

Employment Law Counseling & Training Tip of the Month

November 2009

Tip:

The repercussions of domestic violence come to work with your employees.

Are you prepared?

You arrive at work Monday morning and pick up a voice mail left over the weekend from an employee who explains that she will miss work because she needs to go to court to get a protective order against her abusive husband. A supervisor informs you that a woman he took out on one date has been stalking him, and lately she has been showing up at work. Another employee has to leave work early after learning that her daughter has been sexually assaulted. Are you prepared to handle these issues? Does your company have policies, protocols, procedures and resources in place to provide a safe and helpful working environment for employees currently or potentially experiencing the effects of domestic violence?

Domestic violence can, and often does, cause serious problems in the workplace. It affects employees' attendance, well-being and productivity, and may create workplace safety issues. As an employer, you need to know how to handle these issues appropriately; otherwise, you risk exposing your company to potential liability under various state and local laws that protect employees who may need time off from work to address the effects of domestic violence. Creating a domestic violence policy for your workplace, and ensuring that relevant personnel understand their responsibilities under applicable law and your policy, are key steps to put in place to avoid potential harm and liability.

Understanding Domestic Violence and Its Effects on the Workplace

“Domestic violence” generally refers to a pattern of coercive behavior perpetrated by an abuser in an intimate relationship with the victim. Such a relationship may be marriage, cohabitation or dating. The abuser may behave violently or threaten violence to establish control or dominance over the victim. While women are far more likely than men to be victims, both men and women can be abusers or victims, and abuse may be present in both opposite- and same-sex relationships. When discussing how domestic violence affects the workplace, we must also consider the related issues of sexual assault and stalking. “Sexual assault” means intentional sexual contact to which the victim does not or cannot consent. “Stalking” involves obsessive fixation on a victim, which may or may not include physical contact. A stalker may harass, terrorize, frighten, intimidate, or molest the victim.

The effects of domestic violence are widespread. Almost one-third of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives.[\[1\]](#) Every year more than one million people in the U.S. report a violent assault by an intimate partner.[\[2\]](#) In addition, more than one million women and men are victims of stalking in the U.S. each year. Since stalkers show up unexpectedly at places where the victim is likely to be, the workplace is often ground zero. Indeed, the workplace can be a prime target for abuse in many cases of domestic violence because the perpetrator usually knows where the victim works and is able to take advantage of the victim’s fear of losing his/her job.

Companies that closely monitor workplace security recognize the inherent issues domestic violence raises. In fact, corporate security directors rank domestic violence as a high security problem.[\[3\]](#) Employers who fail to protect their employees from violence at work may be liable, and jury awards for victims claiming inadequate security can run in the neighborhood of one million dollars.[\[4\]](#)

Domestic violence may also affect employees’ performance and productivity. Many women who experience domestic violence report that the abuse impacts their work -- in the form of lateness, absence, keeping a job, or career promotions.[\[5\]](#) According to the CDC, the annual cost of lost productivity due to domestic violence is \$727.8 million, including more than 7.9 million lost paid workdays.[\[6\]](#)

[1] (Source: The Commonwealth Fund, Health Concerns Across a Woman's Lifespan: 1998 Survey of Women's Health, May 1999).

[2] (Source: U.S. Department of Justice, Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, & Girlfriends, March 1998)

[3] (Source: State of Louisiana, Domestic Violence in the Workplace, available at: <http://www.ag.state.la.us/Article.aspx?articleID=40&catID=0>)

[4] (Source: Perry, P., Assault in the Workplace. Law, May 1, 41 (1994))

[5] (Source: Family Violence Prevention Fund, Seven Reasons Employers Should Address Domestic Violence, available at: <http://endabuse.org>)

[6] (Source: CDC Report: Costs of Intimate Partner Violence Against Women in the United States, available at: <http://www.cdc.gov>).

State Laws Prohibiting Discrimination and/or providing Sick Leave for Victims of Domestic Violence

In recent years, a number of states have enacted laws aimed at protecting victims of domestic violence in the workplace. Some states provide protection under their anti-discrimination laws, while other states have enacted safe leave laws that enable employees to take time off from work to obtain necessary medical care, counseling, legal assistance or otherwise address issues relating to domestic abuse. These laws are intended to protect victims of domestic violence from the loss of their income at the very time it may be needed to escape an abusive situation. In addition, several states have enacted laws that enable employers to seek a court order protecting the workplace from domestic violence. Examples of these laws include:

New York State

- **Employee Protection:** In July 2009, New York expanded the categories of victims protected under its Human Rights Law to include victims of domestic violence. Employers may not discriminate against an individual because of the person's status as a victim of domestic violence, which includes harassment, stalking, and assault by a spouse or a family member. N.Y. Exec. Law §§ 292, 296. In addition,

New York prohibits employers from discharging or penalizing a crime victim for taking time off from work to appear in court, consult with a district attorney or obtain an order of protection. This law requires employees to give their employers one day's notice of leave. N.Y. Penal Law § 215.14.

New York City

- **Employee Protection:** Under New York City law, employers may not discriminate against an individual who is, or who is perceived to be, a victim of domestic violence, sexual assault or stalking. The law also requires employers to make reasonable accommodations that allow the employee to perform “essential requisites” of the job, unless doing so would create “undue hardship.” Employers can, however, require their employees to provide documentation supporting their need for leave. N.Y.C. Admin. Code § 8-107.1; N.Y.C. Local Law 75 (2003).

California

- **Employee Protection:** In California, employees may be entitled to leave to obtain judicial relief, seek medical attention, obtain services or psychological counseling, and participate in safety planning or relocating. Employees must provide reasonable advance notice or notice within a reasonable time after the absences. Employers may require certification such as a police report, court order or medical documentation. The law prohibits employers from discriminating or retaliating against employees for taking leave. Cal. Lab. Code §§ 230, 230.1.
- **Workplace Safety:** California law allows employers to apply for a temporary restraining order and injunction to prevent threats or violence against their employees. Cal. Civ. Proc. Code § 527.8.

Colorado

- **Employee Protection:** For employers with 50 or more employees, Colorado law allows employees who are the victims of domestic abuse, sexual assault or stalking to take up to three days of leave to seek judicial relief, obtain medical care or counseling, relocate or make their homes secure. This law prohibits employers from discriminating or retaliating against an employee for taking the leave. Colo. Rev. Stat. § 24-34-402.7.

- **Workplace Safety:** Colorado law gives courts the ability to issue civil restraining orders in the name of a business for the protection of employees. Colo. Rev. Stat. § 13-14-102(4)(B).

District of Columbia

- **Employee Protection:** D.C. law requires employers to provide employees up to seven days of paid leave for absences needed to obtain social or legal services resulting from stalking, domestic violence or sexual abuse of the employee or the employee's family member. D.C. Code § 32-131.10.

Florida

- **Employee Protection:** Florida employers with 50 or more employees must provide an employee who is a victim, or has a family member who has been a victim, of domestic violence (including dating or sexual violence) with up to three days of leave to seek court protection, legal assistance, to obtain medical care, mental health counseling, or victim-services, to secure his/her home or seek new housing. Fla. Stat. § 741.313. The employer can require documentation and advance notice of leave, unless there is a threat of imminent danger. The law also prohibits employers from interfering with, restraining or denying domestic violence leave.

While the details of each state's laws vary significantly, more than half of the states explicitly provide unemployment insurance benefits to victims of domestic violence who leave their employment as a result. Some states provide defenses to individuals who are subject to eviction proceedings based on violence against them or their having sought emergency services. Many states have "crime victim leave laws" that prohibit employers from penalizing employees who are victims of crime for taking time off to go to court or seek medical services.

Domestic violence issues in the workplace may also implicate federal laws. For example, leave and job protection under the Family and Medical Leave Act may be available to eligible employees to care for a "serious health condition" caused by abuse.

Summaries and updates on other state laws protecting victims of domestic violence are available at Legal Momentum, an advocacy group's website, at:

<http://www.legalmomentum.org/>.

Tips To Keep In Mind:

- ***Prepare a domestic violence policy for your workplace:*** Consider developing a domestic violence policy that is fully compliant with applicable state laws. Keep in mind that the purpose of the policy is to increase awareness of domestic and sexual violence, assist employees who have experienced such violence or stalking, and help ensure that the workplace is a safe environment.
- ***Ensure that relevant personnel understand their duties under applicable law and your Policy:*** If you have a domestic violence policy in place, make sure that your human resources, security and legal departments, and your managers, understand your policy, the applicable laws and how to respond to signs of domestic violence. If your business does not have a formal policy in place, ensure that your managers are aware of changes in applicable law and instruct them to consult with your legal or human resources departments when these issues arise.
- ***Provide support to victims when requested - Engage in Interactive Process:*** When an affected employee requests leave or another accommodation, take the request seriously and engage in the interactive process in order to evaluate the reasonableness of the requested accommodation. Remember that an employee can not dictate his/her accommodation, and that you can require documentation supporting the accommodation request.
- ***Keep Matters Confidential:*** You should treat matters of domestic violence as strictly confidential as practicable under the particular circumstances. However, never promise absolute confidentiality to the complaining employee.
- ***Treat claims of discrimination arising out of domestic violence appropriately:*** To minimize the risk of discrimination claims, ensure that managers and supervisors promptly report all claims of domestic violence, discrimination, or harassment to Human Resources and assist in expediting a response to the employee in need of help. Take appropriate remedial action if violations of your policy are discovered and ensure proper documentation.
- ***Congressional Action Is on the Horizon:*** Employers should be aware that the states are not alone in their desire to protect victims of domestic violence. Congress is currently considering legislation that would allow employees to take paid time off to deal with issues related to domestic violence. The provision is

actually part of a broader bill, the Healthy Families Act (HR 2460, S1152) which would require employers with 15 or more employees to provide employees with up to 7 days of paid leave each year. Like a number of its state counterparts, this bill would cover employee absences resulting from domestic violence, sexual assault, or stalking. The Healthy Families Act has received a great deal of attention and was the subject of a House sub-Committee hearing this past June. It is anticipated that the bill will gain momentum during the months proceeding the mid-term election next year.

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Should you have any questions or would like assistance in creating or reviewing your domestic violence leave policy, please contact your Proskauer relationship lawyer or any Proskauer lawyer listed below.

[Related Professionals](#)

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Partner