

California Court of Appeal Holds that Courts Must Consider "All Relevant Evidence," Including Hearsay, in Deciding Whether to Issue Injunctions to Prevent Workplace Violence

December 13, 2011 by *Travis Anderson and Gregg A. Fisch*

On December 5, 2011, in *Kaiser Foundation Hospitals v. Wilson* 2011 Cal. App. LEXIS 1511 (Dec. 5, 2011), the Court of Appeal for the Fourth District, Division One, ruled that the trial court properly considered "all relevant evidence," including generally inadmissible hearsay evidence, in deciding to issue a workplace violence injunction. As a result, employers likely will have an easier time obtaining injunctions against potential workplace violence situations in the future.

In the underlying matter, when deciding to issue an injunction banning a former Kaiser employee's husband, Wilson, from a Kaiser facility for three years, the trial court considered all of the testimony submitted by Kaiser. Specifically, in support of its injunction petitions, Kaiser presented declarations and testimony from two employees to demonstrate that Wilson had made several credible threats of violence. In particular, the two employees alleged that they had learned from others (and did not actually hear from Wilson) that Wilson had variously threatened to "put [them] down," "flip his lid," "do something that he would regret," "kill someone," and shoot one of them. The employees did, however, testify that Wilson had made one direct threat, when he told one of the employees that, if anything happened to his wife, "you are going to pay for this." After the trial court granted the injunction, Wilson appealed on the ground that the trial court had improperly considered the second-hand evidence during the hearing.

The Court of Appeal held that California Code of Civil Procedure section 527.8 required the trial court to consider the second-hand evidence, known as “hearsay evidence.” Section 527.8 permits an employer to petition for an injunction to protect employees from credible threats of workplace violence. It also requires the court to conduct a hearing on the petition before issuing an injunction. California law specifies that, at the petition hearing, “the judge shall receive any testimony that is relevant and may make an independent inquiry. . . . If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue” Code Civ. Proc. § 527.8(f).

The appellate court explained that the plain language of Section 527.8(f) permits trial courts to “consider *all* relevant evidence, including hearsay evidence,” when deciding whether to issue an injunction. Accordingly, the court held that this section of the California Rules constitutes an exception to the general rule barring admission of hearsay evidence. The court reasoned that this exception is consistent with the overall purpose of Section 527.8 to provide a method for obtaining injunctions that is “procedurally truncated, expedited, and intended to provide quick relief to victims of civil harassment.” Moreover, Section 527.8(f) requires trial courts to weigh the evidence instead of juries, and “judges are particularly aware of the potential unreliability of hearsay evidence, and are likely to keep this in mind when weighing all of the evidence presented.”

Kaiser is a significant decision that likely will greatly aid employers in obtaining workplace violence injunctions. Using *Kaiser* as a basis, an employer should attempt to submit all relevant evidence in favor of granting the desired injunction, regardless of whether it constitutes hearsay or might otherwise be excluded under the general rules of evidence. On the other hand, employers also should be prepared to rebut otherwise excludable evidence that a defendant might present at the hearing. In any event, employers should protect its employees against any credible threats of workplace violence whenever they become aware of such potentially dangerous situations.

If you have any questions about this decision or how it could impact your employment practices, [Sheppard Mullin's labor and employment attorneys](#) are able to assist you.