

Domestic Violence as an Employment Issue

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Introduction

The epidemic of domestic violence in American society is well-documented. Nearly one in every three adult women experiences at least one physical assault by an intimate partner during adulthood. Domestic violence is a pattern of behaviors directed at intimate partners that includes physical, sexual, and psychological attacks, as well as economic coercion. It occurs in same-gender and heterosexual relationships, teen relationships, and among all socio-economic levels. It also occurs in all cultures, races, ethnic, and religious groups. No one is immune.

Domestic violence, sexual assault, and stalking can have a significant impact on an individual's ability to work and on the workplace in general. An employer or co-worker may harass, assault, or stalk a fellow employee, affecting her productivity and jeopardizing her employment rights. A non-employee may also stalk, assault, or harass an employee at work, endangering her and her co-workers. Not surprisingly, one-quarter to one-half of domestic violence victims report losing a job due at least in part to domestic violence. One study has shown that 96 percent of employed domestic violence victims experience problems at work related to domestic violence. In some cases, employers fire employees who are victims of domestic violence just because they are victims. Moreover, domestic violence may result in job loss because a victim missed days of work due to injuries caused by battering and was unaware of her rights to sick leave or family and medical leave.

As employees, domestic violence victims are entitled to the same protections as any other employee, but there are unique aspects of their experiences that raise specific issues, some of which are addressed in this chapter.

Family and Medical Leave

A domestic violence victim who needs time off from work to seek medical attention and/or to heal from a serious health condition resulting from domestic violence may be entitled to **job-protected leave** under the federal Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601, *et seq.*, or the D.C. Family and Medical Leave Act (DCFMLA), D.C. Code § 32-501, *et seq.* Neither of these acts, however, makes explicit reference to domestic violence.

Federal FMLA

In order to be covered by the FMLA, the employee must have a **serious health condition** as defined under the act. *See* 29 U.S.C. § 2611(11). Domestic violence victims may experience physical and/or emotional abuse that results in injuries and/or conditions that qualify as serious health conditions under the FMLA, such as post-traumatic stress disorder, neck or back injuries, or head injuries.

To be an **eligible employee** under FMLA, the employee must have worked for a covered employer for at least a year, and she must have worked for at least 1,250 hours for that employer during the last year preceding the date she needs FMLA-qualifying leave. *See* 29 U.S.C. §

2611(1)(A)(i). A **covered employer** is one that employs 50 or more persons within a 75-mile radius. *See* 29 U.S.C. § 2611(2)(B)(i).

If an employee is eligible for FMLA leave, a covered employer is prohibited from discharging her for taking up to **12 weeks of unpaid leave** to care for her own serious health condition.

D.C. Family & Medical Leave

Under D.C. law, an employee is eligible for up to **16 weeks of unpaid family and medical leave every 24 months** to care for her own “serious health condition” if she has been employed by the same employer for a year without a break in service and worked more than 1,000 hours in the 12-month period preceding her request for family and medical leave. D.C. Code § 32-503(a).

Under the D.C. law, a **covered employer** is one that employs 20 or more employees. *See* D.C. Code. § 32-516(2). The definition of **serious health condition** differs under federal and D.C. law and the purposes for taking the leave are slightly different.

D.C. Accrued Paid Sick and Safe Leave Act of 2008

In D.C., employers must provide a certain amount of paid safe and sick leave to employees for illnesses and to address issues arising from stalking, domestic violence, or sexual abuse. D.C. Code § 32-131.01, *et seq.* The leave may be used for the illness or safety of the employee or a qualified family member. D.C. Code § 32-131.02(b)(4). The definition of “family member” is identical to the definition under the D.C. FMLA, and an “employee”¹³⁸ must work the same requisite hours within a 12-month period to qualify. D.C. Code §§ 32.131.01(2)(A), (4).

The amount of leave an employee is eligible for depends on the size of the employer:

- “100 or more employees: at least 1 hour of paid leave for each thirty-seven (37) hours worked, not to exceed 7 days of paid leave per calendar year.” D.C. Code § 32-131.02(a)(1);
- “25-99 employees: at least 1 hour of paid leave for every 43 hours worked, not to exceed 5 days of paid leave per calendar year.” D.C. Code § 32-131.02(a)(2);
- “1-24 employees: at least 1 hour paid leave for every 87 hours worked, not to exceed 3 days of paid leave per calendar year.” D.C. Code § 32-131.02(a)(3).

Paid leave may be used for an “absence resulting from employee or employee’s family member being a victim of stalking, domestic violence, or sexual abuse,” if the absence is directly related to seeking medical attention to treat or recover from physical or psychological injury or disability caused by the stalking, domestic violence, or sexual abuse; obtaining services from a

¹³⁸ Independent contractors, students, and health-care workers who choose to participate in a premium pay program, and restaurant wait staff and bartenders who work for a combination of wages and tips do not qualify as “employees” under the act. D.C. Code § 32-131.01(2)(B).

victim services organization; obtaining psychological or other counseling services; temporary or permanent relocation; taking legal action, including preparation; or taking other action that could reasonably be determined to enhance physical, psychological, or economic health or safety of employee, employee's family member, or the safety of those who work or associate with employee. *See* D.C. Code § 32-131.02(b)(4).

Paid leave guaranteed by the Accrued Sick and Safe Leave Act does carry over from year to year, but an employee is not entitled to cash out such leave at the termination of employment. D.C. Code § 32-131.02(c)(2) .

Claims asserted pursuant to this act may be filed with the D.C. Office of Wage-Hour.

Please see this manual's chapter on the Family Medical Leave Act for additional information regarding qualifications and requirements for leave under D.C. and federal law, as well as how to file a claim.

Claims under Title VII

If the worker is engaged in an intimate relationship with a co-worker who engages in abusive behavior, discrimination laws may be implicated.

The Civil Rights Act of 1964 (Title VII) prohibits employers who employ more than 15 employees from discriminating against employees because of their sex. *See* 42 U.S.C. § 2000e-2(b). It applies to employers who employ 15 or more employees. *Id.* at § 2000e(b). If the co-worker perpetrator is the employee's supervisor or employer, the batterer's harassment, assault, or stalking at work may be in violation of Title VII or the D.C. Human Rights Act as sexual harassment. *See* 42 U.S.C. § 2000e *et seq.*; D.C. Code § 2-1402.11.

In addition, employers violate Title VII when they treat battered women differently than similarly situated male employees on account of gender. *See Fuller v. City of Oakland*, 47 F.3d 1522 (9th Cir. 1995); *Rohde v. Steel Casings, Inc.*, 649 F.2d 317 (5th Cir. 1981). For example, if an employer allows male employees time off from work to attend family court or child support proceedings, but refuses to allow female employees time off to seek protective orders from their batterers, the employer may be discriminating against the female employees because of their sex.

Please see this manual's chapters on Sexual Harassment and Discrimination for a more in-depth discussion of gender-based harassment and discrimination under D.C. and federal law.

Claims under the ADA

Long-term mental or physical injuries caused by domestic violence, including, but not limited to, post-traumatic stress disorder or back and neck injuries, may be covered under the Americans with Disabilities Act (ADA) or the D.C. Human Rights Act if the injury qualifies as a disability under these laws. *See* 42 U.S.C. § 12102; D.C. Code §§ 2-1402.02(5A), 2-1411(a).

Under the ADA, a **disability is defined as a physical or mental impairment that substantially limits a major life activity**. A worker can establish that s/he has a disability by showing “a record of a substantially limiting impairment” or “[being] regarded as having such an impairment.” Major life activities include walking, sleeping, working, standing, thinking, lifting, and taking care of oneself.

In addition to being protected from discrimination, a disabled domestic violence victim may be entitled to a **reasonable accommodation**, such as a modified work schedule or a transfer to another position or site. *See* 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.2(m); “EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act,” March 1, 1999).

Like Title VII, in order to be a **covered employer** subject to the ADA, an employer must employ at least 15 employees. *See* 42 U.S.C. § 1211(5)(A). An employer is prohibited from discriminating against a battered woman employee – like any other employee – with a qualified disability. *Id.* at § 12112.

Please review this manual’s chapter on Discrimination for more detailed information regarding the ADA and D.C. law.

Workers’ Compensation

If the employee who is the target of the abuse is injured at work because of the assault or attack by the batterer at work, her injuries may be covered under the D.C. Workers’ Compensation Act. Under the D.C. Workers’ Compensation Act, an employee who suffers an injury at work is entitled to workers’ compensation. Physical and emotional illness and injuries are covered by workers’ compensation, though emotional injury claims are only allowed in certain narrow circumstances. *See* D.C. Code § 36-301 *et seq.*

Please review this manual’s chapter on Workers’ Compensation before advising a domestic violence victim about filing for workers’ compensation.

Occupational Health and Safety

Occupational safety and health laws require all employers to maintain a work environment that is safe and healthy for all workers. *See* 29 U.S.C. § 654(a)(1); D.C. Code § 36-1203(a)(1). A domestic violence victim who fears for her safety at work because her batterer has threatened to assault her there or has attacked her there previously may consider reporting this “workplace hazard” to her employer and may request that the employer address the danger consistent with OSHA. If the employer fails to address her safety concern, then the employee-victim may file a complaint with OSHA regarding the safety hazard.

In addition, under federal and D.C. law, an employer is prohibited from discriminating against or firing an employee for filing a complaint or exercising any right or duty afforded under occupational safety and health laws. *See* 29 U.S.C. § 660(c); D.C. Code § 36-1117(a). If a domestic violence victim has been terminated or otherwise discriminated against because she has filed a complaint or otherwise complained about her fear for her safety at work, this may be a violation of federal and D.C. occupational health and safety law. D.C. Code § 32-1117(a).

Please review this manual's chapter on Occupational Safety and Health for additional information regarding D.C. and federal law.

Unemployment Compensation

Unemployment insurance is a social insurance program that provides temporary income to workers who lose their jobs in certain circumstances. To receive unemployment compensation, a claimant must: 1) have earned enough wages to qualify; 2) be able and available to work; and 3) have lost or quit his or her job through no fault of his or her own. In the past, domestic violence victims who, for example, quit to flee a batterer or who are fired for attending to domestic violence proceedings were deemed ineligible to receive benefits.

Under D.C. law, however, domestic violence victims are entitled to unemployment compensation benefits if they lose their jobs as a result of the violence. In June 2004, the D.C. City Council passed legislation to expand unemployment compensation coverage to these workers. The "Unemployment Compensation and Domestic Violence Amendment Act of 2003" allows domestic violence victims to receive unemployment compensation if they establish that they quit or were fired because of domestic violence. For example, if an unemployment compensation claimant who is discharged for excessive absenteeism can prove that she was absent due to domestic violence problems, then she can overcome her employer's proof that she was discharged for misconduct and still receive benefits.

Under the 2004 act, to receive unemployment compensation, domestic violence victims must produce the same paperwork required of all other applicants for unemployment compensation. Additionally, domestic violence victims must offer some sort of proof that they are victims of domestic violence. Proof can include the following:

- (1) A police report or record;
- (2) A court record, such as a Temporary Protection Order or Civil Protection Order;
- (3) A governmental agency record such as a report from Child Services; or
- (4) A written statement affirming that the victim has sought services from a shelter official, social worker, counselor, therapist, attorney, medical doctor, or cleric.

The employer, however, will not be charged for the provision of benefits. Instead, the benefits will come from D.C.'s general funds.

D.C. Unemployment Compensation Reform Act of 2010

The D.C. Unemployment Compensation Reform Act of 2010 expands eligibility for unemployment compensation to persons who leave their jobs due to compelling family reasons. Among the circumstances included in the statute as providing “good cause” for a voluntary separation from employment is when a worker leaves a job due to domestic violence against the worker **or against his or her immediate family member**. Thus, in addition to reinforcing the 2004 law, this law expands protection to a worker who must separate from his or her employment if an immediate family member is a victim of domestic violence.

Please refer to this manual’s chapter on Unemployment Compensation for additional information.

Additional Resources for Domestic Violence Victims

Civil Protection Orders

Apart from employment law protections, a domestic violence victim who has experienced abuse in the District of Columbia may obtain a civil protection order (CPO) against her batterer. To obtain a CPO under the D.C. Intrafamily Offenses Act, a petitioner must prove that s/he has an intrafamily relationship with the respondent and that there is “good cause to believe” that the respondent committed or threatened to commit an intrafamily offense against petitioner. *See* D.C. Code § 16-1001 *et seq.*

An **intrafamily relationship** is defined broadly by showing that the petitioner is related to the respondent by: blood (including parents, children, siblings, aunts, uncles, and grandparents), marriage (current or former) (including in-laws and step-siblings), legal custody, having a child in common, adoption or domestic partnership. *See* D.C. Code § 16-1001(9).

An **intrafamily offense** refers to interpersonal, intimate partner or intrafamily violence. *See* D.C. Code § 16-1001(8). This includes criminal assaults and threats, and stalking. Any criminal offense listed in the D.C. Code or any federal crime that occurs in the district may be sufficient to meet this requirement as long as the petitioner can show that it was committed on his/her person.

The Intrafamily Offenses Act enumerates specific forms of **relief** that may be granted by the court in both *ex parte* and permanent orders. *See* D.C. Code Ann. § 16-1005(c)(1)-(9). The act further authorizes the judge to award any additional relief that is “appropriate to the effective resolution of the matter.” D.C. Code Ann. § 16-1005(c)(11). This permits creative and innovative requests for relief, however, any requests should be very specific to avoid confusion. The court may direct the respondent not to assault, threaten, harass, stalk, or physically abuse the petitioner and/or petitioner’s children and may prohibit the respondent from contacting petitioner in any manner, directly or indirectly through a third party. *Id.* at § 16-1005(c)(1) & (2).

A domestic violence victim may work with someone who could be covered under a CPO; this may impact the nature of the legal advice she is offered regarding her employment. For example, the behavior the employee is experiencing may qualify her to obtain a CPO – the abusive relationship need not take place in the home. If a batterer is stalking or assaulting the employee at the workplace, that alone may be a sufficient basis for obtaining a CPO, as long as the intrafamily relationship exists and the stalking rises to the level of a criminal offense under the D.C. Code or federal law. The D.C. Code penalizes stalking and harassment as well as more physically brutal offenses:

- ❖ Whoever unlawfully assaults or threatens another in a menacing manner shall be fined not more than \$1,000 or be imprisoned not more than 180 days or both. D.C. Code Ann. § 22-404(a)(1).
- ❖ Whoever unlawfully assaults or threatens another in a menacing manner, and intentionally, knowingly or recklessly causes significant bodily injury to another shall be fined not more than \$3,000 or be imprisoned not more than three years or both. D.C. Code Ann. § 22-404(a)(2).

Note: D.C. Code Ann. § 22-404 defines “significant bodily injury” as an injury that requires hospitalization or immediate medical attention.

In addition, a CPO can extend to the workplace – prohibiting a respondent from threatening, harassing, stalking, or otherwise contacting the petitioner at her workplace, even if the respondent/batterer does not work at the same workplace. An employer is required by law to obey a CPO, so if it requires that the petitioner and respondent stay a specific distance from each other and they are at the same workplace, compliance with the order may require the employer to move the respondent to another shift or location in the building or another site.

If the worker does not already have a CPO, please refer her to one or more of the organizations listed in the next section and advise her to include the workplace in the scope of relief she seeks. Apart from the impact of domestic violence on employment, the legal, social, and practical implications of domestic violence are complex and outside the scope of the services that EJC offers. Legal advocates should take caution in providing advice regarding other domestic violence-related issues about which the practitioner lacks expertise, and instead provide appropriate referrals.

Referral Organizations

There are several agencies in Washington, D.C., that provide assistance to domestic violence victims seeking a civil protection order, shelter, or counseling. For a woman in crisis who needs emergency assistance, encourage her to call the **National Domestic Violence Hotline** at 1-800-799-7233 or 1-800-787-3224 (TDD), or the local 24-hour hotline at **My Sister’s Place** 800-298-7233.

Please refer a client with legal questions to one of the following: for clients with immigration issues or clients who speak Spanish, French, or another foreign language, **Ayuda**,

202-387-4848 (DC) or 703-444-7009 (VA); **American University College of Law, Women and the Law Clinic**, (202) 274-4154; **Bread for the City**, 202-518-0545 (NW) or 202-561-8587 (SE); **Columbus Community Legal Services, Family and the Law Clinic**, **Catholic University**, 202-319-6788, **Domestic Violence Clinic**, **The George Washington University Law School**, 202-994-7463; **Georgetown University Law Center, Domestic Violence Clinic**, 202-662-9640; or they can go directly to the **Domestic Violence Intake Center at D.C. Superior Court**, 202-879-01532.

For shelters and counseling: **House of Ruth**, 202-347-2777, or **My Sister's Place**, 202-529-5991 (this is a 24-hour hotline as well).

Maryland Law

Exec. Order No. 01.01.1998.25 mandates that all Maryland state agencies adopt domestic violence model policies that increase awareness in the workplace for employees. These policies and procedures must instruct employees on how to offer assistance to domestic violence victims “in an expedient, meaningful and confidential manner.” Exec. Order No. 01.01.1998.25(A)(2). Departments and agencies must post information about domestic violence and available resources in conspicuous spaces in the workplace. Exec. Order No. 01.01.1998.25(A)(3). Finally, the order mandates that each department and agency of the state provide domestic violence awareness training for employees. Exec. Order No. 01.01.1998.25(A)(4).

There are currently no Maryland laws on the books that address the issue of domestic violence with respect to employees in the private sector. However, domestic violence survivors should be encouraged to seek the same protections provided to D.C. residents. For example, s/he should be encouraged to apply for unemployment compensation benefits and to explain to the person accepting his or her claim that the violence s/he experienced resulted in his or her job separation.

Virginia Law

In Virginia, no laws specifically cover domestic violence victims who lose their jobs or are otherwise treated differently in their workplaces as a result of the domestic violence. However, domestic violence survivors should be encouraged to seek the same protections provided to D.C. residents. For example, s/he should be encouraged to apply for unemployment compensation benefits and to explain to the person accepting his or her claim that the violence s/he experienced resulted in his or her job separation.