

Workplace violence restraining orders limited to threats against employees

By Dan Eaton

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A recent California court of appeal ruling addresses what an employer must show to get a workplace violence restraining order (WVRO) when a customer or other third party mistreats an employee. In *Technology Credit Union v. Rafat*, the court underscored that only a credible threat of violence will warrant a WVRO.

Background

On March 24, 2021, Matthew Rafat, a Technology Credit Union member, went to a branch to open a business account. M.L., the banker who assisted him, had had a single awkward, but not threatening, encounter with Rafat in 2019. (The court referred to TCU employees by their initials to protect their privacy.) M.L. told Rafat he would have to answer a questionnaire and that the account could not be opened that day.

The first question asked the nature of Rafat's business. He responded that he was a "freelance writer." When M.L. said she did not know what that was, Rafat became visibly upset. A plexiglass barrier separated M.L. from Rafat, who was about six feet tall, as he stood over her about three feet away as she was seated. Rafat belittled M.L. and demanded that the account be opened that day. Rafat also was videorecording their encounter. When M.L. became aware of that, she repeatedly asked Rafat to stop recording. He refused. Eventually, M.L. gave Rafat her business card and that of her supervisor. The entire encounter lasted about five minutes.

M.L. later testified that Rafat had frightened her and caused her to have a panic attack. She feared Rafat would return that day and harm her.

Rafat posted the video of the encounter on YouTube, sent an email to M.L.'s manager asking her to investigate the matter, demanded in a phone call that the manager fire M.L., and threatened to file a complaint with a "federal agency" over the incident. Rafat returned to the branch the next day, but did not encounter M.L.

About a week later, TCU filed a petition for a WVRO to restrain Rafat and protect M.L.

Under section 527.8 of the California Code of Civil Procedure, an employer may obtain a restraining order on behalf of any employee who "has suffered unlawful violence or a credible threat of violence" if the employer can show by clear and convincing evidence that an individual has made a "knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose."



(San Diego Union-Tribune)

The trial judge found Rafat had made a credible threat of violence toward M.L. and issued the WVRO. The order barred Rafat from contacting or harassing M.L. or visiting the branch except for legitimate business.

Court of appeal reverses WVRO

The appellate court agreed Rafat's conduct was "indisputably rude, impatient, aggressive, and derogatory," but found that nothing in Rafat's statements or conduct threatened violence toward M.L. "The only threats he made were of litigation and complaints to a federal agency. His actions toward M.L. consisted of berating her, complaining to her supervisor, and posting an accurate video of their March 24 interaction on YouTube."

The court observed that, while TCU found Rafat's conduct extremely troubling, a WVRO is available only where an individual credibly threatens an employee with violence. "Here, Rafat's conduct reasonably caused M.L. to want to avoid any further encounters with him due to his aggressive and rude conduct. In addition, there is substantial evidence that M.L. was actually afraid of Rafat." But that was insufficient to show "a reasonable person would believe Rafat would resort to violence against M.L. or would encourage anyone else to do so."

Other tools to deal with third-party misconduct

A WVRO targets a specific kind of objectionable behavior. In providing its employees with a safe and healthful workplace, an employer has other tools to address obnoxious third-party behavior falling short of a credible threat of violence.

An employer may counsel the offending individual, reassign the employee-victim, order the offender to leave, or stop doing business with the individual altogether and permanently bar him or her from the premises. Indeed, an employer aware of third-party misconduct constituting sexual or other unlawful harassment probably must take one or more of those actions.

Dan Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com. His Twitter handle is [@DanEatonlaw](https://twitter.com/DanEatonlaw).