Bridging the Gap

SB428 EXPANDS AVAILABLE PROTECTIONS IN THE "HOA WORKPLACE"

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By now, most individuals in the industry are aware of the newly adopted AB648 (virtual meetings) and AB1458 (lowered quorum). However, SB428 is another bill that managed to fly under the radar and will ultimately have a *significant* impact by providing associations with a more expansive tool to protect those who serve community associations, including board members and community managers.

WHAT WAS MISSING?

Code of Civil Procedure ("CCP") §527.8 currently allows an employer to seek a restraining order on behalf of employees who have suffered unlawful violence or a credible threat of violence in the workplace. The term "employee" includes board members, as well as "a volunteer or independent contractor who performs services for the employer at the employer's worksite." In the context of community associations, this phrase is often interpreted broadly to include not only the board but also managers, committee members, and some vendors that provide direct services within the community.

However, the statute is limited in the *type of misconduct* that triggers the right, requiring violence or threats of violence. As a result, associations have not been able to pursue a restraining order to protect against behavior that does not reach this threshold. Even in cases when an errant homeowner or other third party is continually harassing members of the board or the community manager, the association is not able to step in and seek a restraining order on their behalf until the conduct crosses the line into threats of violence. Instead, these individuals have been forced to pursue their own relief by personally filing for a "Civil Harassment Restraining Order" under alternate provision CCP §527.6.

Employers and employees should not have to wait for conduct to escalate before being able to seek protection from the courts.

BRIDGING THE GAP

On September 30, 2023, Governor Newsom signed SB428, amending CCP §527.8 to expand available protections for employees in the homeowners association workplace. The amendments take effect January 1, 2025, and will authorize an employer to seek a restraining order on behalf of an employee who has suffered harassment. "Harassment" here means "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose."

The new provision allows associations to *immediately* access the courts to request a temporary restraining order to protect their agents from this type of conduct. Generally, the judge will decide whether to issue a protective order that same day, and a copy is transmitted to local law enforcement. The court will then schedule a second hearing, usually within 21 days, to determine whether a "permanent order" should be entered extending the protections for up to three years.

The Legislature's addition of "harassment" as a new type of wrongful conduct justifying court relief gives boards a significantly broader tool to be able to protect themselves and their managers, volunteers, and vendors from abusive conduct, even when there is no fear that it may escalate to violence. The afforded protections carry significant weight, as disobedience to a restraining order qualifies as a misdemeanor punishable by a hefty fine, imprisonment, or both.

LIMITATIONS TO CONSIDER

Associations and their legal counsel will still be required to consider certain limitations when deciding whether to seek relief from the courts under the new provisions of CCP §527.8.

First, SB428 adds a new requirement that employers allow employees to decline to be named in the application. Although most attorneys will already do this as a matter of good practice, this requirement may prove to be a barrier to seeking relief. Some employees might be uncomfortable disclosing their identities or refuse to sign supporting affidavits, making it more challenging to provide the court with sufficient evidence to grant the order.

Second, the definition of "harassment" includes a built-in requirement that the conduct "serves no legitimate purpose." This limitation ensures that courts do not grant a restraining order if it infringes upon other constitutional or labor rights. In the context of community associations, the Fourth District Court of Appeal recently examined whether harassing conduct was for a legitimate purpose in the unpublished case of *Manrodt v. Albelo*, 2023 WL 4557605 (July 17, 2023). The case involved an owner seeking a Civil Harassment Restraining Order against her neighbor, who followed her family around to take pictures and video record them. The neighbor argued that he recorded them in case they violated the rules. While the court recognized that it may be appropriate to document *ongoing* violations, it characterized the neighbor's conduct as having no legitimate purpose. Instead, it was simply a tool of harassment or potential illegal activity.

Third, associations must also consider the financial implications of pursuing a restraining order on behalf of their "employees." Section 527.8 does *not* include the automatic attorney fee provision for "prevailing parties" that boards may be used to when they engage in other enforcement actions. Instead, associations will be responsible for these legal expenses.

By expanding the type of conduct associations can address through the restraining order process, the California Legislature bridged the gap to help provide much-needed protections and relief to "employees" of community associations. Boards and community managers should keep these provisions in mind and plan to consult their legal counsel for potential use in 2025.

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