

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 553 (Cortese)
Version: April 17, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Occupational safety: workplace violence: restraining orders and workplace violence prevention plan

DIGEST

Within the jurisdiction of this Committee, this bill authorizes collective bargaining representatives to seek workplace violence restraining orders on behalf of employees.

EXECUTIVE SUMMARY

A civil restraining order is a court ruling that prevents the restrained party from doing specified things like touching, approaching, or communicating with the person who sought the order. Any individual can seek a restraining order against anyone else for violence, threats of violence, or harassment, defined as a course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, that serves no legitimate purpose, and that is extreme enough that the person and any reasonable person would suffer substantial emotional distress as a result of it. Existing law also permits employers to seek restraining orders on behalf of their employees, thus sparing employees the time, legal knowledge, resources, and emotional energy involved in obtaining a restraining order by themselves. This bill would also authorize a collective bargaining representative of an employee to seek a restraining order on behalf of the employee and employees at the workplace.

The bill is sponsored by the United Food and Commercial Workers and is supported by numerous organizations that represent workers, including the California Teachers Association and the California Federation of Teachers. It is opposed by numerous organizations that represent employers, including the California Chamber of Commerce. However, there is no opposition to the portions of the bill within the jurisdiction of this Committee. Opposition made it clear that they do not oppose the provisions of the bill which allow collective bargaining representatives to seek workplace violence restraining orders on behalf of their members. Opponents are

“strongly opposed to the remaining portions of SB 533, which would short-circuit an ongoing regulatory process for unclear reasons, create wasteful recordkeeping obligations, and overreach into simple verbal disputes, all without improving safety.”

The bill passed out of the Senate Labor, Public Employment & Retirement Committee with a 5 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes 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, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as specified. Sets forth standards and procedures under which a public or private employer may seek a civil restraining order on behalf of an employee who has suffered from 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 (Code Civ. Proc. § 527.8.)

This bill:

- 1) Authorizes a collective bargaining representative of an employee to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as specified.

COMMENTS

1. Stated need for the bill

According to the author:

SB 553 would take several steps to prevent workplace injury and violence and ensure employees have access to wellness resources. This bill gives employers and employees the tools to keep themselves safe from assaults and more serious tragedies.

A coalition of 28 organizations, which includes the California Chamber of Commerce, made clear that they do not oppose allowing collective bargaining representatives to seek workplace violence restraining orders on behalf of their members. In fact, they write:

As an initial matter, we want to be clear about what in SB 533 we do not oppose: allowing collective bargaining representatives to seek workplace violence restraining orders on behalf of their members. This change is reasonable to ensure that workers who want to seek a workplace violence restraining order – but do not know how to do so or struggle with language issues – can seek help from their union in doing so.

2. Employers can petition courts for restraining orders on behalf of employees

California law allows anyone to petition the courts for a civil restraining order in situations involving unlawful violence, a credible threat of violence, or extreme harassment. (Code Civ. Proc. § 527.6(a).) Depending how the judge rules, such an order may require the person restrained to refrain from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls, 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 person who sought the restraining order. (Code Civ. Proc. § 527.6(b)(6).) The order typically starts as a temporary restraining order. (Code Civ. Proc. § 527.6(d).) If a temporary restraining order has been granted, a hearing must be held within 21 days for the judge to decide whether to extend the restraining order further. (Code Civ. Proc. § 527.6(e) and (f).) Willful violation of a restraining order is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code § 273.6.)

Under existing law, an employer can also petition the courts for a restraining order on behalf of an employee, but only in a more limited set of circumstances. Specifically, employers can seek restraining orders on behalf of their employees when those employees have suffered 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. (Code Civ. Proc. 527.8(a).) This bill also authorizes a collective bargaining representative to obtain petition the courts for a restraining order on behalf of the employees pursuant to Civil Procedure Code section 527.8.

As the Senate Committee on Judiciary analysis of SB 428 (Blakespear, 2023) highlighted, “Absent unlawful violence or a credible threat of violence, the sort of harassment that would be legally sufficient to support an employee’s request for a restraining order on their own behalf is not currently legally sufficient to support a request for a restraining order made by an employer on the employee’s behalf.” This Committee passed SB 428 with a vote of 9 to 0. As both bills move through the legislative process, the Legislature will have to amend the bills to ensure they can conform with one another and do not chapter each other out.

3. Opposition letters are focused on the proposed changes to California's Occupational Safety and Health law, specifically, changes to Labor Code section 6401.7 and the addition of Labor Code section 6401.9

This bill also enhances provisions in the Labor code that mandate employers to establish, implement, and maintain effective injury prevention programs. The Labor code requires that employer's injury prevention programs shall be written, except as specified, and include specified elements, such as the identification of the person responsible for implementing the program; employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner; among other requirements. This bill provides that the employer injury prevention program must also include a "workplace violence prevention plan conforming with the requirements of" a new Labor code section contained in this bill. The new Labor Code section 6401.9 requires that "every employer shall establish, implement, and maintain, at all times in all of the employer's facilities, a workplace violence prevention plan for purposes of protecting employees and other personnel from aggressive and violent behavior at the workplace. The workplace violence prevention plan may be incorporated into the written injury prevention program as a separate chapter or may be maintained as a separate document, and shall include" twelve specified elements. The new Labor Code provision would also require certain information to be recorded in a violence incident log, as specified. Additionally, the new Labor code section would require the employer to establish and implement a system to review the effectiveness of the workplace violence prevention plan, as specified, and the new section requires the employer to provide specified training and requirements to involve employees and their collective bargaining representatives in developing the training.

Employer groups and employee groups agree that workplace violence is a grave problem in California. The United Food and Commercial Workers Western States Council, sponsors of the bill, highlight data that shows that workplace violence incidents are becoming more prevalent across all types of workplaces in California, and while healthcare workplaces are covered by a workplace violence standard, other workplaces are not. The sponsors explain:

In 2014, Senator Padilla passed Senate Bill 1299 which required the Cal/OSHA Standards Board to promulgate regulations by July 1, 2016 to protect healthcare workers from workplace violence by mandating protections such as keeping a violent incident log, training, and addressing workplace violence in the injury illness and prevention plan (IIPP). On April 1, 2017, Cal/OSHA officially adopted the Healthcare Workplace Violence Standard, but this standard only offers protections for healthcare workers, excluding most of California's workforce.

On January 12, 2017, in an effort to adopt workplace violence prevention protections for all non-healthcare workplaces, Cal/OSHA released a proposed

draft of the General Industry Workplace Violence Standard. Six years, and numerous workplace deaths, injuries, and incidents later, California workers are still waiting for Cal/OSHA to pass a workplace violence standard to protect them. On May 17th, 2022, Cal/OSHA circulated yet another General Industry Workplace Violence discussion draft, but one that is significantly weaker than the Healthcare Workplace Violence Standard. There is no reason or logic as to why non healthcare workers should enjoy less protections, or no protections, from being violently assaulted on the job than healthcare workers.

Unfortunately, there has not been any progress since then on this standard. Workers, who fear for their lives going to work every single day, do not have years to wait for Cal/OSHA to act and adopt a General Industry Workplace Violence Standard.

SB 553 will urgently and swiftly move the needle forward by establishing a floor of protections for all non-healthcare workers experiencing workplace violence by requiring employers to implement the following safeguards:

The coalition of opponents urge the Legislature to allow Cal/OSHA to continue working on a Multi-Industry Standard instead of copying the provisions of the Healthcare work violence standard that was designed and enacted for healthcare settings. Opposition notes that “hospitals are not the same as the majority of businesses in California.” Opponents highlight the variety of employers that would be impacted by this bill and note that the Cal/OSHA process on its Draft multi-Industry Standard is the more appropriate venue to account for the various workplaces and stakeholders. They note that the process will recommence with stakeholders this summer with a new draft version. Opponents assert that:

SB 553 will not actually prevent any workplace violence, so there is no urgency to supersede Cal/OSHA’s ongoing work. Substantively, SB 533 does not change the realities around workplace violence – namely, that it is a criminal matter that employers are not well-equipped to prevent...Instead, it will, at its core, require businesses to keep more records of these events. While we do not dispute that recordkeeping can be an important part of justice – and certainly many regulations require records be kept – that is not a reason to supersede Cal/OSHA’s ongoing work on this issue...While we certainly support (and are working as part of) Cal/OSHA’s ongoing process to create a workable multi-industry workplace violence standard, SB 553 simply does not advance that effort. Instead, it short-circuits that effort and treats all employers like hospitals.

For a detailed analysis of the proposed changes to occupational safety laws please see the Senate Labor, Public Employment and Retirement Committee analysis of this bill.

SUPPORT

American Federation of State, County, and Municipal Employees (sponsor)
United Food and Commercial Workers Western States Council (sponsor)
California Alliance for Retired Americans
California Food and Farming Network
California Institute for Rural Studies
California Rural Legal Assistance Foundation
California School Employees Association, AFL-CIO
California Teachers Association
Central California Environmental Justice Network
Garment Worker Center
National Union of Healthcare Workers
Nurse Alliance of SEIU California
Pesticide Action Network
Restaurant Opportunity of the Bay
Roots of Change
San Mateo County Central Labor Council
Santa Clara County Wage Theft Coalition
Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
TechEquity Collaborative
Warehouse, Processing and Distribution Workers’ Unit of ILWU
Warehouse Worker Resource Center
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Pistachio Growers
Associated Roofing Contractors
California Association of Sheet Metal and Air Conditioning Contractors, National Association
California Attractions and Parks Association
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Craft Brewers Association
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California Grocers Association
California Landscape Contractors Association
California League of Food Producers
California Manufacturers & Technology Association

California Restaurant Association
California Retailers Association
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Far West Equipment Dealers Association
Flasher Barricade Association
Housing Contractors of California
National Federation of Independent Business
Nisei Farmers League
Official Police Garages of Los Angeles
Plant California Alliance
Residential Contractors Association
Western Agricultural processors Association
Western Electrical Contractors Association
Western Steel Council

RELATED LEGISLATION

Pending Legislation: SB 428 (Blakespear, 2023) expands the circumstances under which employers can seek civil restraining orders on behalf of their employees. SB 428 is on the Senate Floor.

Prior Legislation: ABX 68 (Halpert, Ch. 29, Stats. 1994) established the Workplace Violence Safety Act which authorized employers to seek restraining orders on behalf of employees who suffer unlawful violence or a credible threat of violence, as defined.

PRIOR VOTES:

Senate Committee on Labor, Public Employment, and Retirement (5 - 0)
