

DOMESTIC VIOLENCE AND/OR HARASSMENT

Q. What's the difference between a restraining order and a protective order?

A. A restraining order is a commonly-used term for an order of protection or an injunction against harassment, which are protective orders.

Q. What is an order of protection?

A. An order used for protection when there is a "family" relationship between the plaintiff and the defendant. The plaintiff must state how an act of domestic violence was threatened or committed against the plaintiff within the last year. If both a family relationship and an act of domestic violence do not apply, an injunction against harassment is the appropriate process. A petition and guide sheet must be filed, followed by an appearance before a judicial officer. If the judicial officer finds that the defendant may commit or has committed an act of domestic violence, the judicial officer can issue an order of protection:

- Ordering one party not to commit acts of domestic violence,
- Granting one party exclusive use of residence,
Preventing one party from coming near residence, place of employment or school of the other party, and
- Any other relief necessary for protection.
- An order of protection can prohibit the possession of weapons. After a hearing, the judicial officer may order the defendant to obtain counseling.

Q. What is a domestic violence crime?

A. Domestic Violence includes: assault, aggravated assault, aggravated harassment, aggravated domestic violence, child or vulnerable adult abuse, criminal damage, criminal trespass, crimes against children, custodial interference, disobeying a court order, disorderly conduct, endangerment, harassment, kidnapping, stalking, surreptitious videotaping, threatening and intimidating, unlawful imprisonment, unlawful use of telephone.

Q. What is the "relationship test" for an order of protection?

A. The plaintiff and defendant need to meet one of the following "relationship test" requirements:

- married now or in the past
- live together now or lived together in the past
- parents of a child in common
- one party is pregnant by the other
- the parties are relatives (parent, in-law, brother, sister, or grandparent)

Q. How do I file for an order of protection?

A. The paperwork provided by the court must be filled out. Although an order may protect more than one person, it can only be issued against one person. A separate petition is required for each person filed against. Each petition must have:

- The defendant's name
- A list of all acts of domestic violence or harassment that the defendant has committed within the past year. (The one-year requirement may be waived if the defendant is out of state, incarcerated, or good cause is shown.)
- Plaintiff's address and phone number so the court can contact the plaintiff if the defendant requests a hearing. (Upon request, this information will be withheld from the defendant.)
- An address, if known, at which the defendant can be legally served with the court's order

Q. How long is the order of protection in effect?

A. If the judicial officer issues the order of protection, the defendant must be served with the order before it will be effective. Once an order has been served, it will be in effect for twelve (12) months. A private process server or local law enforcement may serve the order. If using a private process server, the plaintiff is responsible for delivering the defendant's copy of the order to the process server and for paying a service fee and mileage.

Q. What if the defendant is in jail?

A. The plaintiff will need to advise court staff. The plaintiff may need to deliver the order to the jail and request that jail staff serve the defendant. If the defendant is in the process of being released, there may not be enough time to have service completed at the jail. If not, the plaintiff has one year in which to serve the defendant.

Q. What if we are in the process of divorce?

A. If a protective order was issued from a municipal or justice court, and a petition for dissolution or separation of marriage or maternity/paternity action is filed in superior court, one of the parties must notify the court immediately and the protective proceedings will be transferred to superior court and heard with the family court case.

Q. What is harassment?

A. According to Arizona law, harassment must involve a series of acts that can be spread over a long or short period of time, usually within the last year. The acts must show a continuity of purpose directed at a specific person, seriously alarming, annoying, or harassing the victim without serving a legitimate purpose, which would cause a reasonable person to suffer substantial emotional distress. A single incident, no matter how bothersome, does not constitute legal harassment, although other violations of the law may have occurred. Injunctions do not resolve landlord-tenant disputes. A party must be specific about how the other party has harassed the plaintiff.

Q. What is an injunction against harassment?

A. Court assistance requested when the defendant has committed a series of acts (more than one) of harassment against the plaintiff in the last year. Also, a "dating" relationship without living together could be the basis for this injunction. A petition and guide sheet must be filed, followed by an appearance before a judicial officer. At the hearing, the plaintiff is the only party present. The injunction is not in effect until it is served on the defendant. Once served, the defendant has a right to a hearing.

Q. How do I file for an injunction against harassment?

A. The paperwork provided by the court must be filled out. Although an order may protect more than one person, it can only be issued against one person. A separate petition is required for each person filed against.

Each petition must have:

- The defendant's name.
- A series of two or more acts of harassment that the defendant has committed within the past year. (The one-year requirement may be waived if the defendant is out of state, incarcerated, or good cause is shown.)

- Plaintiff's address and phone number so the court can contact the plaintiff if the defendant requests a hearing. (Upon request, this information will be withheld from the defendant.)
- An address, if known, at which the defendant can be legally served with the court's order.

Q. What if I don't know where the person I am filing against lives?

A. If the defendant's whereabouts are unknown, the plaintiff should keep a copy of the injunction. As soon as the defendant's whereabouts are known, the plaintiff can contact a private process server or law enforcement so that they may attempt to serve the defendant.

Q. How long is the injunction against harassment in effect?

A. If the judicial officer issues the injunction against harassment, the defendant must be served with the order before it will be effective. Once an order has been served, it will be in effect for twelve (12) months. A private process server or local law enforcement may serve the order. If using a private process server, the plaintiff is responsible for delivering the defendant's copy of the order to the process server and for paying a service fee and mileage.

Q. What do I do if the defendant violates the injunction once it is in effect?

A. Violation of the court order is a criminal charge. It may be appropriate or necessary to call 9-1-1.

Q. What if the other person contests the injunction?

A. The defendant may request a hearing on the injunction one time during the twelve months in which it is in effect. A hearing will be held within ten (10) business days from the date requested unless the court finds compelling reasons to continue the hearing.

Q. What do I do if my child is being harassed by a bully at school?

A. Arizona has a new law that requires schools to have policies on bullying, harassment and intimidation. The message is clear: create an environment where bullying is not tolerated. Each school is required to have a procedure for students, parents and teachers to confidentially report bullying behavior to a school official to trigger investigation, punishment and prevention of further bullying behavior. See A.R.S. §15-341. If the bullying acts threaten or actually cause injury to a person or property, then more severe penalties are called for and carried out under Arizona's criminal laws. See A.R.S. §13-2911.

Q. What is an injunction against workplace harassment?

A. An injunction filed by an employer or owner of a business or operation for the benefit of an employee or the business against a single act or series of acts of harassment.