

**RESTRAINING ORDERS:
TAKING MEASURES TO PROTECT YOUR EMPLOYEES AND COMPANY
FROM WORKPLACE VIOLENCE AND STALKING**

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I. Introduction

Every year in the United States, over a million people become the victims of some form of workplace violence. In a recent survey, more than half of the companies polled reported at least one of their workers had been attacked, stalked, threatened, or killed on the job within the last five years. Too often, we read about these frightening statistics in daily newspapers, which frequently contain headlines of violent confrontations in the workplace.

Notwithstanding the apparent proliferation of workplace violence, violent situations generally catch employers off-guard. As a result, many companies are left scrambling for a solution when such situations arise. However, a prompt and effective response is necessary to ensure employee safety and to reduce the risk of liability to employers for claims associated with workplace violence.

One such response is a temporary or permanent restraining order. A restraining order is a court mandate forbidding an individual from engaging in certain conduct, including any contact with a victim. It can be an effective tool to prevent or respond to violent situations in the workplace. The outline below addresses the primary considerations in obtaining a restraining order.

II. When Is a Restraining Order Appropriate?

A. General rule. A court will issue a restraining order if the judge or magistrate finds that an imminent danger exists to the person or persons seeking protection. In determining whether an imminent danger exists to the life or health of that person, the court considers when the most recent incident of abuse or threat of harm occurred as well as all other relevant evidence concerning the safety and protection of the person(s) seeking the restraining order. A court will not deny relief solely because of a lapse of time since the most recent threatening incident. C.R.S. § 13-14-102(4).

B. A restraining order may be issued for any of the following purposes:

1. To prevent assaults and threatened bodily harm;
2. To prevent domestic abuse;
3. To prevent emotional abuse of the elderly; or
4. To prevent stalking.

See C.R.S. § 13-14-102(1).

C. Threats

1. Express. Express threats are surprisingly frequent. They range from verbal threats of bodily injury ("I'm going to kill you!") to various forms of conduct, such as actual physical harm. Express threats increase the likelihood that a restraining order will be issued.
2. Implied. Most often, threats are implied and include statements and/or conduct. For instance, an employee who constantly talks about his gun collection or understanding how someone could "go postal" is making statements that most people would find threatening. Similarly, an individual who shows unwanted attention to a co-worker in the form of excessive e-mails or by following the co-worker around may be engaging in threatening behavior.
3. Totality of circumstances. A person seeking a restraining order should rely on the totality of statements and conduct (express and implied threats) in demonstrating to the court that a threat of harm exists.

D. Stalking. Stalking covers a wide variety of conduct including, without limitation, physical contact, obscene language or gestures in a public place, following a person in a public place, communications (including by telephone) intended to harass or threaten bodily injury or property damage, and calling a person repeatedly or at inconvenient hours. C.R.S. § 13-14-101(3); C.R.S. § 18-9-111.

E. Domestic abuse. This means any act or threatened act of violence that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same residence, or

with whom the actor is involved or has been involved in an intimate relationship. Domestic abuse may also include any act or threatened act of violence against the minor children of either of the parties. C.R.S. § 13-14-101(2).

III. Where Should I Go for a Restraining Order?

A. Local courts. District courts, county courts, and most municipal courts have the authority to issue a temporary or permanent civil restraining order. See C.R.S. § 13-14-102(1). However, a county court is the most accessible and efficient.

B. Location. There are four different considerations in determining the county in which you should seek a restraining order: (1) defendant's residence, (2) plaintiff's residence, (3) location of victim's employer, (4) location of threatening conduct or statements.

C. Times. Depending on the court, there are pre-established times that the court will hear motions for restraining orders. Most courts will hear them at 8:30 a.m. and again at 1:30 p.m. Once you determine the appropriate court, you should call ahead and determine the correct time. Most courts have a duty judge who is available at all hours to handle emergency situations. A call to the appropriate court should provide you with the necessary information in such situations.

IV. What Is Involved in the Process?

A. Forms and filing fee

1. Complaint. The complaint is easy to fill out and essentially asks for personal information, basic facts, and the relief the victim seeks. The victim should make sure that he or she specifies that the defendant should be ordered to stay at least 200 yards away from the victim at all times, including staying away from the victim's home and work.

2. Incident checklist. This document is provided to assist the victim in identifying different types of threatening conduct. The checklist is helpful for the victim to prepare for the hearing and to avoid forgetting information to give to the judge. The checklist need not be filed with the complaint, but it will become a part of the public record and served on the defendant if it is filed.

3. Consent to magistrate (as opposed to county court judge). Consenting to a magistrate judge often speeds up the process. In the restraining order context, magistrates have the same authority as a county court judge and are equally competent. Once a consent form is submitted, consent cannot be withdrawn at a later time.

4. Motion to waive costs. Individuals who are concerned about the costs of a restraining order can request that the costs be waived or postponed by filling out the appropriate form.

5. Affidavit/certificate of service. This document is either a part of the complaint or comes with the complaint. The affidavit functions as proof that the temporary restraining order was served on the defendant. It is imperative that the affidavit be brought to the permanent restraining order hearing. If the defendant fails to show at the hearing, the affidavit will verify service. The affidavit also can be used to petition the court for a contempt citation if the defendant violates a restraining order.

6. Motion for contempt. In the event that the defendant violates a restraining order that has been issued by the court, this is a petition for the court to impose sanctions against the defendant.

7. Filing fee and costs. There is a one-time, \$33.00 filing fee (currently) for a temporary restraining order. Additionally, some courts charge \$2.00 to \$5.00 for a restraining order packet including the forms above. Many courts provide the forms free of charge.

NOTE: It is important not to include the address or telephone number of the victim on any form submitted to the court. There is a category for this information on most forms, and people generally fill in the blank by habit. However, many of these forms are served on the perpetrator, who may not otherwise have this information. The forms usually provide the victim with the opportunity to elect not to reveal this information.

B. Hearing on temporary restraining order. Shortly after filling out the complaint and associated paperwork, the victim will go before the magistrate or judge and explain why a temporary restraining order should issue. The victim should relate all statements and conduct amounting to threats by the defendant (make the point that the totality of circumstances are threatening). This hearing can be ex parte, meaning that the defendant need not be present. If the temporary restraining order issues, the judge will set a "return date" (eight to fourteen days later) for a hearing on a permanent restraining order. If the temporary restraining order does not issue, the victim can seek reimbursement of the filing fee.

C. Service

1. What to serve. Once a temporary restraining order issues, a copy of the complaint together with a copy of the temporary restraining order containing a citation, must be served on the defendant. The citation must inform the defendant that, if the defendant fails to appear in court in accordance with the terms of the citation, a bench warrant may be issued for the arrest of the defendant and that the temporary restraining order may become permanent without further notice to the defendant.

2. How to serve it. The defendant can be served personally, or by leaving a copy of documents at the defendant's usual residence with someone over 18, who is a member of the defendant's family. If the defendant is under the age of 18, his father, mother, or guardian must also be served.

3. Who should serve it. Service can be accomplished by anyone over the age of 18, who is not a party to the action. The following individuals are the most common choices:

a. Sheriff's deputy. For a small fee, the victim can arrange through the court clerk to have a sheriff's officer serve the temporary restraining order. The advantage of using an sheriff's officer is that the likelihood for a confrontation decreases. The downside is that the victim loses control over the timing of the service because the sheriff's department often will handle service when they get around to it.

b. Professional process server. A process service is more expensive, but the victim has more control over getting service quickly. These companies and individuals can be found in the yellow pages.

c. Employer. You can personally serve a temporary restraining order on the defendant (usually at the termination meeting). This is the least expensive method, but it may provoke an unnecessary confrontation. If you choose to serve the restraining order yourself, make sure to sign the affidavit/certificate of service before a notary.

4. Proof of service. An affidavit/certificate of service should be included with the initial package for the process server to verify service. This latter document must be filed with the court.

NOTE: Service is a necessary part of controlling the perpetrator -- a restraining order cannot be violated unless it has been served. Moreover, service of the temporary restraining order will be required before a court will issue a permanent restraining order. If the defendant is not served with the temporary restraining order before the date of the permanent restraining order hearing, the victim should go to the court on that date, at the hearing time, and request that the judge order a continuance so that the defendant can be served. The victim also should request that the temporary restraining order remain in place in the meantime.

D. Hearing on permanent restraining order

1. Uncontested. Many permanent restraining orders are not contested either because the defendant does not show up to the hearing or because he or she simply doesn't have a problem with a restraining order being in place.

2. Contested. The defendant can contest the entire restraining order or only a part of it. When a defendant shows up to the permanent restraining order hearing and contests the issuance of the order, the matter is set for a more formal hearing. This is essentially a mini-trial, in which both sides are given an opportunity to put on evidence (including testimony, documents, photos, e-mails, transcripts or recordings of voice-mails, etc.) in support of their relative positions. It is important that the victim be prepared both to present his or her case and to challenge evidence put on by the defendant. If the victim has any witnesses to the threatening statements or conduct, they should be present at the hearing and prepared to testify. It is generally advisable for the victim to write out everything that he or she wants to say to ensure that facts are not omitted. Defendants will sometimes bring attorneys to these hearings, and it is helpful to have an attorney present on behalf of the victim and/or the employer, if possible.

3. Agreement. Nothing prohibits the parties from reaching a mutually agreeable resolution of their differences prior to the permanent restraining order hearing. The defendant may be willing to agree to a limited version of the restraining order that satisfies the victim. This solution is a means to avoid confrontation, and both parties come away feeling as if they have accomplished something. If an agreement is reached, the parties still must go to the court at the pre-determined hearing time and present the agreement to the judge. The judge will issue an appropriate order.

E. Copies of restraining orders. The victim should keep several copies of the restraining order, including, one at home (for the victim's family), one at work (for employer), and one on the victim's person at all times. In domestic violence situations, it is advisable to have a copy for a child's school and/or day care providers.

F. Failure to comply

1. Jail and fine. If a defendant violates a restraining order, the victim or employer should call the police immediately. It is a crime to violate a restraining order, and the defendant will be arrested and taken to jail. The penalties for violating a

restraining order include time in jail and a fine.

2. Contempt. A victim can also go directly to the court which issued the restraining order and file a motion for contempt. In a contempt proceeding, the victim (or his or her lawyer) will need to convince the judge that the defendant did something the restraining order prohibits.

G. Modifications to restraining orders. The victim and defendant cannot agree to change the terms of a restraining order without the permission of the court. In order to get the court's permission, both parties will have to go to the court and set the matter for a hearing. During the hearing, the judge will hear from both parties to determine whether the restraining order should be modified. A defendant can request changes to a restraining order, but the victim must be afforded an opportunity to be heard prior to changes being made.

V. Do I Need a Lawyer?

A. No requirement. There is no requirement that an individual seeking a restraining order be represented by counsel. The process is designed to be relatively simple, and court personnel generally are willing to respond to questions and walk the victim through the process.

B. Recommendation. Notwithstanding the lack of any requirement that a person be represented, it is generally advisable to have an attorney available to facilitate the process and deal with any unexpected problems. Additionally, most courts give priority to cases where a lawyer has entered an appearance, making the process much more efficient.

VI. Can I Get a Restraining Order on Behalf of My Company?

Different courts, and often different judges within the same court, have divergent views about whether a restraining order can be issued on behalf of a company. Some county courts including Adams, Boulder, and El Paso read the statute broadly to apply to both individuals and businesses. However, other courts including Jeffco, Arapahoe, and Denver read the statute narrowly to permit restraining orders on behalf of individuals only.

Because there is no clear answer to the question, it is worthwhile to call the appropriate county court and ask what its practice is prior to going in for a restraining order. If you are told that a company cannot get a restraining order, it never hurts to pose the question again to the magistrate or judge.

As a practical matter, if a restraining order issues on behalf of a victim requiring the defendant to stay away from the victim's workplace, the employer's needs will be met. Thus, there is an incentive for an employer to provide the necessary assistance to make sure that the victim is able to obtain a restraining order.

VII. How Active Should I Be in Assisting the Employee?

The level of participation by an employer in seeking a restraining order varies based on the situation and the employer. Some employers do little more than give an employee instructions on where to go for a restraining order. Others are heavily involved in the process and make an attorney available to answer questions and to increase the likelihood of success. As stated above and below, however, it is in the employer's interest to provide whatever assistance is necessary to ensure that a restraining order is issued to keep the perpetrator away from the workplace.

A. Risk of doing nothing. An employer may be exposed to several legal claims related to violence in the workplace:

1. Occupational Safety and Health Act ("OSHA").
2. Negligent hiring.
3. Negligent retention and supervision.
4. Negligent response to threats.
5. Negligent maintenance of premises.
6. Failure to provide accurate references.
7. Premises liability.

B. Following through. Once you begin the process of assisting an employee in seeking a restraining order, it is important to follow through. A common occurrence is the failure to go to the permanent restraining order hearing after a temporary

restraining order issues. Once the temporary restraining order expires, a victim will be without recourse (short of seeking a new temporary restraining order) if the unwanted conduct resumes.

VIII. Advantages of Restraining Orders

- Speedy relief B you can obtain a temporary restraining order on the same day you request it and a permanent restraining order within a couple of weeks.
- The process is relatively easy.
- Establishing some control over the perpetrator B creating obstacles.
- A variety of protection.

IX. Disadvantages of Restraining Orders

- The problem created when co-workers are still employed.
- A piece of paper won't stop a bullet.
- Concern that it will inflame the perpetrator.
- The problem of geographic limits.
- The victim gets cold feet.

X. Conclusion

The decision of whether to obtain a restraining order often will turn on individual circumstances. While doing something is sometimes as risky as doing nothing, it is usually best to err on the side of obtaining a restraining order. More often than not, restraining orders stop the unwanted statements and conduct. At a minimum, they serve as a mechanism to enlist the help of the courts and law enforcement officers to control potentially violent individuals.