

# Kimball, Tiley & St. John LLP

## Understanding Abuse & Harassment Laws

*Edited from the "Understanding Abuse & Harassment Laws" page of the California Courts website, used by permission of the Administrative Office of the Courts*

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When someone is abused or harassed, he or she needs to decide on the best way to get legal protection from the abuse or harassment. To do that, several things must be considered, such as: what type of relationship there is between the person being abused or harassed and the person doing the abuse/harassment; the age of the person being abused or harassed; and the type of abuse or harassment. Then, the law says what type of protection someone can ask for and what he or she has to prove to get it.

There are 4 types of abuse or harassment cases in civil court:

- Domestic Violence
- Elder or Dependent Adult Abuse
- Civil Harassment
- Workplace Violence

### **Domestic Violence**

Domestic violence is abuse or threats of abuse when the person being abused and the abusive person is:

- Married or registered domestic partners;
- Divorced or separated;
- Dating or used to date,
- Living together or used to live together (but more than just roommates), OR
- Closely related (like parent, child, brother, sister, grandmother, grandfather, in-law).

The domestic violence laws say "abuse" is:

- Physically hurting or trying to hurt someone intentionally or recklessly;
- Sexual assault;
- Making someone reasonably afraid that he or she or someone else is about to be seriously hurt (like threats or promises to harm someone); OR
- Behavior like harassing, stalking, threatening, or hitting someone, disturbing someone's peace, or destroying someone's personal property).

Keep in mind that abuse and domestic violence do not have to be only physical. Abuse can be verbal (spoken), emotional, or psychological. Someone does not have to be physically hit to be abused. Often, abuse takes many forms, and abusers use a combination of tactics to control and have power over the person being abused.

Someone being abused in any of these ways or feeling afraid or controlled by a partner/spouse or someone they are close with, it may help to talk to a domestic violence counselor, even if the victim does not want (or is not sure if they want) to ask for legal protection.

## **Elder or Dependent Adult Abuse**

Abuse of an elder or a dependent adult is abuse of:

- Someone 65 years old or older; OR
- A dependent adult, who is someone between 18 and 64 that has certain mental or physical disabilities that keep him or her from being able to do normal activities or protect himself or herself.

The law says elder or dependent adult abuse is:

- Physical abuse, neglect, financial abuse, abandonment, isolation, abduction (taking the victim out of the state against the victim's will), or other behavior that causes physical harm, pain, or mental suffering; OR
- Deprivation by a caregiver of things or services that the elder or dependent adult needs to avoid physical harm or mental suffering.

## **Civil Harassment**

Civil harassment is harassment by:

- Unlawful violence, like assault or battery or stalking; OR
- A credible threat of violence. "Credible threat of violence" means intentionally saying something or acting in a way that would make a reasonable person afraid for his or her safety or the safety of his or her family. A "credible threat of violence" includes following or stalking someone or making harassing calls or sending harassing messages (by phone, mail, or e-mail) over a period of time (even if it is a short time); AND
- The violence or threats seriously scare, annoy, or harass someone and there is no valid reason for it.

The harassment must be by someone the victim has not dated and does NOT have a close family relationship with, like a neighbor, a roommate, or a friend (that they have never dated). It is also civil harassment if the abuse is from a family member that is not included in the list under domestic violence.

## **Workplace Violence**

For a workplace violence situation, the harassment is defined in the same way as for civil harassment. The difference is that the harassment happens primarily at work AND it is the employer of the harassed employee who asks for protection for the employee (and, if necessary, for the employee's family).

For an employer to get a workplace violence restraining order on behalf of an employee, there needs to be reasonable proof that:

- The employee has suffered unlawful violence (like assault, battery or stalking) or a credible threat of violence;
- The unlawful violence or the threat of violence can reasonably be construed to be carried out or to have been carried out at the workplace;
- The conduct is not allowable as part of a legitimate labor dispute; and
- The person accused is not engaged in constitutionally protected activity.

A person being abused or harassed who meets the criteria above can seek a restraining order to prevent further abuse or harassment. Self-help resources are available at the California Judicial Council Website at <http://www.courts.ca.gov/selfhelp-abuse.htm>. Alternatively (or

additionally) a victim may seek the assistance of an attorney. If a corporation or LLC is seeking the restraining order, it must be represented by an attorney.

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