



California Expands “Red Flag” Law To Permit Gun Violence Restraining Orders In Workplaces And Schools

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Mass shootings have become a tragic reality in the United States. Recent years have witnessed a number of high-profile incidents at schools, workplaces, churches, and other public places. While the country remains deeply divided about the cause of such incidents and how to prevent them, there has been significant bipartisan discussion, at both the national and state levels, about so-called “red flag” laws as a potential tool to combat gun violence.

These laws generally authorize a temporary restraining order to remove firearms from the possession of a threatening person. As in other areas, California recently pushed the envelope by expanding its own version of a red flag law to permit employers, coworkers, and teachers to pursue a restraining order. This may raise a number of interesting issues for employers in the Golden State.

“Red Flag Laws” and Gun Violence Restraining Orders

As mentioned above, a “red flag” law is generally a state law that authorizes the police or a close family member to seek a restraining order to remove firearms from the possession of an individual who has been deemed to constitute a threat to themselves or others. Connecticut was the first state to adopt such a law in 1999, and today 17 states authorize such actions in one form or another.

A “gun violence restraining order” (or GVRO) is different from a “workplace violence restraining order,” with which many employers are already familiar. The latter generally involves a restraining order sought by an employer or an individual employee seeking to bar an individual from the premises – such as a violent spouse or ex-spouse or a stalker. A GVRO, on the other hand, seeks to temporarily remove firearms from the possession of a person who is a danger. In general, the request is made to a judge who makes the final determination whether to grant or deny such a request.

California Expands Red Flag Law To Workplaces And Schools

California has had a red flag law on the books since 2014. It currently only permits law enforcement officials and close family members of individuals to seek a restraining order. However, first-year Governor Gavin Newsom recently signed into law [Assembly Bill 61](#), which will soon expand California law to include employers, coworkers and teachers as those eligible to seek a GVRO. The new law goes into effect on January 1, 2020.

Under AB 61, California's red flag law will allow the following individuals to request GVROs regarding another person:

- An employer of the subject of the petition;
- A coworker of the subject of the petition, if they have had "substantial and regular interactions with the subject for at least one year" and have obtained the approval of the employer; and
- An employee or teacher of a school that the subject has attended for the last six months, if the employee or teacher has obtained the approval of administrators.

Some state "workplace violence restraining orders" also include the confiscation of firearms as a condition of the restraining order. However, California appears to be the first state to authorize employers to directly request gun violence restraining orders. Other states may soon follow suit, so even employers in other states should pay close attention to this trend.

Considerations for Employers

In some situations, the ability to request a gun violence restraining order could be a valuable tool for employers in the ongoing effort to prevent workplace violence. However, various areas of law converge when employers are confronted with these issues – including workers' compensation issues, OSHA issues, and potential tort liability.

California's new law specifies that it does not "require" a person to seek a gun violence restraining order. However, an employer who has evidence of potential gun violence by an employee, or who receives a restraining order request from a coworker, could face potential arguments that a duty to act was created. Someone could allege an employer was negligent if it does not pursue such a restraining order.

Therefore, best practice demands that you sit down with counsel to discuss and consider these issues in a comprehensive and proactive manner. As we discussed [here](#) and [here](#), it is important for employers to consider working with counsel to develop an appropriate Workplace Critical Incident Protocol (WCIP). For employers doing business in California, the discussion and development of any WCIP should now address gun violence restraining orders and your process and procedures for dealing with such issues.

In some state and local jurisdictions, you must also navigate the complicated issue of whether to allow concealed weapon permit holders to carry guns at work. We recently discussed the potential legal risks and pros and cons of this topic [here](#).

Like it or not, employers need to be prepared to face these issues. Occurrences of workplace shootings continue at an alarming rate, as reported in the media on a frequent basis. You should consult with legal counsel and safety experts regarding this critically-important workplace safety issue.

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