

From Private to Public: The Impact of Domestic Violence in the Workplace

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This post is part of an ongoing series on the intersection of law and how it interacts with violence against women, illuminating how it is equally critical to make effective implementation of law, as well as the legislation itself, a priority.

It is well-established that domestic violence disproportionately impacts women. It is also well-established that economic independence and stability are crucial for women to escape an abusive relationship. What is less obvious, however, is the impact domestic violence has on women's employment.

When women deal with the consequences of domestic violence, they have to miss work to do so. Women must take time off from work to obtain an order for protection, engage in safety planning, seek medical attention, obtain counseling services, secure legal assistance, find childcare and/or relocate. For many victims, leaving an abusive relationship means completely starting over — a time consuming and financially burdensome task.

Absent a legal mandate or employment policy, employers are under no obligation to provide victims of domestic violence with leave, and by missing work, victims put their employment and financial security at risk. In the U.S. alone, it is estimated that between 21% and 60% of victims lose their jobs for reasons related to domestic abuse.

Missing work also means missing a day of pay — something most victims cannot afford to do. Nationally, it is estimated that victims lose a combined total of 8.0 million days of paid work each year.

In the simplest terms, the very steps victims need to take to leave an abuser, stay safe and begin to heal could jeopardize their ability to live on their own and support themselves and their families. This double bind is the reason many victims end up staying with their abusers.

While previously ignored, the intersection of domestic violence and the workplace has become a recent area of focus for employers, lawmakers and advocates. This post seeks to: explain the impact domestic violence has in the workplace; provide an overview of relevant laws; and suggest that the current focus on this issue signals an important cultural shift in our collective response to domestic violence.

The Problem

The effects of domestic violence in the workplace can take many forms. Consider the following examples:

- Absences at work. A victim is out of sick leave but has to miss work to attend a hearing regarding her order for protection. She is unable to find someone to cover her shift, and her employer fires her.
- Poor work performance. A victim is constantly afraid partner will harm her, and she is starting to feel hopeless. As a result, she suffers from anxiety and depression and has trouble concentrating at work.
- Discrimination. A victim discloses to her employer that she is in an abusive relationship. Her employer views her as less professional and tells her she needs to keep her personal life separate from work life.

In addition to the examples above, an abuser's actions can also put a victim's employment at risk. It is a common tactic for abusers to harass and/or stalk victims at their workplace in order to maintain control over them. If the abusive partner is prohibited from showing up at the victim's workplace, they may call multiple times a day or disseminate personal information about the victim to her coworkers. This behavior further isolates the victim and solidifies financial dependence. If the abuser causes enough of a disruption, the employer may decide to terminate the victim's employment.

The Response

Recently, lawmakers and employers have come to view domestic violence as a workplace issue demanding a response. Some employers have taken it upon themselves to create policies that will help identify and support workers who are suffering from domestic abuse. By doing so, employers are not only protecting their workers but also themselves. It has been estimated that the cost of intimate partner violence exceeds \$8.3 billion per year in the U.S. alone. With statistics like these, employers have come to view domestic violence as an issue that can negatively impact their bottom line.

Lawmakers are also responding to this issue. In the U.S., there are efforts at the federal and state levels to address the effects of domestic violence in the workplace. Broadly speaking, these laws can be described as:

- Accommodation or leave laws. These laws provide paid or unpaid leave to victims of domestic violence. While some laws create additional domestic violence leave, less comprehensive versions simply allow victims of domestic violence to take previously accrued sick leave to address issues related to the abuse.
- Antidiscrimination laws. These laws make "domestic violence victim" a protected status like race, sex, religion and national origin. An employee cannot be fired on the basis that she is a victim of domestic violence.

- Job-protected leave laws/Hybrid laws. These laws provide victims with leave and prohibit employers from terminating a victim's employment because she requested leave related to domestic violence.

Of the types of laws discussed, the laws that offer paid leave and prohibit employment discrimination do the most to protect victims in the workplace. If a victim has used all of her sick leave or cannot afford to take unpaid leave, a law allowing her to take unpaid leave does little to improve her situation. Similarly, accommodation laws that lack an antidiscrimination component are insufficient to protect a victim's employment. Once a victim discloses her status to her employer, she puts her continued employment at risk. To truly address the issues and barriers domestic violence victims face in the employment context, a comprehensive legal framework is necessary — a framework that combats the stigma associated with domestic violence and provides victims with time and financial resources necessary to rebuild their lives.

Federal Law

In 2012, President Obama issued a memorandum directing all federal agencies to create policies addressing domestic violence in the workplace. In doing so, the President recognized that the effects of domestic violence “spill over into the workplace.” While there is no current federal law protecting domestic violence victims from employment discrimination or requiring employers to accommodate a victim's request for leave, federal legislation has recently been introduced that would do just that.

In 2015, versions of the Security and Financial Empowerment Act (“SAFE Act”) were introduced in the House and Senate. The proposed legislation prohibits employers from taking any adverse employment action against an individual who is, or is perceived to be, a victim of domestic violence. Under the SAFE Act, a victim cannot be fired because of a disruption in the workplace caused by the perpetrator. Importantly, the proposed legislation not only protects victims of domestic violence but also survivors of dating violence, sexual assault, stalking and victims of “communication of an intimate image of the individual.”

In addition to the SAFE Act, the Healthy Families Act was introduced in the House in 2015 and would provide victims with paid leave to address health and safety concerns related to domestic violence. The Healthy Families Act allows employees to earn up to seven paid sick days that they can use to seek medical treatment, take legal action, relocate, or obtain counseling or psychological services. Importantly, paid leave would not only be available for victims who need to take leave for themselves, but also for employees who need to miss work to support their child, parent, spouse or any other relative who has suffered from domestic abuse.

If enacted, the SAFE and Healthy Families Acts, would surely represent significant progress in addressing the barriers facing domestic violence victims in the workplace. However, in the absence of explicit federal protections, Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Americans with Disabilities Act (the “ADA”) may be a vehicle for providing legal protections to domestic violence victims in the employment setting.

The Equal Employment Opportunity Commission (“EEOC”) has provided guidance cautioning employers not to overlook the applicability of Title VII and the ADA to an employee who is the victim of domestic abuse. The EEOC provides the following example: an employer fires an employee after learning she is the victim of domestic abuse and states he is concerned about the “drama” domestic abuse brings to the workplace. Because Title VII prohibits discrimination on the basis of sex, including sex-based stereotypes, the employer’s actions may be unlawful.

State Efforts

A number of states have enacted laws that provide employment protections to domestic violence victims. These laws are a patchwork of leave laws, anti-discrimination laws and combinations of both. While some states’ laws are more robust than others, the message is clear — employers have an obligation to respond to the needs of domestic violence victims.

In Illinois, an employer cannot discriminate against an applicant or employee on the basis of her “order for protection status.” In addition, the Illinois Victims’ Economic Security and Safety Act (“VESSA”) allows for up to 12 weeks of unpaid leave for victims, or family members of victims, to obtain medical care, including psychological treatment, seek legal assistance and participate in safety planning. VESSA also requires employers to provide reasonable accommodations to employees who are suffering from domestic violence. Importantly, there is no requirement that the employee be employed for a specific amount of time before becoming eligible for VESSA leave. VESSA leave is immediately available to the employee. While the protections afforded under VESSA are fairly expansive, there is no private right of action. Instead, the Illinois Department of Labor is in charge of enforcing the law, and upon complaint by an employee, can investigate and hold public hearings regarding an employer’s alleged violation.

Although not nearly as comprehensive as VESSA, Minnesota has enacted the Women’s Economic Security Act (“WESA”), which requires employers to allow employees to use sick leave for “safety leave.” The purpose of “safety leave” is to provide or receive assistance related to domestic violence, sexual assault or stalking. Notably, WESA does not provide victims of domestic violence with additional sick leave, but rather, simply allows them to use accrued sick leave benefits to address issues related to domestic violence. As a result, leave benefits are not immediately available to the employee. Unlike the Illinois law, WESA provides workers with a private right of action against employers who violate the law.

In addition to domestic violence leave and anti-discrimination laws, states have also expanded eligibility for unemployment benefits to victims of domestic violence. For example, Montana provides up to 28 weeks of unemployment benefits to individuals who left their job due to domestic violence. The law requires the individual requesting unemployment benefits to provide documentation of the abusive situation such as an order for protection or medical documentation. Notably, the law states a victim will forfeit her eligibility for benefits if she remains with, or returns to, the abuser.

While many states are recognizing the importance of protecting victims of domestic violence in the workplace, other states have failed to do so. A Louisiana bill aimed at protecting survivors of domestic violence from workplace discrimination recently stalled in committee. Representative

Marcus Hunter, D-Monroe, explained the purpose of his bill is to ensure survivors' reliance on perpetrators is not further "exacerbated by [their] lack of employment." Opponents of the bill expressed concern that the proposed legislation would unfairly burden employers.

What opponents of domestic leave laws fail to recognize, however, is the significant economic impact domestic violence has on employers. Approximately 64% of victims report that domestic violence impacts their ability to work. Victims report that they feel distracted and afraid, and often worry about losing their job. As a result, victims are less productive at work. It is also not just victims who are distracted at work, perpetrators report having difficulty concentrating at work and using workplace resources to check up on a victim.

Beyond the U.S.

The U.S. is not the only country that has recognized the impact domestic violence has on the workplace. A 2014 Canadian study found that:

- 9% of people who identified as experiencing domestic violence reported that domestic violence negatively impacted their work performance;
- 38% of victims reported being unable to get to work due to domestic violence;
- 5% of victims reported losing their job as a result of domestic violence; and
- Canadian employers lose \$77.9 million each year because of the impact domestic violence has in the workplace.

In response, Manitoba recently amended its Employment Standards Code to include paid and unpaid leave for domestic violence victims. Under the amended Code, an employee who is the victim of domestic violence is entitled to 5 days of paid leave and 5 days of unpaid leave that can be taken consecutively or intermittently. In addition, a victim is entitled to a continuous leave of up to 17 weeks if a victim needs to permanently relocate.

Like Canada, Australia has been at the forefront of recognizing domestic violence as a workplace issue. In 2013, Australia amended its Fair Work Act to include the right to request leave to employees who are experiencing domestic violence or supporting a relative who is experiencing it. However, there is no right to an appeal if the request is denied, and once an employee discloses her status as a domestic violence victim, there are no anti-discrimination law in place to protect her.

Australia's law demonstrates the need for a comprehensive legal framework. It is not enough to enact domestic violence leave laws if there is no law prohibiting discrimination against domestic violence victims. Similarly, it is not enough to criminalize domestic violence and create resources for victims if accessing those resources means losing their economic freedom.

The Cultural Shift

The recognition by employers and lawmakers that domestic violence is a workplace issue, rather than a woman's issue, represents a very significant cultural shift. Historically, domestic violence has been relegated to the "private sphere." Marital and family violence have long been considered private matters, beyond the reach of the law or public scrutiny. Treating domestic abuse as a "private matter" not only worked to justify nonintervention but also reinforced a cultural belief that domestic violence is not as serious as other forms of violence.

In contrast, the workplace has long been synonymous with the "public sphere," and as a result, understood as a male space. Laws and employer policies that protect victims in the employment context signal that women's voices are being heard in a historically male-dominated space. Further, these laws and policies are working to bring the issue of domestic violence further away from the margins and directly into the public sphere. Instead of viewing domestic abuse as something an individual woman experiences, it is being understood as a societal problem demanding a community-based approach. Put simply, these laws and employer policies reflect an important cultural value — victims of domestic violence, who are predominately women, belong in the workplace and their safety matters.

Further, by valuing women's experiences in the workplace, employers and lawmakers are playing an important role in combating gender inequality rather than reinforcing it. Our communities and societies are healthier and stronger with a fully functioning workforce of both men and women. A recent report by the McKinsey Global Institute found that we could add \$12 trillion to the global GDP by the year 2025 if we continue to advance women's equality. Providing employment protections to domestic violence victims builds on the efforts of organizations, like Global Rights for Women, to achieve a world where women's rights to equality and freedom are fully realized.

**This article originally appeared on the Global Rights for Women website on May 24, 2016, and is republished with their permission. Global Rights for Women is a Minnesota-based nonprofit that collaborates with partners around the world to promote women's human rights to equality and freedom from violence through legal reform and systems change. You can learn more at www.globalrightsforwomen.org.*

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Practice Areas

Family Law