

INSTRUCTIONS FOR PETITIONS TO PROHIBIT WORKPLACE VIOLENCE

Under Indiana Code 34-26-6, courts can issue orders to protect an employee from unlawful violence or credible threats of violence. These orders can be requested by the employer of a person who is the target of unlawful violence or credible threats of violence, and will be enforced by law enforcement officers. These orders are called “Workplace Violence Restraining Orders” (WVRO’s). There are 2 kinds of WVRO’s—a temporary restraining order (TRO) issued without a hearing that lasts a maximum of 15 days, and an injunction (an order issued after a hearing) that lasts up to 3 years.

The employer asking for these orders is called the “plaintiff”. The plaintiff needs to file a petition in a court of record, on behalf of his or her employee, against the other person (the “defendant”) to get these orders. There will be a court hearing within 15 days of the filing of the petition.

This instruction booklet explains what court orders an employer can get and how to get them. These instructions cannot cover all of the problems and questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see an attorney. The Clerk, the Court, and other court staff are prohibited from giving you legal advice.

These forms can be used only by an employer of a person who is the target of unlawful violence or a credible threat of violence.

GENERAL INFORMATION

Who can get a court order under this law?

This statute allows **employers** to obtain court orders prohibiting unlawful violence or credible threats of violence against their employees. To get an order under this law, the plaintiff **must** be an employer. An employer means:

- a person defined as an employer, including
 - an individual;
 - a partnership;
 - an association;
 - a limited liability company
 - a corporation;
 - a business trust;
 - the state;
 - a governmental agency; or
 - a political subdivision;that has at least two (2) employees during any work week.

Before completing the forms needed to obtain court orders under this statute, make sure you meet the definition of “employer”.

Whom can an employer protect under this law?

Under this statute, employers can obtain court orders, known as **Workplace Violence Restraining Orders (WVRO’s)** which last up to 3 years on behalf of employees and certain family or household members. The definition of an employee includes:

- a person employed or permitted to work or perform a service for remuneration;
- a member of a board of directors for a private, public, or quasi-public corporation;
- an elected or appointed public officer; and,
- a volunteer or an independent contractor who performs services for an employer at the employer’s place of work.

An employer may seek protection under this law if:

1. An employee has experienced **unlawful violence** or a **credible threat of violence** from any person;
2. The unlawful violence or credible threat of violence **did occur at the workplace** or **can reasonably be construed to be carried out in the workplace**;

3. The defendant's conduct is **not part of a labor dispute**; and,
4. The defendant is **not engaged in constitutionally protected activity**.

What is “unlawful violence”?

“**Unlawful violence**” is defined by the law as meaning Battery under IC 35-42-2, or Stalking under IC 35-45-10. In Indiana, a “battery” occurs when one person knowingly or intentionally touches another person in a rude, insolent, or angry manner, except in self-defense or defense of others.

According to the Indiana criminal code, “**Stalking**” means a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened, and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

What is a “credible threat of violence”?

A “credible threat of violence” under this law means a knowing and willful statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate family.

What does “course of conduct” mean?

The term “course of conduct” as used in the WVRO law means a pattern of conduct composed of a series of acts over time, however short, indicating a continuity of purpose, that includes the following:

- (1) Following or stalking an employee to or from the employee's place of work;
- (2) Entering the employee's place of work;
- (3) Following an employee during the employee's hours of employment;
- (4) Making telephone calls to an employee during the employee's hours of employment;
- (5) Sending correspondence to an employee by means such as public or private mail, interoffice mail, fax, or electronic mail.

What do you need to get the court orders or to object to them?

1. Workplace violence **forms**, available from the court clerk's office, legal publishers, or from the following Web site:
<http://www.in.gov/judiciary/forms/po.html>
2. Someone, other than yourself, 18 years of age or older, to deliver (“serve”) certain papers to the other party.

What forms must be used for petitioning under the workplace violence law and for opposing those petitions?

1. *Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee* (“Petition”). This form tells the judge the facts of the plaintiff's case and what orders the plaintiff wants the court to issue. This form is mandatory—it must be used to ask for a **WVRO**.
2. *Order to Show Cause and Temporary Restraining Order*. The *Order to Show Cause*, when signed by the judge, tells the defendant to come to court for the hearing. It may include a *Temporary Restraining Order* that takes effect immediately and stays in effect until the hearing (not more than 15 days). A Temporary Restraining Order is one type of **WVRO** (**Workplace Violence Restraining Order**).
3. *Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence* (“Response”). The defendant files this form to state objections to the orders the plaintiff has asked the court to issue and to give his or her side. This form is mandatory—it must be used by a defendant to respond to a petition.
4. *Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee* (“Injunction”). This is the form signed by the judge after the hearing. This order will stay in effect for up to 3 years, depending on what the judge decides. The order issued after a hearing, or injunction, is the other type of WVRO.
5. *Proof of Personal Service* and *Proof of Service of Completed Response*. These forms are used to show that the other party has been served with the legal documents as required by law.

Should you see a lawyer?

In general, you have the right to file a petition or defend against one and go to court with or without an attorney. Because your situation may involve unique problems, you may want to consult with an attorney. Whether or not you have a lawyer, the other party may have one.

If the employer is a corporation, the rules that govern the corporation's representation before a particular court apply.

What does the phrase “ex parte” mean?

The term “ex parte” means “one-sided.” A basic principle in our legal system is that **all sides** to a dispute get to present their case to a judge before the judge makes a decision on the case and issues an order or a ruling. All parties to a case have a **right to be notified** that a legal action is being taken against them, and they have a **right to be heard** and to dispute the action in court.

An ex parte order is contrary to this principle. It is issued after the judge has only heard one side of the case, and before the opposing side even has notice that legal action is being taken against them. An ex parte order is rare in the justice system. Ex parte orders are granted by courts in exceptional circumstances. If you are requesting a TRO in this case, that means you are requesting an “ex parte” order.

Are TRO's automatically issued?

No. As just explained, orders of this type are only granted in exceptional circumstances. Court orders are not issued just because a person asks for one. It is important that you pay attention to every detail in filling out your Petition. The Judge who reviews the Petition will carefully examine the information in the Petition to determine if the situation meets the statutory, or legal, requirements for a TRO.

Why might my request for a TRO be denied?

There are many reasons why the TRO might be denied. Some of the most common reasons include:

- The parties do not fit the statutory, or legal, definition of “employer” and “employee”.
- The parties do not meet Indiana residency or employment requirements.
- The factual allegations do not meet the statutory, or legal, definitions of “unlawful violence”, or of a “credible threat of violence”.
- The allegations are vague. They lack a clear and understandable description of the time, place, or acts of the incident.
- If you are relying solely on what another person saw or told you, a failure to have a sworn affidavit from that other person.

INSTRUCTIONS FOR PLAINTIFFS

What steps need to be taken to get the court orders?

1. You will need at least 5 copies of each workplace violence form: one for a worksheet; the original to file with the court; a copy to be personally delivered (served) to the defendant; and, two copies for yourself. In addition, you will need extra copies of the *Order to Show Cause/TRO*, the *Order After a Hearing/Injunction*, and the *Proof of Service* forms. Get at least 3 extra copies for yourself. Finally, you will need a *Confidential Form*.
2. Fill in the *Petition* and the *Order to Show Cause/TRO* except for the dates for the court hearing and service, the case number, and the judge's signature. Courts may require that the forms be typewritten. **The Petition is a public document. A copy of the Petition will be kept in the Court's file. Also, if a TRO is granted or if the case is set for a hearing, a copy of the Petition will be sent to the defendant.**
 - a. If you are not represented by an attorney, fill in your name, mailing address, and phone number at the end of the *Petition*. You may, but are not required to, provide a fax number and e-mail address where you may be contacted.
 - b. Fill in the name of the county where the case will be filed and the court name.
 - c. Type your full name, the defendant's full name, and the employee's full name. If you are seeking orders to protect more than one employee, you should fill out a separate set of forms for each employee to be protected. If you need more space, attach additional pages and refer to the additional pages in Paragraph 20 of the *Petition* form.
 - d. Check ("X") all boxes that apply to your case. Read each item carefully and fill in the necessary information. Be specific.
 - e. Remember to date and sign the *Petition*.
3. If you are applying for a TRO, you must give the details of the recent acts of violence or credible threats of violence and the problems they have caused your employee. Place an "X" in the caption of the *Petition* next to "Application for Temporary Restraining Order."

To obtain a TRO, you must notify the defendant of the application for the order unless both of the following requirements are satisfied:

- a. It appears from the facts in the *Petition* (and/or affidavits) that great or irreparable injury will result before the case can be heard with notice given to the defendant; **and**,
- b. You or your attorney certifies one of the following to the judge under oath:
 - (1) That within a reasonable time before filing the *Petition* you informed the defendant or the defendant's attorney, orally or in writing, at what time and where the application for a TRO would be made; **or**,
 - (2) That you in good faith attempted, but were unable to, inform the defendant and the defendant's attorney, and you specify the efforts you made to contact them; **or**,
 - (3) That for reasons you specify in writing, you should not be required to inform the defendant or the defendant's attorney.
4. If you are seeking WVRO's on the basis of information given to you by other persons (for example, the employee who was threatened, or other employees), and not on the basis of what you personally observed, you must attach to the *Petition* affidavits by the people who have personal knowledge of the facts that support the granting of a WVRO.
5. Take all of your completed forms and all copies to the clerk's office. The clerk will tell you where to take your papers.
6. If the judge signs the *Order to Show Cause*, take the original and all copies back to the court clerk. The clerk will place a case number on all of the papers. The clerk will file-stamp the copies (showing the date of filing). The clerk will file the originals and give you the copies. Ask for at least 3 file-stamped copies. Keep at least one for yourself and give the others to the employee and other people, if any, who are protected under the WVRO. If you or the employee has to call the police, they will want to see the copies of your papers. The clerk will keep the *Confidential Form* so that the WVRO can be entered into the computer system in order to allow the police to verify it.
7. Have the defendant personally served with copies of the *Petition* and the *Order to Show Cause*, and the blank forms of the *Response* and *Proof of Service of Completed Response*. You **cannot** serve the defendant yourself. Service may be made by a sheriff, by a deputy of the sheriff, or by a person specially or regularly appointed by the court for that purpose. A person who is not a sheriff, a sheriff's deputy, or a court-appointed process server can serve legal papers, as long as he or she testifies to the court about the service, acts promptly, and exercises reasonable care to cause service to be made. In most cases, the sheriff or a deputy

will serve the papers for you. The clerk will tell you how to get the papers to the sheriff's office for service. If you use someone other than a sheriff, a deputy, or a court-appointed server, that person will need to fill out the *Proof of Service* forms and return them to the clerk.

Service is very important. It tells the defendant about the order and the hearing. Without it, there will not be a court hearing and your temporary order will expire unless the judge extends it. The defendant must be personally served immediately after the orders are signed by the judge, unless the judge specifies a different time for service.

8. If you have requested a temporary order and the judge granted it, get file-stamped copies of the TRO and immediately deliver a file-stamped copy of the TRO to each law enforcement agency (police, sheriff, town marshal, etc.) that you want to be aware of the order and enforce it.
9. After the defendant has been personally served, the person who served the defendant must complete and sign the original Proof of Service form and return it to the court clerk. You should obtain file-stamped copies of this form—some to keep for yourself, and some to deliver to the law enforcement agencies you visited in Paragraph 8 above.
10. Go to the court hearing with any and all evidence you might have. The *Order Issued After a Hearing/Injunction* should be filled in and given to the judge for signing. If there are any witnesses to the defendant's conduct, they should also be at the hearing.
11. If the judge signs the *Order Issued After a Hearing/Injunction*, file the original with the clerk and get file-stamped copies. You should immediately deliver some of those copies to the law enforcement agencies you want to know about the WVRO.

If the defendant was not present in court for the hearing, arrange to have the defendant personally served with a copy of the *Order Issued After a Hearing/Injunction*. Again, make sure the completed *Proof of Personal Service* form is filed with the court and deliver file-stamped copies to the law enforcement agencies. Keep at least 3 copies for yourself—one for your employee, one for any other protected person, and one to keep for yourself.

INSTRUCTIONS FOR THE DEFENDANT

1. If you are served with an *Order to Show Cause*, and a *Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee*, you should promptly seek legal advice. If you have no attorney, the lawyer referral service of your local bar association may be helpful. The Clerk, the Court, and other court staff are prohibited from giving you legal advice.
2. Read the papers served on you very carefully. The *Order to Show Cause* tells you when to appear in court and may contain a temporary restraining order (TRO) forbidding you from doing certain things. **If you disobey the court's orders, criminal charges may be filed against you.**
3. If you wish to oppose the *Petition*, or to make your own request for court orders, you must file a *Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against an Employee* ("Response").

In addition to the *Response*, you may file and serve affidavits signed by people who have personal knowledge of the facts. These people are, of course, witnesses, and they must come to the hearing with you. After you have filed the *Response* with the clerk of the court, a copy must be delivered personally or by mail to the plaintiff or the plaintiff's attorney.

You cannot serve the plaintiff yourself. The person who does serve your papers should complete and sign a *Proof of Service of Completed Response* form. You should make sure that form is filed with the clerk of the court.

4. If you wish to oppose the *Petition*, in addition to filing a *Response*, you should be present at the hearing. If you have any witnesses, they must also be present.