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.

(b) For purposes of this section:

(1) "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 employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

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

(3) "Employer" and "employee" mean persons defined in Section 350 of the Labor Code. "Employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. "Employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(4) "Petitioner" means the employer that petitions under subdivision (a) for a temporary restraining order and order after hearing.

(5) "Respondent" means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) "Temporary restraining order" and "order after hearing" mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the employee.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) "Unlawful violence" is 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.

(c) This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members, or other persons employed at the employee's workplace or workplaces.

(e) Upon filing a petition under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows 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. The temporary restraining order may include any of the protective orders described in paragraph (6) of subdivision (b).

(f) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(g) A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or if the court extends the time for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or terminated by the court.

(h) Within 21 days, or if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(i) The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence.

(j) At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the respondent is a current employee of the entity requesting the order, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the respondent. If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence.

(k) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(l) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(m) Upon filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, 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 petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that, if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent, named in a restraining order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: _____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(r) (1) Information on a temporary restraining order or order after hearing relating to workplace violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court’s discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) 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 unlawful violence or a credible threat of violence.

(5) At the request of the petitioner, an order issued under this section shall be served on the respondent, regardless of whether the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The petitioner shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the petitioner or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(s) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(t) Any intentional disobedience of any temporary restraining order or order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) This section shall not be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(v) (1) The Judicial Council shall develop forms, instructions, and rules for relating to matters governed by this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or order after hearing relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(w) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(x) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process by a sheriff or marshal of a temporary restraining order or order after hearing to be issued pursuant to this section if either of the following conditions applies:

(A) The temporary restraining order or order after hearing issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or order after hearing issued pursuant to this section is based on unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision.