

SEC. 21. Section 527.8 of the Code of Civil Procedure is amended to read:

<< CA CIV PRO § 527.8 >>

527.8. (a) 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, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(b) For the purposes of this section:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is 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.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms "employer" and "employee" mean persons defined in Section 350 of the Labor Code. "Employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein.

"Employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the employee, or other persons employed at his or her workplace or workplaces.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i)(1) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(2) At the request of the plaintiff, an order issued under this section shall be served on the defendant,

regardless of whether the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The plaintiff shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the plaintiff or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and obtain the defendant's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the defendant into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of **Sections** 273.6 and ~~***~~**29825** of the Penal Code. The plaintiff shall mail an endorsed copy of the order to the defendant's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(j)(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to ~~***~~Section **29825** of the Penal Code.

(k) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(l) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(m) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a temporary restraining order or injunction to be issued pursuant to this section if either of the following conditions apply:

(A) The temporary restraining order or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or injunction issued pursuant to this section is based upon a credible threat of violence.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

C

Effective: January 1, 2003

West's Annotated California Codes Currentness

Labor Code (Refs & Annos)

Division 2. Employment Regulation and Supervision (Refs & Annos)

Part 1. Compensation (Refs & Annos)

☐ Chapter 1. Payment of Wages

☐ Article 1. General Occupations (Refs & Annos)

→ § 230. Jury duty; legal actions by domestic violence and sexual assault victims; right to time off; reinstatement and reimbursement; misdemeanor; right to file complaint with Division of Labor Standards Enforcement

(a) An employer may not discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.

(b) An employer may not discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) An employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

(d)(1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or

sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a), (b), or (c) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(f)(1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), or (c) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (c) shall have one year from the date of occurrence of the violation to file his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(h) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

C

Effective: January 1, 2004

West's Annotated California Codes Currentness

Labor Code (Refs & Annos)

Division 2. Employment Regulation and Supervision (Refs & Annos)

Part 1. Compensation (Refs & Annos)

Chapter 1. Payment of Wages

Article 1. General Occupations (Refs & Annos)

→ § 230.1. Employers with 25 or more employees; domestic violence and sexual assault victims; right to time off

(a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to attend to any of the following:

- (1) To seek medical attention for injuries caused by domestic violence or sexual assault.
 - (2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault.
 - (3) To obtain psychological counseling related to an experience of domestic violence or sexual assault.
 - (4) To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.
- (b)(1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.
- (2) When an unscheduled absence occurs, the employer may not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:
 - (A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d)(1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (a) has one year from the date of occurrence of the violation to file his or her complaint.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section may not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

(g) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

CREDIT(S)

(Added by Stats.2000, c. 487 (A.B.2357), § 3. Amended by Stats.2001, c. 159 (S.B.662), § 157; Stats.2002, c. 664 (A.B.3034), § 159; Stats.2002, c. 275 (A.B.2195), § 2; Stats.2003, c. 62 (S.B.600), § 204.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Section 1 of Stats.2000, c. 487 (A.B.2357), provides:

"(a) This act shall be known and may be cited as the Victims of Domestic Violence Employment Leave Act.

"(b) The Legislature finds and declares the following:

"(1) Domestic violence affects many persons without regard to age, race, educational level, socioeconomic status, religion, or occupation.

"(2) Domestic violence is a crime that has a devastating effect on families, communities, and the workplace.

"(3) Domestic violence impacts productivity, effectiveness, absenteeism, and employee turnover in the work- place.

"(4) The National Crime Survey estimates that 175,000 days per year are missed from paid work due to domestic violence.

"(5) The study also found that 56 percent of the victims were late for work at least five times a month, 28 percent of the victims had to leave work early at least five times a month, and 54 percent missed at least three days a month, all due to domestic violence.

"(6) Victims of domestic violence may be vulnerable at work when trying to end an abusive relationship because the workplace may be the only place where the perpetrator knows to contact the victim.

"(7) Employers must be sensitive to the needs of employees who are experiencing domestic violence and be responsive to those needs through personnel leave and benefits policies.

PROHIBITING WORKPLACE VIOLENCE

Policy Prohibiting Employee Violence in the Workplace

The City is committed to maintaining a workplace free from violence and threats of violence, and will not tolerate acts or threats of violence in the workplace.

Definition of “Violence”

“Violence” includes both acts and threats of violence. For example, violence includes any conduct, verbal or physical, which causes another to reasonably fear for his or her own personal safety or that of his or her family, friends, associates, or property.

Policy

No employee may possess, store, or have control of any weapon on the job, including firearms and knives, except where required by the City department in the performance of the employee’s official duties.

- Any act or threat of violence made or committed at the workplace is prohibited.
- Any act or threat of violence should be reported immediately.

Failure to comply with these policies may result in employee discipline up to and including termination as well as criminal prosecution.

Reporting and Responding to Workplace Violence

All employees are responsible for reporting any acts of intimidation, threats of violence, or acts of violence to their supervisor, department head, or Management Response Team (MRT) member. Supervisors and managers are responsible for documenting and reporting all observed or reported incidents of workplace violence.

Such action may include:

1. Filing a Police Report.
2. Removing a person from the workplace as quickly as safety permits from the workplace as a substantial threat, exhibits threatening behavior, or engages in violence. Said person may be placed on unpaid administrative leave and should remain off the work site pending the outcome of an investigation into the incident.
3. Relocating the employee (either the employee committing the violent conduct or the employee who is the target of the conduct) if it would improve workplace safety. In these instances, management should work with Human Resources to determine whether relocation of the employee to an alternate work site would be feasible and appropriate.
4. Where it is consistent with the needs of the Department and the terms of the collective bargaining agreement, adjusting an employee's (either the employee committing the violent conduct or the employee who is the target of the conduct) work schedule and/or granting paid leave, e.g., sick leave, vacation, or compensatory time off, if the same would be beneficial to workplace safety. Management must follow all applicable personnel policies and procedures, collective bargaining agreements and statutes.
5. Obtaining an evaluation from a threat assessment specialist.
6. Initiating and following through with appropriate disciplinary action against employees who engage in workplace violence, up to and including termination.
7. In the event the employee is separated from the department, recommending restrictions on future employment with the City.
8. Providing written directives to the employee regarding his or her workplace conduct. Management should comply with all civil protection and restraining orders. If you believe that a violation of a protection order is occurring in the workplace, call the police. If both parties to a civil protection order are employees of the City, managers should contact Human Resources, and/or the Office of the City Attorney for instructions on how to comply with the order.

Management should post the City's Policy Prohibiting Workplace Violence and Workplace Violence Guidelines on the designated official posting areas.

Appointing Officer or Department Head:

Each Appointing Officer or designee shall create a Management Response Team for his or her department and notify all department employees how to contact Management Response Team members. Individuals may be added to or removed from the Management Response Team at the discretion of the Appointing Officer.

Counseling/Employee Assistance Program (EAP)

The City maintains an Employee Assistance Program to assist employees and their families with personal or emotional issues. Employees who have violent tendencies are encouraged to voluntarily seek diagnosis and treatment by qualified professionals. The Management Response Team or designee may contact the EAP on behalf of an employee if there is a violence related concern.

Participation in the EAP is encouraged, but will not shield employees from disciplinary action. The EAP may be used as a resource for individuals or a group of employees that are impacted by an actual or potential workplace violence incident.

Incidents of workplace violence must be reported even if the employee is an EAP participant.

CONFIDENTIALITY

To the extent practical, disclosures made to the City concerning any threatening or violent situation, or any potentially threatening or violent situation, shall be treated as confidential.

INTERPRETATION

These guidelines are not intended to create an obligation on the part of the City to take any action beyond those required by law.



Workplace Violence Guidelines

Developed by
the Department of Human Resources
and the Office of the City Attorney

Workplace Violence Guidelines

PURPOSE

To implement the Policy Prohibiting Violence In The Workplace adopted by the Civil Service Commission on April 3, 1995.

DEFINITIONS

"*Workplace violence*" is violence that impacts the workplace or work site, as these terms are defined below.

"*Workplace*" or "*work site*" refers to all areas, including facilities and surrounding parking areas on or off the premises where employees perform duties in the scope of their employment for the City and County of San Francisco.

"*Violence*" refers to both acts and threats of violence. For example, violence includes any conduct, verbal or physical, which tends to cause another to reasonably fear for his or her own personal safety or that of his or her family, friends, associates or property. Threats include direct or indirect, intentional or unintentional, words or actions targeted at self or another individual. Threats may be general in nature such as exhibiting an unusual fascination with incidents of violence or an unhealthy fascination with the destructive power of weapons.

"*Weapon*" includes, but is not limited to, firearms, knives, weapons as defined in California Penal Code section 12020, or other instruments used to injure, threaten or intimidate.

"*Management Response Team*" refers to the individuals who are assigned to investigate and respond to workplace violence. The team may include managers and supervisors within a department as well as persons from other departments who will be able to consider the interests of the City and its employees.

GENERAL GUIDELINES

1. If you are in immediate danger, call the police.

2. Pursuant to the Policy Prohibiting Violence in the Workplace, employees are prohibited from bringing weapons to the workplace, unless they are required to do so by the City and County of San Francisco in order to perform their official duties.

3. Immediately report all incidents of workplace violence to your supervisor, department head, or member of your department's Management Response Team.

4. Any person who engages in workplace violence will, as appropriate, be removed from the premises as quickly as safety permits and remain off the work site pending the outcome of an investigation into the incident.

5. The investigation will be conducted by the Management Response Team or designee.

6. If the investigation substantiates a violation of the Policy Prohibiting Violence in the Workplace, the City will take appropriate action.

If an employee violates the Policy, appropriate action may include, but is not limited to, referral to EAP, counseling, written warning, suspension, reassignment of duties, termination, and/or legal action. Any employee who is terminated due to violation of the policy may be ineligible for future employment with the City.

If a person who is not employed by the City violates the Policy, appropriate action may include, but is not limited to, seeking arrest and prosecution and/or other legal action.

RESPONSIBILITIES

All Employees:

All employees are responsible for reporting workplace violence to a supervisor, department head or member of the Management Response Team. Failure to comply with this provision may result in discipline. An employee's duty to report arises in, but is not limited to, the following situations:

1. Employees must report all threats or acts of violence which occur at the workplace that they experience, witness, or of which they otherwise become aware.

2. Employees must report all threats or acts of violence they experience while acting in the scope of their employment off the work site.

3. Employees must report any threats or acts of violence occurring off the City premises which they are a target, if there is a reasonable basis to believe that the violence will follow them to the workplace. This may apply to notification by third party of threats against them. Where the third party is a physician or psychologist, the notification is commonly referred to as a "Tarasoff" warning.

4. Employees must report any conduct verbal or physical, which indicates a person intentionally may harm him/herself at the workplace.

Employees must report threats or acts of violence regardless of the relationship between them, the individual making the threat and the person threatened. Employees who apply for or obtain a protective or restraining order which lists themselves or any City employee, or which identifies any City workplace as a protected area are encouraged to notify the employee's supervisor, department head or Management Response Team providing a copy of any such order and supporting documentation used to seek the order.

Management and Supervisory Employee:

In an emergency, call the police. If there is the possibility for serious injury alert others to leave the area or take cover.

Management shall be committed to providing a safe workplace and protecting employees from threats to their safety to the full extent required by law.

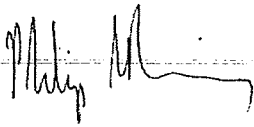
All incidents of workplace violence must be documented by the manager and reported to the Management Response Team immediately.

Upon receiving a report of workplace violence, the Management Response Team or designee shall conduct an investigation.

In response to incidents of workplace violence and after consultation with the Management Response Team, management should take corrective action consistent with the Policy Prohibiting Violence in the Workplace and these Guidelines.

MEMORANDUM
DHR #14-2005

To: Department Heads
Personnel Officers

From: Philip A. Ginsburg 
Director

Date: July 25, 2005

Subject: New Department of Labor (DOL) Fair Labor Standards Act (FLSA) Regulations Regarding Suspensions

The U.S. Department of Labor has promulgated FLSA regulations clarifying issues related to exempt employees and the Act's "salary basis" test. These regulations took effect on August 23, 2004. Under the DOL's prior regulations, suspensions of exempt employees in increments of one or more *weeks* would not violate the salary basis test. Under the new regulations, an employer is free to suspend exempt employees in *one-day* increments for violations of certain "workplace conduct" rules under some circumstances.

First, the work rule must be imposed pursuant to a written policy; the policy must be applicable to all employees. 29 CFR § 541.602(b)5.¹ Not all workplace rules may support one-day suspensions. The workplace rules cannot apply to performance and attendance issues. They must refer to "serious harassment, violence, drug or alcohol violations, or violations of state or federal law." According to the DOL, this exception to the one-week rule should be construed narrowly so not as to undermine the essential guarantees of the salary basis test." 29 CFR Part 541, Preamble, Fed. Register, Vol. 69, No. 79, April 23, 2004 at 22177.

Second, the written policy must be applicable to all employees, and must put employees on notice that violations thereof may lead to an unpaid disciplinary suspension. The Preamble to the new regulations makes clear that the workplace policy in question "need not include an exhaustive list of specific violations that could result in a suspension." Thus, it appears that the work rule violation must at least stem from a written policy,

¹ The pertinent portion of the new regulation reads as follows:

Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed *pursuant to a written policy applicable to all employees*. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

29 CFR 541.602(b)(5) (emphasis added).

To: Department Heads and Personnel Offices
Date: July 25, 2005
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even if the policy does not specifically address the exact misconduct at hand. 29 CFR Part 541, Preamble, Fed. Register, Vol. 69, No. 79, April 23, 2004 at 22177-78.²

It is recommended that departments reduce as many workplace rules to writing as possible. In addition, all policies should be reviewed to make sure that they apply to all employees and put employees on notice that violations of the policies may lead to unpaid disciplinary suspensions.³

CONCLUSION

While the Department of Labor has promulgated new regulations allowing employers much more freedom to suspend exempt employees in periods of less than a week, departments should only rely on these regulations for violations of workplace conduct rules: (a) contained in or generally addressed in a written policy distributed to all or substantially all employees; (b) involving serious workplace policies such as sexual or racial harassment, workplace violence, substance abuse or violations of state or federal law; (c) that place employees on notice that violations of the policy may lead to unpaid disciplinary suspensions; and (d) that are applicable to all employees.

I would like to thank Martin Gran of the City Attorney's Office for his diligence and work on this matter.

Please feel free to contact your DHR Client Services Representative or Deputy City Attorney, Martin Gran at 554-4291 if you have any follow-up questions.

² The DOL Preamble states in part:

The Department has decided to retain the requirement that the policy be in writing, on the assumption that most employers would put (or already have) significant conduct rules in writing, and to deter misuse of this exception. This provision is a new exception to the salary basis test, and the Department does not believe restricting this new exception to written disciplinary policies will lead to changes in current employer practices regarding such policies. *However, the written policy need not include an exhaustive list of specific violations that could result in a suspension, or a definitive declaration of when a suspension will be imposed. The written policy should be sufficient to put employees on notice that they could be subject to an unpaid disciplinary suspension.* We have clarified the regulatory language to provide that the written policy must be "applicable to all employees," which should not preclude an employer from making case-by-case disciplinary determinations. Thus, for example, the "written policy" requirement for this exception would be satisfied by a sexual harassment policy distributed generally to employees, that warns employees that violations of the policy will result in suspension or termination.

29 CFR Part 541, Preamble, Fed. Register, Vol. 69, No. 79, April 23, 2004 at 22177-78 (emphasis added).

³ The new regulation also allow employers to limit the damage of making improper deductions (i.e., making deductions that threaten an employee's exempt status) by: (a) clearly communicating a policy that prohibits improper deductions, (b) creating a complaint mechanism for employee who feel that deductions were improper, and (c) making a good faith commitment to comply in the future. 29 CFR 603(d).

POLICY PROHIBITING VIOLENCE IN THE WORKPLACE

PART I: PROHIBITING EMPLOYEE VIOLENCE IN THE WORKPLACE

Under the authority of Section 3.660 of the Charter of the City and County of San Francisco, the Civil Service Commission adopts the following policy on workplace safety:

I. POLICY

It is the policy of the City and County of San Francisco to require employees to treat co-workers and members of the public with courtesy and respect. The City and County of San Francisco will not tolerate any assaults, battery or threats or acts of violence by employees in the workplace.

Employees are also prohibited from bringing weapons to the job, unless required by the City and County department in the performance of the employee's official duties. Weapons include, but are not limited to, firearms, knives or weapons defined in the California Penal Code Section 12020.

Failure to comply with this policy may result in employee discipline up to and including termination.

II. REPORTING

Employees have the responsibility to report any threats or acts of violence to their respective supervisors. When notified by a health care provider of a threat against an employee ("Tarasoff Warning"), the department head, Human Resources official, personnel official, or designee shall notify the affected employee as soon as possible.

III. INVESTIGATION

Supervisors and managers through the department head, Human Resources official, personnel official, or designee have the responsibility to investigate any reported incidents of threats or acts of violence by any employees and to take appropriate action.

IV. REMEDIAL ACTION

Appropriate action taken by the department head, Human Resources official, personnel official, or designee may include, but is not limited to, one or more of the following depending on the nature of the threat or act of violence:

- Calling Emergency Response "911" if the threat is immediate and lifethreatening;
- Placing the employee on administrative leave in accordance with Charter Section 8.341 or suspension in accordance with Charter Section 8.342;
- Referring the matter to the City Attorney to determine if a restraining order is appropriate;
- Requesting the Human Resources Director to schedule a medical examination to determine fitness for duty;
- Imposing disciplinary action up to and including dismissal or termination;
- Admonishing the employee(s) that such behavior is unacceptable and will not be tolerated;
- Referring the employee to the Employee Assistance Program or to a health care/medical provider.
- Any employees who are a target of an act or threat of violence may be referred to the Employee Assistance Program or other support services;
- Other measures may be taken as appropriate under the circumstances.

Adopted April 3, 1995.

employment. The department shall provide for such waiver of temporary or seasonal employment as it may deem just to candidates.

Notwithstanding anything to the contrary in this or any other provision of the charter, an employee who has been certified from a regularly adopted eligible list to a non-permanent position in a civil service classification shall be entitled to appointment to a permanent position within that same classification before the department certifies to the appointing officer the names and addresses of persons standing higher on the list of eligibles who are not then current employees, subject to a demonstration of satisfactory job performance in the non-permanent position for a period and in the manner provided by rule of the commission. The provisions of this section as herein amended shall only be applicable to requisitions for permanent positions filled from and after January 1, 1980.

A8.341 REMOVAL OR DISCHARGE OF PERMANENT, NON-PROBATIONARY EMPLOYEES

A. Any person employed under the civil service provisions of this charter, exclusive of members of the uniformed ranks of the police and fire departments as provided under Section 8.343 hereof, in a position defined by the commission as "permanent" may be removed or discharged by the appointing officer for just cause, after being provided with written notice of the charges, copies of all documentation upon which the charges are based and after an opportunity to respond to the charges before the appointing officer or his or her designee. Pending investigation of conduct involving misappropriation of public funds or property, misuse or destruction of public property, drug addiction or habitual intemperance, mistreatment of persons, immorality, acts which would constitute a felony or misdemeanor involving moral turpitude, or acts which present an immediate danger to the public health and safety the appointing officer may place the accused person on unpaid administrative leave for no more than 30 days unless the investigation shall be delayed beyond such time by the act of the accused person. When the appointing officer imposes discharge or removal he or she shall, in writing, notify the person removed or discharged of the right to appeal the discharge or removal by mailing such statement to his last known address. The employee

shall have thirty days from the date of mailing of the notice to file an appeal of the matter in writing with the appointing officer. Upon receipt of a timely appeal, the appeal shall be conducted forthwith by a qualified and unbiased hearing officer who shall be employed under contract by the city and county and selected by procedures set forth in the rules of the civil service commission. The hearing officer shall publicly hear and determine the appeal, and may approve the discharge or removal, or exonerate, or suspend the accused.

If the employee is exonerated the hearing officer may, at his or her discretion, order payment of salary to the employee for the period of the discharge or removal or unpaid administrative leave, and the report of such period of discharge or removal or unpaid administrative leave shall thereupon be expunged from the record of service of such employee.

The civil service commission shall immediately be notified of the charges when made, of the action of the appointing officer to remove or discharge, of the appeal, and of the finding thereon. The finding of the hearing officer shall be final.

The civil service commission may remove or discharge an employee for any charge filed by a citizen or by any member of or authorized agent of the commission when the appointing officer neglects or refuses to take such action against the employee within 30 days of notification to the department head of the occurrence or event giving rise to the charge. Removal or discharge may be made for any cause after the employee is provided with written notice of the charges, copies of all documentation upon which the charges are based and after the employee has had the opportunity to respond to the charges before the civil service commission or its designee. The decision of the civil service commission shall be final.

Nothing in this section shall limit or restrict rules adopted by the commission governing dismissal of probationary employees, lay-offs or reduction in force or providing for the removal of any appointee who has abandoned his or her position as defined by civil service commission rule.

B. Notwithstanding the provisions of Subsection A above, a recognized employee organization and any affected city department may agree to alternative procedures, including final and binding arbitration by a neutral arbitrator jointly selected by the employee organization and the city, to deal with charges brought