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RESTRAINING ORDERS AS LEGAL ARSENAL

AUGUST 24, 2015 | KRISTEN FRASCH | LEAVE A COMMENT

When an email came my way recently, touting yet another approach to keeping employers safe from liability – restraining orders – I nearly discarded it, thinking it was surely common knowledge among HR leaders.

But something about the wording, and the invitation to interview a Los Angeles judge who thinks employers and their HR departments must *not* be privy to this technique, compelled me to look further. So I called him.



Herbert Dodell, Judge Pro Tempore for the Los Angeles Superior Court, thinks if employers really understood how much legal protection they'd be cloaking themselves in by filing restraining orders against potentially dangerous employees and ex-employees, more would be taking this approach. As it is, "maybe 5 percent to 10 percent are doing it today, tops," he says. He goes on:

"Think about it, if there is an unruly employee or someone who is a credible threat of violence, the fact that [an employer] got a restraining order allows [that employer] to argue it did the prudent thing when confronted with a situation.

"If the employer doesn't do it, and that employee shoots up the place, that employer will be faced with an argument that it didn't do anything to protect the other employees or the work environment. In other words, it had notice and was negligent about doing something about it. It is no guarantee, but allows for an argument on liability issues.

"With the proliferation of lawsuits against employers for wrongful termination,

discrimination, retaliation, you name it – all seeking damages, large and small – employers should be looking for ways to defend their actions and minimize damage claims. Restraining orders [can be] valuable tools in that regard.”

Dodell has a pretty good frame of reference for this. Not only has he heard hundreds of restraining-order cases in his judge’s robe, he also has experience as a transactional and trial lawyer, and mediator and arbitrator. So he’s represented people on both sides of these cases and decides them now, too.

Granted, he says, it won’t stop the violence (although it *could* deter it). “If someone has it in his or her mind to shoot up the place, he or she will shoot up the place,” he says. While such incidents were rare decades ago, he adds, they have been on the rise in recent years – perhaps the most recent being the [February shooting at a Moorestown, N.J. security company](#) that left one man dead and another injured.

Hard to say just how much they’re going up. [Here’s](#) the Centers for Disease Control and Prevention’s word on that. But as a legal record of steps an employer takes, and as proof in a court of law that “the employers had some concerns and took action, that employer would be far more protected from liability than most are,” says Dodell.

“I’m convinced HR people and employers don’t understand how this works or far more would be doing it,” he says. (He’s not even sure enough risk managers know how effective and simple this is.)

Filing a restraining order, he says, is not a difficult procedure – “basically, a six-page form [that entails mostly] checking the boxes.” Judges like himself “don’t even come out of chambers for temporary restraining orders; then you have a hearing in 21 days; then, if it’s issued, it’s good for three years.”

The thing to remember, he says, is you don’t have to be *right* about a perceived threat. You simply need to present your concerns to the court in the form of a fact pattern – “this is what happened and this is what we think might happen.” If the judge concurs, you *are*, in essence, right, and you – and possibly your employees (if the order does serve to dissuade the violent behavior) are protected for three years.

These documents are not complicated and they’re not expensive, says Dodell, and they make a whole lot more sense than what he’s sadly seen far more often, “where companies simply transfer unruly employees to other departments” to the detriment – and sometimes injuries or murders

– of other employees. What's more, he adds:

"The terms of the restraining order can be 'manuscripted' for the court to approve. I often tailor the relief to the need. In wrongful termination cases, it is invaluable to have a finding made by a judicial officer that there was a reason for the termination or conduct by the employer to refute arguments of discrimination, etc.

"In cases where an employee or former employee disrupts the operation of the business or causes damages such as a shooting at the place of business, the obtaining of a restraining order, before something happens, shows due diligence and goes directly against allegations of negligence. Insurance companies should love it when there is a restraining order in place. It can then be shown that a neutral judicial officer found a sufficient basis, by the applicable standard, that the employee or former employee was unstable and that the employer sought to do something about it."

So there you have it: When in doubt (or concern), file those restraining orders.

I don't usually take over someone else's soapbox here, but thought I'd err on the side of safety.

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