

When should you seek an injunction against workplace harassment?

by Jodi R. Bohr
Tiffany & Bosco, P.A.

Craig, a 27-year-old janitor, was recently hired by a janitorial company. After being hired, he accepted his uniforms and signed an acknowledgment stating the cost of the uniforms would be deducted from his paycheck. After a week of working for the company, Craig decided that being a janitor just wasn't for him, so he quit.

The company processed Craig's paycheck and sent it to him in accordance with Arizona and federal law. The cost of the uniforms was deducted from his paycheck. When Craig received his check, he was furious that the uniform costs had been deducted.

Craig immediately began making phone calls to his direct supervisor and the company's HR manager. He threatened to shoot his supervisor and rape and stab the HR manager. True story? Yes. Is your company prepared to respond to such conduct?

Duty to maintain a safe work environment.

Arizona employers have a duty to maintain a safe work environment. That doesn't mean you have to prevent every act of violence, but you should implement and enforce a workplace violence policy to ensure that your workplace is safe and that you are prepared to handle situations like the one described above. Encourage employees to report intimidation, threats, and violent behavior, and promptly investigate complaints.

What is an IAWH? Arizona law, A.R.S. § 12-1810, provides that employers seeking to prevent workplace violence or harassment may seek an injunction against workplace harassment (IAWH). An IAWH may be obtained at a city, county, or justice court. While some counties have forms

available online, other counties require a company representative to fill out a form in person. Once issued, an IAWH precludes a harassing employee from returning to the workplace or other locations specified in the injunction.

What should be included in an IAWH request?

Describe the events and dates of workplace harassment in detail. Explain whether the harasser has damaged or threatened to damage your property or harassed or threatened employees or other people at your place of business. While one incident involving threats or violence may be sufficient, present other evidence of harassment if it exists. In Craig's situation, threatening voice mails and e-mails were available. That evidence was presented to a court and used to get an injunction.

What should we do after we have an IAWH? An IAWH doesn't take effect until it is served, so don't hold off on getting it served. Hire a process server or work with law enforcement to serve the injunction. Don't attempt to serve the injunction yourself. Once the harasser is served, he is entitled to a hearing within 10 days upon written request. In the interim, the injunction will remain in effect.

Handling the hearing. Bring witnesses to the hearing, and be prepared to present the evidence you provided when the IAWH was obtained and evidence of any harassment that has occurred since then. Often, the initial evidence is sufficient for the injunction to remain in effect. If you are uncertain, seek the advice of counsel. The court will tell you whether the injunction will remain in effect during the hearing. If it does, it is valid for one year after the date it is served.

Be prepared. Sadly, I could go on and on recalling cases in which I represented employers that needed to address a potentially violent situation on an

emergency basis. An IAWH is not always the answer, and you should analyze each situation individually to decide whether to seek an injunction.

Be vigilant in monitoring employee morale and other issues that could escalate into workplace violence. Train workers to recognize the warning signs of aggressive behavior. Implement appropriate safety protocols, and train employees on your protocols.

When in doubt on how to handle an emergency situation, call 911. In other situations, knowledgeable employment counsel can assist you in correcting the problem or using available legal avenues to address the issue.

Jodi R. Bohr is an attorney with Tiffany & Bosco, P.A. and a contributor to Arizona Employment Law Letter. She practices employment and labor law, with an emphasis on litigation, class actions, and HR matters, and is a frequent speaker on a wide range of employment law topics. She may be reached at jrb@tblaw.com or 602-255-6082.