



## Maryland SHRM State Council, Inc.

### Testimony in Support of SB846

#### “Peace Orders – Workplace Violence”

Submitted to the Senate Judicial Proceedings Committee

March 11, 2020

Chairman Smith and Members of the Committee:

My name is Cheryl Brown and I’m testifying on behalf of the Maryland Society for Human Resource Management State Council, Inc. Maryland SHRM represents more than 7,000 members of the Society for Human Resource Management (SHRM) across the state. HR professionals are intimately aware of the threat and realities of workplace violence.

We strongly support SB846 that, if enacted into law, would provide employers standing to seek a peace order to protect an employee and others in their organizations from an imminent threat of harm while at the workplace. Last month, the House passed HB126, 130-0.

According to the U.S. Bureau of Labor Statistics, in 2017, 458 people were fatally injured in work-related attacks. That’s about 9% of the 5,147 workplace deaths that year. Workplace violence is the third leading cause of death for healthcare workers, and employees in professional and business services like education, law and media, according to *Injury Facts 2016*<sup>1</sup>. Of the 50 active shooter incidents that occurred in the U.S. in 2016 and 2017, 3 of them occurred in Maryland. Maryland was the 5<sup>th</sup> highest state of active shooter incidents in the country.<sup>2</sup>

In Maryland in 2018 alone, businesses lost a number of employees to active shooter situations by either an employee, a former disgruntled employee or an unhappy customer. 6 people shot and 3 killed at Advanced Granite Solutions in Edgewood; 7 people shot and 3 killed at a Rite Aid shooting in Aberdeen, 5 people killed and several others injured at the Capital Gazette shooting in Annapolis.

In 2019, SHRM lost two HR professionals in a workplace violence shooting by a disgruntled employee who killed 5 employees and injured 5 others at a worksite in

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<sup>1</sup> <https://injuryfacts.nsc.org/work/work-overview/work-related-fatality-trends/>

<sup>2</sup> “Active Shooter Incidents in the United States in 2016 and 2017”, U.S. Dept. of Justice, Federal Bureau of Investigation, 2018.

Aurora, IL<sup>3</sup>. Most recently, 5 employees were shot by their co-worker in Milwaukee. And last year a former employee at a municipal building in Virginia Beach killed 12 people.

To date, at least 11 states have enacted Workplace Restraining Order Laws allowing the employer to apply for a restraining or peace order prohibiting acts of violence at the employer's workplace<sup>4</sup>. In Maryland, the employer does not have standing to seek a peace order if it is aware that one or more of its employees is threatened with an imminent harm at the workplace.

Maryland Occupational Safety and Health (MOSH) covers every Maryland employer in a business, trade, commercial or industrial activity, who has one or more employees, including State and local governments. MOSH's mission is to promote and assure workplace safety and health, and reduce workplace fatalities, injuries and illnesses.

The enactment of SB846 into law will provide MD employers with another tool to protect the health and safety of their employees at the workplace. This bill is not a mandate on employers. Rather; it will allow an employer the opportunity to decide whether or not seeking a peace order makes sense for their organization. The bill also provides a safeguard from any civil liability an employer for failure to file a petition on behalf of an employee should an incident occur.

Under current law, the court can issue a peace order filed by the individual if it finds by a preponderance of the evidence that the aggressor engaged in or threatened unlawful violence. If the employer has the ability to seek a peace order, that action might take the pressure off the victim and could result in protecting others in the workplace at the same time.

SB846 would provide employees and their employers with the opportunity to secure the work environment when a potential threat to either or both exists. SB846 will bar the aggressor from: "entering the workplace, following an employee and/or contacting the employee by any means."

Often, HR professionals and employers have first-hand knowledge of an imminent threat of harm, as they are the ones who are charged with terminating employees; HR professionals are the ones who hear complaints from other co-workers, who witness the emotions of a disgruntled or angry employee and observe the impact that threats of violence have on an employee's performance and attendance in the workplace. The passage of SB846 would provide employers a way to deter workplace violence from even entering the workplace when they are aware that a threat exists.

MD SHRM strongly urges your favorable consideration of SB846.

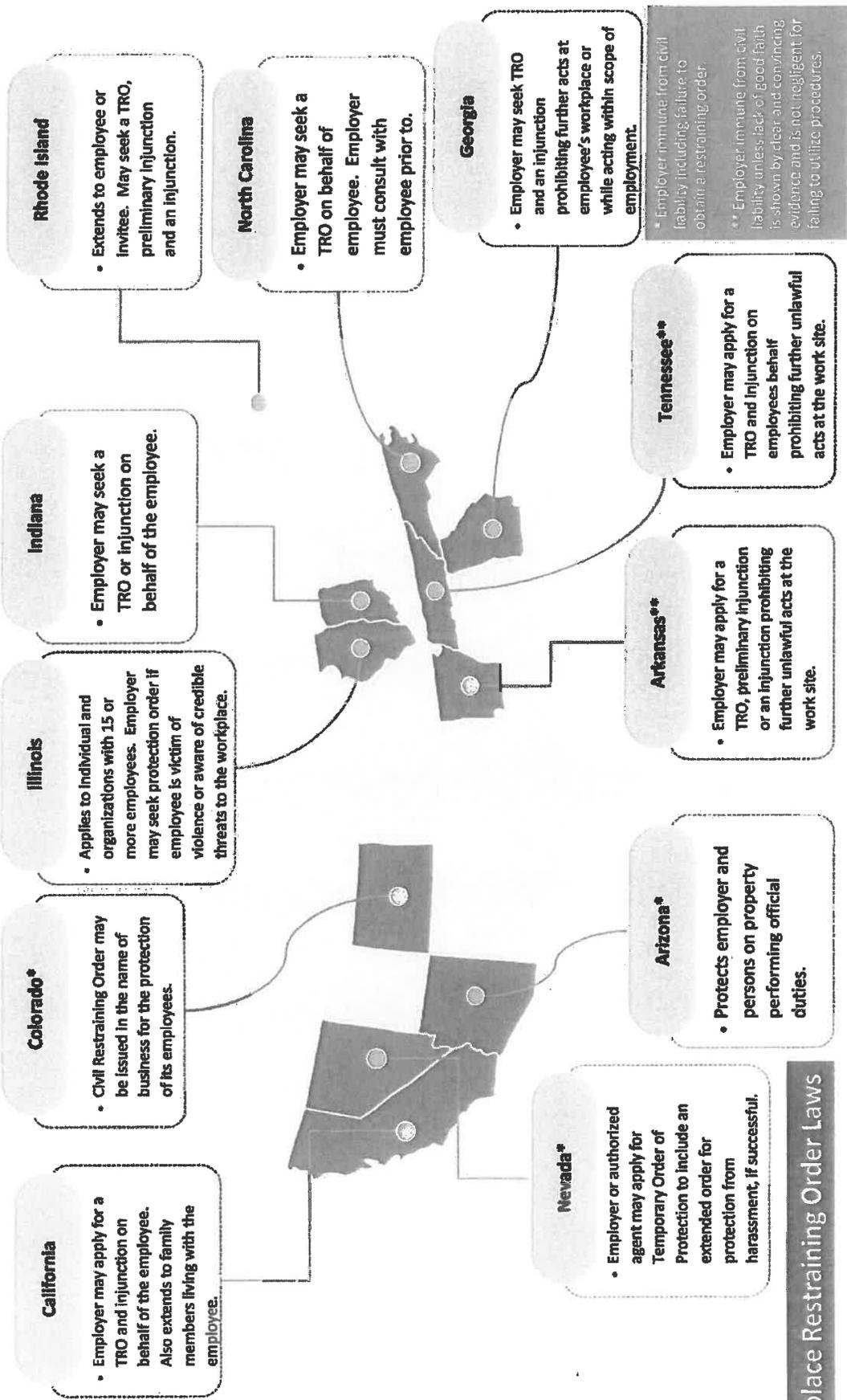
Respectfully submitted,

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MD SHRM Governmental Affairs, Chair

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<sup>3</sup> Smith, Allen, "A Workplace Shooting Is Every HR Professional's Fear." February 19, 2019, SHRM.

<sup>4</sup> See attached Map of the United States showing states with Workplace Violence laws, SHRM 2019.



**Workplace Restraining Order Laws**

Several states have proposed or enacted laws allowing employers to apply for restraining orders to prevent violence, harassment, or stalking of their employees. The laws vary in significant ways, such as whether the employer may seek a restraining order or injunction on behalf of itself rather than on behalf of the employee, and whether an employee who is the target of violence must be consulted prior to the employer's seeking a restraining order.

### STATE LAWS

**ARIZONA:** Ariz. Rev. Stat. § 12-1810.

Allows an employer or an authorized agent of an employer to petition for an injunction prohibiting workplace harassment on behalf of the employer or "any person who enters the employer's property or who is performing official work duties." The employer must make a good faith effort to provide notice to the person(s) targeted. The law specifies that it does not change the duties of the employer to provide a safe workplace, and that the employer will be immune from civil liability for seeking/not seeking an injunction except if it seeks injunction for illegitimate purposes.

**ARKANSAS:** Ark. Code § 11-5-115. [*click open Arkansas Code; click open Title 11; click open Chapter 5; then click open Subchapter 1; then click on 11-5-115*]

Provides that "if an employer or employer's employee or invitee" has been a victim of unlawful violence, received a threat of violence that could be carried out at the work site, or been stalked or harassed by an individual at the work site, the employer may, in addition to or instead of filing criminal charges against the individual, seek a temporary restraining order (TRO), a preliminary injunction, or an injunction prohibiting further unlawful acts by that individual at the work site. The law specifies that the employer will be immune from civil liability for actions taken under the statute unless lack of good faith is shown by clear and convincing evidence, and any employer that does not seek such a restraining order "shall not be liable for negligence, nor shall evidence of the same be admissible as evidence of negligence."

**CALIFORNIA:** Cal. Civ. Proc. Code § 527.8 & § 527.85.

If an employee has suffered violence or a credible threat of violence that can "reasonably be construed to be carried out or to have been carried out at the workplace," the employer may apply for a TRO and injunction prohibiting an individual from carrying out further acts of unlawful violence or threats against the employee. The TRO and/or injunction may also include "other named family or household members who reside with the employee." The law states that it does not change the duties of the employer. Section 527.85 expands the reach of the act to private postsecondary educational institutions. The chief administrative officer or designated employee of such an institution may seek a temporary restraining order and an injunction, on behalf of a student or students at the campus, if the student has suffered a credible threat of violence made off the campus by any individual which can reasonably be construed to be carried out or to have been carried out at the school campus or facility. The school official seeking the order must first obtain the written consent of the student who received the threats.

**COLORADO:** Colo. Rev. Stat. 13-14-102(4)(B). [*click open Colorado Revised Statutes; click open Title 13; click on Civil Protection Orders; click on Article 14; then click on 13-14-102*].

A court, upon finding that "an imminent danger exists to the employees of a business entity," may issue a

civil restraining order in the name of the business for the protection of the employees. The law specifies that the employer shall not be subjected to liability for failure to obtain a restraining order under this law.

**GEORGIA:** Ga. Code Ann. § 34-1-7. [*click open Georgia Code; click open Title 34; click open Chapter 1; click open 34-1-7*]

“Any employer whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to have been carried out at the employee’s workplace,” may seek a TRO and an injunction on behalf of the employer prohibiting further unlawful violence or threats “at the employee’s workplace or while the employee is acting within the course and scope of employment with the employer.” The court may grant a TRO if the petitioner demonstrates that “great or irreparable harm shall result to an employee if such an injunction is not granted.” The law specifies that it does not change the duties of the employer.

**INDIANA:** Ind. Code § 34-26-6.

On behalf of an employee, an employer may seek a TRO or injunction prohibiting further violence or threats of violence if: “(1) the employee has suffered unlawful violence or a credible threat of violence from the person; and (2) the unlawful violence has been carried out at the employee’s place of work or the credible threat of violence can reasonably be construed to be carried out at the employee’s place of work.” The law specifies that it does not change the duties of the employer.

**MAINE:** Me. Rev. Stat. tit. 5, §§ 4651 and 4655. A court in Maine may make a protective order directing someone “to refrain from harassing, threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff or the plaintiff’s employees” and to stay away from the plaintiff, avoid interfering with the plaintiff’s property, avoid contacting the plaintiff, and pay plaintiff compensatory damages. Harassment is defined as “[t]hree or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property.”

**NEVADA:** Nev. Rev. Stat. § 33.200-.360.

An employer or an authorized agent of an employer may apply for a temporary order for protection (TOP) and, if successful, an extended order for protection against “harassment in the workplace.” If an employer has knowledge that a specific person is the target of harassment in the workplace, the employer shall make a “good faith effort” to notify the person who is the target that the employer intends to seek an order for protection. “Harassment in the workplace” is defined as occurring when a person knowingly injures or harms, or threatens to injure or harm, the property or the physical or mental health or safety of a person and the action is targeted against an employer, an employee of the employer while the employee performs his or her duties of employment, or a person present at the workplace of the employer. The law specifies that it does not change the duties of the employer, and that the employer will be immune from civil liability for seeking an injunction if acting in good faith, and immune from liability for failure to seek an injunction.

**NORTH CAROLINA:** N.C. Gen. Stat. § 95-261.

An employer may seek a civil no-contact order on behalf of an employee who has been subject to unlawful conduct, such as physical injury or threats of violence, at the workplace. Prior to seeking such an order, the employer must consult with the employee who is the target of the violence to determine whether the employee’s safety would be jeopardized by participating in the process. An employee who is the target cannot be disciplined based on their involvement or lack of involvement in the process.

**RHODE ISLAND:** R.I. Gen. Laws § 28-52-2.

If an employer or an employer’s employee or invitee has (1) suffered unlawful violence by an individual; or (2) received a threat of violence by an individual which can reasonably be construed as a threat which may be carried out at the worksite; or (3) been stalked or harassed at the worksite, the employer may seek a TRO, a

preliminary injunction, and an injunction (“in addition to, or instead of, filing criminal charges”). The law specifies that the employer will be immune from civil liability for actions taken under the statute unless lack of good faith is shown by clear and convincing evidence, and that the employer is not negligent for failing to utilize the procedures.

**TENNESSEE:** Tenn. Code §§ 20-14-101 to -109 [*click open Tennessee code; click on Title 20, then Chapter 14*]  
An employer whose employee has experienced violence or a credible threat of violence that can reasonably be construed to have taken place in the employee’s workplace may seek a TRO and injunction on behalf of the employer, prohibiting “further unlawful violence or threats of violence by that individual at the employee’s workplace or while the employee is acting within the course and scope of employment with the employer.” The law specifies that it does not change the duties of the employer to provide a safe workplace.

## RECENT LEGISLATIVE PROPOSALS

The following legislation has been introduced in the current or prior legislative sessions. The contents of the bills vary and the status of a particular bill may change very quickly. For more information about each bill, check your legislature’s website.

**CONNECTICUT:** H.B. 5496, Gen. Assemb. Feb. Sess. (Ct. 2010).

This bill would allow an employer, whose employee has suffered from 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, to seek a restraining order on behalf of the employee and any other employees or animals at the workplace. The employer must provide a sworn affidavit about the threat or violence, and a hearing on the application will be held within 14 days. If the employer alleges an immediate and present physical danger, the court may issue an ex parte order. The bill died in committee.

**FLORIDA:** S.B. 200, 108<sup>th</sup> Reg. Sess. (Fla. 2006).

This bill would provide standing for a government employer to seek an injunction on behalf of an employee who is suffering from at least two incidents of violence or stalking in a public workplace. This bill is very similar to S.B. 512, introduced in 2005. This bill died in committee.

**HAWAII:** H.B. 2028, 26<sup>th</sup> Leg. (Haw. 2012).

This bill, entitled the “Hawaii Workplace Violence Prevention Act,” would allow an employer to petition for an ex parte restraining order or preliminary or permanent injunction in the circuit court of the employer’s principal place of business against an individual, including a co-worker, who subjects an employee to violence or a threat of violence at the workplace. No civil liability shall exist for an employer to fail to invoke the provisions of this bill. In contrast to a prior similar bill, H.B. 2940 (2010), there is no provision requiring an employer to consult an employee prior to filing a petition. Rather, the bill provides that a presumption exists that violence or a threat of violence constitutes “irreparable harm.” H.B. 2028 § 5(d). This bill also provides that an employee may apply for relief relating to workplace violence in the circuit court in which the employee resides on behalf of him or herself, or immediate family or household members. As of January 19, 2012, this bill was set for subsequent referral to the House Committee on Finance.

**KENTUCKY:** H.B. 221, 2003 Reg. Sess. (Ky. 2003).

“If an employer, or an employer’s employees or invitees have suffered unlawful violence...or received a threat of violence from an individual which can reasonably be construed as a threat which may be carried out at the worksite, or been stalked or harassed at the worksite, the employer may...seek a restraining order...prohibiting further unlawful acts by that individual at the worksite, which shall include any place at which work is being performed on behalf of the employer.” Not utilizing this procedure shall not be the basis for a finding of negligence, and evidence of not using it is not admissible as evidence of negligence.

Unless an employer and its agents lack good faith, as “shown by clear and convincing evidence,” they are immune from civil liability for actions taken under this section. This bill failed to win approval in the House.

**MARYLAND:** H.B. 1210, Reg. Sess. (Md. 2006).

The bill allows an employer to file for a peace order on behalf of an employee who has been the victim of certain unlawful acts at the workplace. The qualifying acts include: acts that cause or place the individual in fear of imminent serious bodily harm, assault, rape or sexual offense, false imprisonment, harassment, stalking, and malicious destruction of property. The bill requires the employer to “make[] a good faith effort to notify the alleged victim of the employer’s intention to seek the temporary restraining order.” The bill specifies that it does not change the duties of the employer. The bill died in committee.

**MISSISSIPPI:** H.B.1478, Reg. Sess. (Ms. 2013).

This bill allows an employer to file a civil action seeking a temporary restraining order or preliminary or permanent injunction against a person subjecting the employer, employee or group of employees to unlawful conduct. The employer must allege a reasonable belief that the person may carry out further “unlawful conduct” at the workplace. This bill is similar to H.B. 1359 (Ms. 2010), and sets forth that “unlawful conduct” is comprised of assault, rape, sexual battery, stalking, cyberstalking, or a credible threat of violence. This bill died in committee on March 6, 2012.

**NEW JERSEY:** A.1159, 213<sup>th</sup> Leg. (N.J. 2008).

An employer whose employee has been a “victim of an assault, harassment, stalking or has suffered a credible threat of violence from any individual, which can reasonably be construed to be carried out . . . at the work place” can seek a restraining order on behalf of the employee. If the alleged perpetrator of the violence or threats is also an employee of the employer, the court shall receive evidence concerning the employer’s decision to retain, terminate, or otherwise discipline that employee. An order may restrain the defendant from making “any communication likely to cause annoyance or alarm” with the victim or his or her family members, employer, or fellow workers; it may also require the defendant to pay a fine or reimburse the victim for “any reasonable medical expenses, including reasonable counseling costs” or prohibit the defendant from possessing a firearm. The Department of Labor shall develop a training course and curriculum for agencies involved in handling reports of violence in the workplace. The bill died in committee.

**NEW YORK:** A.B. 3280, 228<sup>th</sup> Leg. (N.Y. 2005).

Provides for the protection of employees from violence in the workplace through the use of temporary restraining orders and permanent injunctions to enjoin credible threats of violence; permits employer to seek such restraining order on behalf of an employee upon a showing that such employee has suffered unlawful violence or a credible threat. The bill specifies that it does not change the duties of the employer to provide a safe working environment. The bill died in committee.

**NORTH DAKOTA:** H.B. 1057, 58<sup>th</sup> Leg. Assembly (N.D. 2003).

This bill allows an employer to seek a temporary restraining order (TRO) and injunction prohibiting workplace harassment. The petition must specify the events “that constitute harassment toward the employer or any individual who enters the employer’s property or who is performing official work duties.” The court may restrain the defendant from coming near the employer’s property, contacting the employer or other individual while at the property or performing work duties, or “grant any other relief necessary for the protection of the employer, the workplace, the employer’s employees or any other individual who is on or at the employer’s property or place of business or is performing official work duties.” The bill does not “expand, diminish, alter, or modify the duty of an employer to provide a safe workplace.” “When the employer has knowledge that a specific individual is the target of harassment as defined by this section, the employer shall make a good-faith effort to provide notice to the individual that the employer intends to petition the court for a restraining order and injunction against workplace harassment.” “An employer is immune from civil liability for seeking or failing to seek a [TRO] and injunction under this section unless the

employer is seeking [them] primarily to accomplish a purpose for which this section was not designed.” The bill died in the House.

**OKLAHOMA:** H.B. 2395, 29<sup>th</sup> Leg., 2d Sess. (Okla. 2004).

An employer may seek an injunction prohibiting “workplace harassment” on the basis of harassment toward “the employer or any person who enters the property of the employer or who is performing official work duties.” The injunction may restrain the defendant from coming near the property of the employer or place of business and restrain the defendant from contacting the employer or “other person while that person is on or at the property of the employer or place of business or is performing official work duties,” as well as grant “any other relief necessary” to protect the subject of the harassment. When an employer has knowledge that a specific person is the target of the harassment, the employer “shall make a good faith effort to provide notice” to that person that the employer intends to seek an injunction. This section shall not “expand, diminish, alter or modify the duty of an employer to provide a safe workplace.” An employer generally is immune from civil liability for seeking or failing to seek an injunction under this section. The bill passed the House but died in the Senate.

**WASHINGTON:** H.B. 1591/S.B. 5552, 62<sup>nd</sup> Leg. (Wash. 2011). [*enter “1591” or “5552”*].

This bill would allow an employer or the employer’s authorized agent to petition for a civil anti-harassment protection order to “restrain a person from engaging in unlawful harassment affecting the workplace...the court may consider respondent’s unlawful harassment of an employer, employee and other persons affecting a workplace.” Under this bill, “unlawful harassment” includes a “knowing and willful course of conduct directed at a specific person or employer, which seriously alarms, annoys, harasses, or is detrimental to such person or employer, and which serves no legitimate or lawful purpose.” An employer with knowledge that a specific person is a target of unlawful harassment must make a “good faith effort” to provide notice to the person prior to petitioning the court. If the unlawful harassment stems from domestic violence, sexual assault, or stalking, the employer is required to provide notice and obtain consent prior to petitioning the court. This bill was introduced in January 2011 and as of April 11, 2012, was reintroduced in the House Committee to the Judiciary. S.B. 5552 was reintroduced to the Committee on Labor, Commerce and Consumer Protection. A similar bill, S.B. 6024, died in the Senate in 2003.

*This state law guide, with links to cited laws and bills, is available on the Legal Momentum website at [www.legalmomentum.org/statelawguides](http://www.legalmomentum.org/statelawguides). For more information, contact our Public Education Office (PEO), [peo@legalmomentum.org](mailto:peo@legalmomentum.org), at (212) 925-6635.*

This project was supported by Grant No. 2009-TA-AX-K028 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expression in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.