

# How a temporary restraining order can help you protect your reputation

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Businesses spend years establishing sterling reputations. Customer lists can take vast amounts of time to build, and confidential information such as costs, vendor lists and trade secrets are often the result of thousands of hours of work. Yet all of these things can be quickly lost if a departing employee engages in illegal conduct.

Richard Miller II, partner, Novack and Macey  
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Similarly, competitors can spread false information in a desperate effort to steal clients, or poach one of your employees. When these things happen, enterprises need immediate help. Yet they are often unsure whether the courts can move fast enough to assist them, as years can pass between the time a lawsuit is filed and a judgment is entered.

“Businesses can obtain valuable relief from the courts in emergency situations,” says Richard L. Miller II, a partner with the business litigation firm Novack and Macey LLP. “In such situations, it is important to promptly seek assistance from a lawyer who has prosecuted these types of claims. If you wait too long, or do not properly establish your case, you can lose protections that can be literally priceless.”

*Smart Business* spoke with Miller about how a business can obtain assistance from the courts in emergency circumstances.

## Why is it important to act quickly in these situations?

To convince a judge that you have an emergency, you must demonstrate that you behaved in a manner consistent with that. Thus, as soon as you learn of a crisis, find a skilled litigator who has experience in seeking emergency relief. Then make sure that he or she has an adequate amount of time to devote to your case, which will require a great deal of immediate attention.

If you delay taking action, the harm that you fear may be completed before counsel can present your case to a judge. And if your reputation has already been destroyed, or your customer list has been published, there may be nothing a judge can do to help you in the short term.

## What is the process to obtain a temporary restraining order (TRO)?

You must first initiate a lawsuit. Your lawyer will draft and file a complaint, which will contain the facts relevant to your case. You will sign a statement swearing that its allegations are accurate.

Your lawyer will also prepare a short emergency motion that asks the court to issue the TRO that will prevent the defendant from engaging in the conduct that will harm your business. Further, your counsel will draft a memorandum that explains, in detail, why the motion should be granted.

These materials usually can be prepared in a few days. Once they are filed, your lawyer should be able to present your motion to a judge within a day or two thereafter.

## **How does a business show that it is entitled to emergency relief?**

Under Illinois law, in order to obtain your TRO, you do not need to meet the same standard as you do to win your case in its entirety. Rather, you must satisfy four elements.

First, you must show that you have a protectable interest. Generally speaking, a legitimate, threatened business interest entitles you to protection.

Second, you must demonstrate that you will suffer irreparable injury if the TRO is not granted. This is easily met under Illinois law because once a protectable interest is established, it is presumed that an irreparable injury will follow if it is not protected.

Third, you must convince your judge that you have 'no adequate remedy at law,' meaning that a monetary award after the fact will not make you whole.

Fourth, you must establish that you are likely to succeed on the merits of your case. Still, you merely must present a 'fair question,' which, once established, entitles you to have your rights preserved. These are the four keys to obtaining a TRO.

## **How will a case unfold in court?**

Once your initial documents are filed, your case will be immediately assigned to a judge who is responsible for deciding emergency motions. Your motion will be argued at a nonevidentiary hearing, at which no witnesses are called and no evidence is considered, other than your sworn complaint.

Barring exceptional circumstances, your lawyer will be required to give the defendant notice of the hearing. If counsel for the defendant appears, he or she will be allowed to argue that you have not satisfied one or more of the elements necessary to obtain a TRO.

If you prevail, a TRO will be issued that prohibits the defendant from engaging in the offending conduct. However, this does not mean the case is over. If an agreement to keep that restraining order in place is not formed, a preliminary injunction hearing must be scheduled.

Discovery will then be taken, perhaps including interrogatories, document requests and depositions. Thereafter, at the preliminary injunction hearing, the parties will present evidence. The judge will then decide whether to enter an injunction that will protect you until a final trial can be held.

The key to obtaining emergency relief is to have a qualified attorney act quickly. When a party prevails at the TRO stage, the opponent often settles the dispute rather than attempting to convince the judge, who has already ruled in the plaintiff's favor, to change his position at the subsequent preliminary injunction hearing.

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