

## **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 renumeration;
- 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:  
<https://www.in.gov/judiciary/iocs/2645.htm>
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** (**W**orkplace **V**iolence **R**estraining **O**rders).
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.

STATE OF INDIANA ) IN THE \_\_\_\_\_ COURT  
 )SS: ( \_\_\_\_\_ DIVISION, ROOM \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

CASE NO. \_\_\_\_\_

PLAINTIFF: \_\_\_\_\_  
DEFENDANT: \_\_\_\_\_  
EMPLOYEE: \_\_\_\_\_

**PETITION OF EMPLOYER FOR INJUNCTION PROHIBITING VIOLENCE OR THREATS OF VIOLENCE AGAINST EMPLOYEE**

**Application for Temporary Restraining Order**

*Read the Instructions for Petitions to Prohibit Workplace Violence before completing this form. NOTE: Plaintiff must be an employer with standing to bring this action under IC 34-26-6-4.*

**IMPORTANT: This is a public document and a copy of it will be placed in the Court's file. A copy may also be sent to the Defendant.**

1. Plaintiff (name): \_\_\_\_\_ is a \_\_\_\_\_ corporation  
\_\_\_\_\_ sole proprietorship \_\_\_\_\_ other (specify): \_\_\_\_\_  
and is filing this case on behalf of the employee identified in Paragraph 2.

2. Employee (name): \_\_\_\_\_  
Sex: \_\_\_\_\_ Male \_\_\_\_\_ Female  
Date of birth: \_\_\_\_\_  
(Use a separate petition for each employee you are seeking to protect.)

3. Defendant (name): \_\_\_\_\_  
a. Resides at (state address and county): \_\_\_\_\_  
b. Works at (state address and county): \_\_\_\_\_  
c. \_\_\_\_\_ Is \_\_\_\_\_ Is not a current employee of plaintiff  
(explain if defendant is still an employee): \_\_\_\_\_

4. This case is filed in this county because  
a. \_\_\_\_\_ defendant resides in this county.  
b. \_\_\_\_\_ defendant has caused physical or emotional injury to plaintiff's  
employee in this county.  
c. \_\_\_\_\_ other (specify): \_\_\_\_\_

5. Defendant has  battered  stalked or  made a credible threat of violence against the employee by knowing or willing statements or a 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.

a.  One of more of these acts can reasonably be construed to be carried out or to have been carried out at the employee's workplace at (address):

\_\_\_\_\_

b. Describe what happened (including the dates, who did what to whom, and any injuries):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Continued on Attachment 5b.

6.  Employee will suffer great and irreparable harm before this petition can be heard in court unless the court makes those orders requested below effective now and until the hearing. (Specify the harm and why it will occur before the hearing):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Continued on Attachment 6

Plaintiff/plaintiff's attorney hereby certifies the following (Check the appropriate box):

Oral notice of this petition has been given to the defendant.

Written notice of this petition has been given to the defendant.

Oral notice of this petition has been given to the defendant's attorney.

Written notice of this petition has been given to the defendant's attorney.

A good faith attempt was made to inform the defendant and/or the defendant's attorney of this petition. The efforts to inform consisted of (specify):

\_\_\_\_\_

Because of the following reasons, plaintiff/plaintiff's attorney should not be required to give notice to the defendant/defendant's attorney (specify):

\_\_\_\_\_

\_\_\_\_\_

7. Defendant's conduct has been directed against employee and is knowing and willful, is not constitutionally protected, and does not constitute lawful acts of self-defense or defense of others.

**PLAINTIFF REQUESTS THE COURT TO MAKE THE ORDERS INDICATED BY THE CHECK MARKS IN THE BOXES BELOW.**

8.  **RESTRAINING ORDERS**  **To be ordered now and effective until the hearing**

a. **Defendant shall not engage in unlawful violence or make threats of violence against the employee and the following members of employee's family or household who reside with the employee:**

(1) **(Name):** \_\_\_\_\_

Sex:  Male  Female

Date of birth: \_\_\_\_\_

(2) **(Name):** \_\_\_\_\_

Sex:  Male  Female

Date of birth: \_\_\_\_\_

(3) **(Name):** \_\_\_\_\_

Sex:  Male  Female

Date of birth: \_\_\_\_\_

Continued on Attachment 8a.

b. **Specifically, defendant**

(1)  shall not batter or stalk the employee and other protected persons.

(2)  shall not follow or stalk the employee and other protected persons to or from the place of work.

(3)  shall not follow the employee and other protected persons during hours of employment.

(4)  shall not contact the employee and other protected persons, directly or indirectly, by any means, including but not limited to, in person, by telephone, in writing, by public or private mail, interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(5)  shall not enter the workplace of the employee and other protected persons.

(6)  other (specify): \_\_\_\_\_

\_\_\_\_\_

9.  **STAY-AWAY ORDERS**  **To be ordered now and effective until the hearing.**

a. **Defendant shall stay at least (specify): \_\_\_\_\_ yards away from the following places and persons (the addresses of the places are optional and may be kept confidential):**

(1) Employee  and other protected person identified in Paragraph 8a.

(2)  Employee's residence (address optional): \_\_\_\_\_

(3)  Employee's place of work (address optional): \_\_\_\_\_

(4)  Employee's children's school or place of child care (address optional): \_\_\_\_\_

\_\_\_\_\_

(5)  Employee's vehicle (*specify*): \_\_\_\_\_

(6)  Other (*specify*): \_\_\_\_\_

b. Will granting of any of the stay-away orders in Paragraph 9a deprive Defendant of access to his or her residence or place of employment?  
 Yes  No (*If yes, explain*): \_\_\_\_\_

10.  **COSTS**  
 Defendant should be ordered to pay costs as follows (*specify*): \_\_\_\_\_

11.  **OTHER ORDERS** (*specify other orders you request to help carry out the orders previously requested*): \_\_\_\_\_

12. Plaintiff requests that copies of orders be given to the following law enforcement agencies:

<u>Law enforcement agency</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

13.  Plaintiff requests that time for service of the *Order to Show Cause* and accompanying papers be shortened so that they may be served no less than (*specify number*): \_\_\_\_\_ days before the date set for the hearing. I need to have the order shortening time because of the facts contained in this petition.

14.  Plaintiff has asked for restraining orders against the defendant in (*specify*): \_\_\_\_\_ County, Case No. (*specify*): \_\_\_\_\_

15.  Employee has asked for an order for protection against the defendant in (*specify*): \_\_\_\_\_ County, Case No. (*specify*): \_\_\_\_\_

16. **DESCRIPTION OF DEFENDANT TO BE RESTRAINED**  
Sex:  Male  Female Ht: \_\_\_\_\_ Wt. \_\_\_\_\_  
Eye color: \_\_\_\_\_ Hair color: \_\_\_\_\_ Race: \_\_\_\_\_

Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_

- 17. Plaintiff requests additional relief as may be proper.
- 18. \_\_\_ Plaintiff is not required to pay a fee for filing this petition because the petition alleges that the defendant has inflicted or threatened violence against an employee of the plaintiff, or stalked the employee, or acted or spoke in any other manner that has placed the employee in reasonable fear of violence, and seeks protective or restraining orders or injunctions restraining stalking or future violence or threats of violence in an action brought under IC 34-26-6-1 *et seq.*
- 19. Plaintiff understands that if the court issues an *Order to Show Cause*, a hearing will be held on the date shown in Paragraph 2 of the *Order to Show Cause*. At that hearing, plaintiff will be prepared to present evidence supporting the petition.
- 20. Number of pages attached: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF ATTORNEY, IF ANY)

I affirm, under the penalties for perjury, that the foregoing representations are true:

- a. on the basis of my own personal knowledge.
- b. on the basis that I have been informed and believe that the facts stated are true. *(NOTE: If this petition is made solely on the basis of plaintiff's information and belief, plaintiff must attach affidavits by one or more persons who have personal knowledge of the facts stated.)*

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PLAINTIFF)

Title of person signing: \_\_\_\_\_

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ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, attorney registration number, and address*):

TELEPHONE NO.:

FAX NO.:

ATTORNEY FOR (*Name*):