

INFO CURRENT AS OF OCTOBER 2004

IS AN EMPLOYER RESPONSIBLE FOR HELPING TO ENFORCE A RESTRAINING ORDER?

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QUESTION: I obtained a domestic violence restraining order on my significant other. Is my employer responsible for helping to enforce it?

ANSWER: It depends. Does your significant other work for the same employer? If so, recent case law suggests that the employer may have a duty to keep you safe. If the employer fails to do so, you may have a worker's compensation claim. If your significant other is not a fellow employee, then the employer has no legal obligation to help guarantee your safety.

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A female employee had a domestic violence restraining order against her boyfriend, who was a fellow employee. While in the employer's parking lot cleaning off her car after a snowstorm, the boyfriend physically assaulted the female employee.

The victim sued the employer under the theory of negligence. This theory, however, was rejected by the U.S. District Court for the District of New Hampshire. The Court determined that the victim would not have been in the parking lot if it was not for her employment and, therefore, walking to her car was not outside the scope of her employment. Furthermore, the act of cleaning off her vehicle was a personal activity that was reasonably expected and not forbidden. While this case disallowed a claim for negligence, it opened the door for employees to seek worker's compensation if they were injured by a fellow employee in violation of a restraining order.

So what is an employee to do? The first step is to make your employer aware of the restraining order. Do so in a manner that can be documented, for example, by certified mail, return-receipt requested. Note: documenting receipt is not a substitute for sitting down with your employer for a conversation. Go to your employer with reasonable suggested solutions or modifications. Speak up if the changes are not working. If there are violations of the order, do not be afraid to call the police and enforce the order. That is, after all, why it is there.

What if your significant other is not a co-employee? The law, as it stands now, does not recognize a duty for the employer to protect an employee in this situation. That doesn't mean they can't or don't want to help you. In fact, most employers would agree that if an employee feels safe and comfortable in the work environment, they will be more productive, thereby helping the employer. Make your employer aware of the restraining order. Go to your employer with reasonable suggested solutions or modifications. If there are violations of the order, do not be afraid to call the police and enforce the order.

Employers can take an active role by helping an employee with a restraining order negotiate its implementation. Most orders include a prohibition against entering the victim's place of employment. If the employee agrees, the employer can make the staff that is first to interact with visitors aware of the situation, providing a description of the individual as well as a copy of the order. The employer could instruct them to contact the police if they suspect that the individual is on-site or is making phone calls, deliveries, etc. in violation of the order. An employer can make sure there is ample lighting in the parking lot, and allow the employee to park closer to the building. If it is possible, offer an escort to the employee's car. An employer may be flexible if the employee needs time off to attend hearings or counseling. If an employer offers an employee assistance program, make it available. This list of suggestions is by no means exhaustive. Contact the police department in your area or a local domestic violence program, such as A

Safespace, to obtain other useful information. They may even provide employees with a training program on safety measures and self protection.

Victims of domestic violence are scared, confused, anxious, and often embarrassed. They feel that their lives are completely out of control. And, while the legal system has changed to accommodate the needs of people in these situations, it is still a difficult process. Domestic violence affects every facet of a person's life. If an employer and the employee-victim work together, not only can a victim attempt to gain some control and a sense of self, but the employer will maintain a loyal and productive worker.

*Answered by **Attorney Tracy A. Bernson** of Dover*