

Employment Rights for Union Members who are Survivors of Domestic Violence, Working in New York

How to Stay Safe & Keep Working

1 Should I tell my employer that I'm a survivor?

Maybe. *You may want to consider:*

- How will your boss react?
- Have you been having performance problems related to the violence that you need to explain?
- Can your boss make any changes that would help you feel safer or do better at work?

If you are a survivor of domestic violence, sexual assault or stalking and work in New York City or Westchester County, the law says that your boss must make changes at work so that you can do your job and still be safe. This is called a "reasonable accommodation." (This protection is *not* available in other parts of the state.) If your abuser is a co-worker and the abusive behavior occurs in the workplace, the law and policies regarding sexual harassment may apply as well.

If you decide that you do want to tell your boss about your situation, contact your union to discuss a strategy. If the union needs more information about domestic violence, encourage them to contact a local domestic violence service provider or Legal Momentum. *You do not need to tell your boss that you are a victim unless you are asking for a reasonable accommodation.*

2 I'm being harassed at work by my abuser, what can I do?

You could ask your boss to:

- Give you time off so that you can go to court, move, or take other steps to deal with the abuse.
- Change your telephone number or extension.
- Keep your work & home address or phone number private.
- Put you at a different desk, shift, or work site.
- Have a security guard take you to your car, bus or subway stop.
- Have security or the front desk help make sure your abuser cannot come inside.

If you work in New York City or Westchester County, you have a right under the law to request a reasonable accommodation. (If you work elsewhere in New York State, you do not have a right under the law but you can still ask). If you want a reasonable accommodation like this, first talk with your union representative or officer to determine if your collective bargaining agreement (CBA) or employer's policies, including a workplace violence or harassment policy, provide you with any benefits.

(If you are a New York state employee, check your employer's workplace violence prevention program and/or workplace domestic violence policy). Benefits can include paid leave, sick days, or leave under the Family and Medical Leave Act (FMLA). If you want an accommodation, and you work in New York City or Westchester County, you must disclose the violence to your employer. Under the law in New York City and Westchester County, your boss does not have to grant your request if it would be an "undue hardship" for the employer. If your boss refuses to make the change you request, see if you can find an accommodation that will work for both of you.

3 What if, after I request an accommodation, my boss asks me to prove that I am a victim?

If you are asking for an accommodation, your boss may ask you to provide "certification" of the violence.

The law in New York City and Westchester County says you can bring in:

- A police or court record.
- A letter from a caseworker, lawyer, clergy member, medical provider or any other professional who is working with you.
- Any other papers that show that you are a victim.

It is your boss's responsibility to keep the fact that you are a victim, your request for accommodations, and any papers you give to him or her *confidential*. Your boss may need to disclose this information to others to secure workplace accommodations for you. However, your boss can only disclose the information to others on a need-to-know basis and only with your consent. You can prepare for the discussion with your boss by working out a strategy beforehand with the union and/or a domestic violence service provider. It is also the union's responsibility to keep this information confidential.

4 My boss is threatening to fire me because of the violence. What can I do?

In New York, the law says that your boss can't fire you, pay you differently, or treat you worse than before just because you are a survivor of domestic violence. If you work in New York City or Westchester County, you are also protected if you are a victim of sexual assault or stalking. It is also against the law in New York City and Westchester County for your boss to fire you just because you are being harassed at work by your abuser.

If your boss is doing any of these things, this may be discrimination that is against the law and a violation of the CBA. You should speak with the union about the best way to protect against job jeopardy and to assert your rights, which could include:

- Pursuing a grievance against the employer.
- Talking to your boss with your union representative and informing him or her that what they are doing is against the law.
- Bringing in a letter explaining the law—contact Legal Momentum for a form letter that you can fill in with the specifics of your situation.
- Filing a complaint with the New York State Division of Human Rights or your local human rights commission.
- Filing a lawsuit in state court.

5 I need to take time off work to deal with the violence. Can I do this and still keep my job?

Yes, but it depends on the situation. You should figure out if you can use vacation time, sick days, flex time, or are allowed time off for disability or family and medical needs. To find this out, you can talk to your union representative, check your employee manual, or talk to human resources. There are also laws that can help you.

- *To go to court:* You have a right to take time off to go to court

to get a protective order, meet with the prosecutor or be a witness in a criminal case. You need to tell your boss at least one day in advance of the absence.

→ *To deal with medical, emotional or psychological conditions:* If you have a serious medical condition, you might be able to take up to 12 weeks off under the federal Family and Medical Leave Act (FMLA). This time off is unpaid. However, you might be able to get short-term disability benefits during this time. Talk to an advocate to see if you are eligible.

6 I'm not doing as well at work as I used to because of the violence against me.

Even though it is illegal to fire you just because you are a victim, you can be fired for poor performance. If you have been written up for being tardy, missing work, or being distracted because of the violence, alert your union steward and develop a strategy to talk to your boss about your situation. If you are taking steps to address the violence (such as getting a protective order or having the abuser move out), explain that your performance will improve. This is a good time to ask for a reasonable accommodation, if you need one.

7 I am considering quitting my job. Can I collect unemployment benefits?

If you feel that you need to quit your job because of the violence, you should apply for unemployment insurance benefits. When you leave your job by choice, you must show that you quit for "good cause" to get benefits. In New York, domestic violence is considered "good cause." You should explain in your interview with the benefits agency why you had to quit your job and how your decision was related to the violence.

8 I've been fired because of domestic violence, sexual assault or stalking. What can I do?

If your boss fires you just because you are a survivor of domestic violence, this may be illegal discrimination under New York State law. (If you work in New York City or Westchester County and you are fired just because you are a survivor of domestic violence, sexual assault or stalking, or because you are being harassed at work, this may be illegal discrimination. You should follow the steps in Question 4 to address it. Sometimes just showing your boss information about the law can be enough to get your job back. If you don't want your job back, you could try to negotiate a severance agreement. You might ask for severance pay, to continue health insurance or other benefits for some time, or for a good reference.

You can also apply for unemployment insurance benefits. Even if you were fired because you were not doing well at work (for example, missing work or coming in late), you may still be able to receive unemployment benefits if you can show that this "misconduct" was because of the violence.

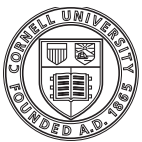
9 I'm an undocumented immigrant — how does this affect what I can do?

Although you are still protected by many of these laws, you will want to be careful about how you approach your boss. Making your boss angry might endanger your job or your ability to stay in this country. You should talk to the union or an advocate to decide what to do.

This pamphlet has been developed to provide general information for individuals seeking to enforce their legal rights. You are advised to consult an attorney or appropriate agency about legal rights in your particular situation. A pamphlet for union stewards and/or representatives is also available.

A Quick Summary for Union Members Working in New York

- It is against the law for your boss to fire you or penalize you just because you are a victim of domestic violence.
- If you work in New York State, it is illegal for your boss to discriminate against you just because you are a victim of domestic violence.
- If you work in New York City or Westchester County, it is also against the law for your boss to fire you or penalize you just because you are being harassed at work by an abuser.
- If you work in New York City or Westchester County, your boss must give you "reasonable accommodations" that can help you do your job and stay safe.
- You can ask your boss to change your phone extension, vary your hours, have security screen for your harasser, or for time off to deal with the situation.
- If you have lost your job because of domestic violence, you may be able to get unemployment insurance benefits.
- If you have lost your job or been discriminated against because of the violence, you may be able to file a lawsuit.
- You should keep records of any interactions between you and your boss that relate to the violence. The notes should include the date of any incident; who says what (exact words if possible); and who else, if anyone, saw what happened.



Cornell University
ILR School

LEGAL
momentum

The Women's Legal Defense
and Education Fund

The Worker Institute at Cornell

The Worker Institute at Cornell, based at the ILR School, is a broad forum for research and education on contemporary labor issues, to promote innovative thinking and solutions for problems related to work, economy and society.

The Institute brings together in collaborative projects — researchers, educators and students with practitioners in labor, business and policymaking. This combined expertise and engagement is necessary to confront the growing economic and social inequities, in the interests of working people and their families. The Institute seeks to partner with other institutions and organizations to promote similar values. www.ilr.cornell.edu/workerinstitute/

Legal Momentum

Founded in 1970, Legal Momentum is the nation's oldest legal advocacy organization dedicated to advancing the rights of women and girls.

Legal Momentum combines ground-breaking litigation with legislative advocacy and training for advocates, lawyers, and employers to help victims of domestic violence across the country maintain their jobs. www.legalmomentum.org/