

Employee Violence – Better Safe Than Sorry

By Terry A. Wills, Esq.

Recent violence at the college campus of Virginia Tech has caused some employers to rethink attitudes about addressing potential violence in the workplace – and for good reason. While there is no evidence that workplace violence is on the rise, both employees and employers are now, more than ever, cognizant of the various “signs” of a potentially emerging violent situation and how to address these concerns both internally and legally.

One of the most common forms of violence in the workplace is a retaliatory reaction from a disgruntled employee during termination. An employee unhappy about being terminated may threaten a manager (“you’ll be sorry.. . . you better watch your back”) or engage in stalking activity (circling the employer’s premises in his car, following employees home). But even nonterminated employees who demonstrate signs of violent tendencies toward coworkers (“I’ll take care of him after hours”) or a non-employee (ex-spouse) who stalks or harasses a current employee at work can give rise to violence issues affecting all employees.

Aside from engaging in an internal investigation and hiring security or surveillance services, employers concerned about potential violence can pursue a legal remedy in the form of a restraining order in court against the perpetrator. California Code of Civil Procedure §527.8 gives employers the ability to seek workplace violence restraining orders on behalf of their employees. The statute is unique in that it does not require the employee him or herself to obtain the order individually, but rather

the employer can do it for any number of employees it believes have been subjected to “unlawful violence or a credible threat of violence... that can reasonably be construed to be carried out or to have been carried out at the workplace...” (§ 527.8a)

The Application for Temporary Restraining Order Prohibiting Workplace Violence must be submitted to a court in the proper county with affidavits showing proof that unlawful violence or a credible threat thereof has occurred and that “great or irreparable harm” could result if the restraining order is not issued. (§ 572.8e) But these papers can be obtained and prepared by legal counsel for the employer who is then able to represent the entity and protect the employees at any hearings associated with the restraining order.

California employers are urged to consult counsel and take advantage of the protections afforded under CCP § 527.8 if appropriate facts exist. Needless to say, failing to act in response to violent situations could have devastating life-threatening consequences. The legal exposure could, as well, be substantial. A recent California Appellate court issued an opinion stating that employers are required to “provide a safe and secure workplace, including a requirement that an employer take reasonable steps to address credible threats of violence in the workplace” (Franklin v. The Monadnock Company (May 2007) 151 Cal.App.4th 252). Thus, an arguable duty exists upon notice of a violent situation to take effective measures to protect all involved.■