



Information for Union Representatives, Officers & Staff

Helping Union Members Who are Survivors of Domestic Violence, Sexual Assault and Stalking and are Working in New York

Stay Safe and Stay Employed

HELPING A UNION MEMBER

Employment Issues Due to Domestic Violence

Survivors of domestic violence, sexual assault, or stalking¹ often find that the abuse has consequences in the workplace that jeopardize their employment. For example, the victim might need to take time off from work to obtain a protective order, attend court hearings, or find a new place to live, and find that she is in danger of losing her job due to excessive absences. Harassment at work by the abuser, or focus and concentration problems, can also contribute to loss of employment. Moreover, employers may fire employees once they learn of a domestic violence situation, or when an employee asks for time off, or for changes at work or to the work schedule.

This may be your first time dealing with domestic violence as a workplace issue. It is crucial for you to focus on the job-related consequences of domestic violence and on what the union can do to help your member keep her job. It is essential that you are non-judgmental and keep any information about domestic violence confidential.

In addition, given the traumatic and personal nature of domestic violence, be aware that the member may not reveal all pertinent information to you at once. Do not assume this means the member is not credible. If you need to share this information with other union staff, do so only on a need-to-know-basis and with the permission of your member. General information about domestic violence and the assistance unions can render is available at: www.workplacesrespond.org.

There are a number of laws that provide victims of domestic violence with employment rights. However, in order to take advantage of those protections, your member will most likely have to disclose the domestic violence to her employer. Your member may not be ready to tell her employer about the domestic violence for many reasons. If you are the first person to whom the member has disclosed her domestic violence situation, it may be helpful for her to speak to a counselor or advocate. Your member also understandably may fear employment consequences if she discloses the domestic violence to her employer. This booklet will help you understand the consequences of disclosure and which steps to take.

¹ Both men and women can be and are victims of domestic violence, sexual assault, and stalking. For the purposes of this pamphlet, however, we generally refer to these forms of violence as "domestic violence," and to victims as female.

If your member is ready to disclose the domestic violence to her employer, she should be prepared to offer documentation of the domestic violence (*see the list on page 6*). If she has sought assistance from a community-based service provider, a letter from the service provider can be very helpful. Legal Momentum can also assist you in identifying other sources of documentation for your member.

Did you know?

- New York State law protects survivors of domestic violence from employment discrimination – that is from being fired, denied a job, or treated worse simply because they are a survivor of domestic violence.
- New York City and Westchester County's Human Rights laws protect survivors of domestic violence, sexual assault, and stalking who work for employers with four or more employees. (See Sections 8-101 and 8-107.1 of New York City's Administrative Code, and section 700.03 of the Westchester County Human Rights Law). Under these laws, an employer cannot fire an employee simply because she is a survivor of domestic violence, sexual assault, or stalking.
- An employer in New York City or Westchester County has to give "reasonable accommodations" to survivors of domestic violence—such as allowing leave time, changing phone extensions or routing calls through a receptionist, or varying hours of work.
- A survivor has to tell her employer about the violence before she is entitled to reasonable accommodations, and the employer can ask for proof that the survivor is experiencing or has experienced domestic violence.
- The employer is not required to make changes that would impose an "undue hardship" on the employer.

Once a survivor tells the employer about the domestic violence, the employer must keep confidential any disclosed information, whether about the domestic violence, the request for accommodations, the accommodations provided, or the documentation provided. The employer may not disclose such information, unless the member requests disclosure or consents to disclosure in writing (for example, where the employer needs to tell others in order to provide the reasonable accommodation), or unless required by applicable federal, state or local law.

Step-by-Step: Keeping Your Members Employed and Safe

This pamphlet provides you with a roadmap for helping your members use state laws so they can keep their jobs and stay safe. Most of these steps do not require going to court.

1. Determine if your member's employment situation is being negatively impacted by violence at home by interfering with her ability to do her job, or whether she needs changes at work to stay safe. This is also a good time to figure out if she is covered by the law. Some questions to ask include:

- Is she being harassed by her abuser at work?
- Does she need accommodations in her workplace to address the situation? This could mean: a new phone extension, varied hours, giving the abuser's photograph to security, or taking time off to get a restraining order, attend court dates, or relocate.
- Does she think the abuse has already affected her work performance, and is she worried about losing her job?
- Is she suffering from any stress or health-related problems as a result of the violence?
- Has she told her boss about the abuse? If so, what was the reaction? Did she get the help that she needs?
- Is she in any type of job jeopardy as a result of the violence? Has she left a job because of the violence? Or been fired?

2. Figure out what options your member might have under her employer's policies.

- Does she have accrued leave, such as medical leave, sick leave, or vacation time, that might give her a right to time off?
- Does her employer have a workplace violence or domestic violence policy? (If the member is a New York state employee, check the employer's workplace violence prevention program and/or workplace domestic violence policy.)
- Does her employer have a sexual harassment or sex discrimination policy? (This is especially important if the abuser is a co-worker.)
- What does the collective bargaining agreement say about domestic violence or addressing complaints of discrimination and/or harassment?
- Does the employer have a members' assistance program or can the member be referred to the union's program, if one exists?

3. Help your member figure out whether to tell her employer about the violence. There are pros and cons to telling an employer about the violence.

Pros

- Telling her employer allows her to ask for accommodations and lets her work with the employer to assess and implement security measures that can help keep the workplace safe for her and her co-workers.

- Telling her employer might also help explain a period of poor performance and deter disciplinary actions or termination, especially if she can assure her employer she is taking steps to stop the violence so that her performance is likely to improve.

Cons

- Telling her employer could cause her employer to fire her just because she's a victim of domestic violence. This is against the law, but enforcing the law might be too difficult or time-consuming an option for your member to pursue. Keeping a steady paycheck might be more important to her present and future stability.
- Telling her employer might also cause her employer to push her to leave her abuser or to get a protective order; this might not be the right step for your member.

How to make this decision

- There is no way to predict how an employer is going to react to a disclosure of domestic violence, but any policies the employer has against violence or harassment might give you an indication of how well the employer will respond. In addition, it helps to figure out how flexible the employer generally is and whether there is someone that the member is comfortable talking to who will have the authority to help her.

4. If your member decides to tell her employer, make a plan for how she will do it.

There are a number of options when a member decides to tell her employer about her domestic violence situation and to ask for accommodations. Remember, only employers in New York City and Westchester County are required to provide reasonable accommodations if asked.

- **Consult the collective bargaining agreement (CBA)** to determine if the union must use the grievance procedure or follow another policy for enforcing the law — whether it is to ask for reasonable accommodations or confront a discriminatory action. If the CBA does not indicate any such procedure, consider the steps outlined below.
- **Your member could tell her employer herself:** If the goal is for your member to keep her job, strategies that are aggressive and confrontational might not be the best first plan.

Instead, ask your member if she feels comfortable having a private conversation with her supervisor, human resources, or labor relations personnel. If she is able to do this, the process might go more smoothly, but remember — this conversation might be very difficult for her and for the employer. If your member is going to talk to someone in person, you might want to brainstorm possible questions that might come up. Even better, you might want to role-play the conversation so that she is prepared to handle this potentially uncomfortable situation. She also might want to take a copy of the relevant law so that she can show it to her boss or human resources if they ask questions.

→ **Your member could take you, the union representative or officer, with her:** What if she is not comfortable with a private conversation or thinks it might not work? Another option is for you to accompany your member. With this approach, it is helpful for you and your member to have an understanding of the law, and to take a copy of the law for the employer.

→ **Your member could write her employer a letter:** Another option is for your member to write her employer a letter, or fill out one of Legal Momentum's form letters, explaining her situation and the law. This option might be especially useful if your member feels uncomfortable discussing the issue with her boss in person, or if she works for a big company with a human resources department and does not feel comfortable having a personal conversation with a stranger in human resources. If she chooses to write her own letter, you can help her phrase her letter in the most effective way for her.

→ **Your member could ask an advocate or an attorney to write a letter:** This option is probably the most confrontational. You might want to use this option if the victim has already been fired in violation of the law, or if the employer has not responded to other attempts by the victim to obtain accommodations.

→ **Documentation:** If your member is going to tell her employer about the violence and attempt to enforce the law, she should be prepared to provide documentation of the domestic violence if requested. A letter from an advocate, explaining that the member is experiencing domestic violence, can help convince an employer that the situation is serious and that she is protected by the law. Other documentation could include a police report, a protective order, medical records, or a letter from a caseworker, lawyer, clergy member, medical provider or other professional.

5. Encourage your member to keep records.

Your member should keep records about any requests she makes for accommodations and how the employer responds. She should also keep notes if she has the impression, because of harassment or other actions, that she is being discriminated against because she is a victim of domestic violence. The notes should include the date of any incident; what happened (writing down the exact words said is helpful); and who else, if anyone, observed the incident. As the union representative, you should keep a log of your activities as well, including dates and times of all conversations with relevant individuals about the member's situation. However, any such notes or logs of conversations and actions should be kept separately from personal records or a journal. If the member later decides to bring a lawsuit against her employer, both you and the member could be required to turn over those notes.

→ **Sending letters:** If she is giving her employer a letter, your member can hand it to the employer personally, or send it by mail. If she sends it by mail, she should send it with a return receipt requested, by overnight mail, or by some other means that will document receipt. She should also send a copy to the union.

→ **Conversations with employers:** If your member addresses this issue with her employer in any

conversation, she should take detailed notes (during the conversation or after the conversation) of what is said by both her and the employer. She should also keep notes on whether the employer provides her requested accommodations.

6. What to do if your member has already lost her job because of domestic violence.

Although it's illegal for employers to fire employees in New York State because they are survivors of domestic violence, or (if they are in New York City or Westchester County) because they need reasonable accommodations, sometimes employers do not know it is illegal or do not care. Additionally, the law does not protect employees from being fired for poor work performance (in some cases, even if the problems were related to the violence). If your member has lost her job recently, as the representative of the union you can help.

→ **Consult the CBA:** Does the CBA outline a grievance procedure for contesting a termination or discriminatory behavior? What about the employer's policies? Consult these documents promptly, because steps to challenge a termination or other action may have to be taken within a short period.

→ **Assist your member to be reinstated or obtain a severance:** Through such procedures, you can attempt to have your member reinstated. Even if the employer is not willing to take the member back, or if the member does not want to go back, you can try to negotiate a severance agreement. Important terms could include some number of months of pay; continuing health or other benefits for a period of time; not challenging a claim for unemployment insurance benefits; or giving a positive or neutral employment reference.

→ **Tell the member to apply for unemployment insurance benefits:** A victim who loses a job as a result of domestic violence may be eligible for unemployment insurance benefits. If your member has been discharged from her job because of absences or lateness relating to the domestic violence (because she was seeking legal or medical assistance or counseling, going to court or trying to relocate, for example), she should apply for unemployment insurance benefits.

7. What to do if your member has chosen to leave a job because of domestic violence.

→ **Apply for unemployment insurance benefits:** New York State law provides that if domestic violence causes an individual to leave a job because they believe that continued employment would jeopardize their safety or that of an immediate family member, that individual is eligible for benefits.

For more information about eligibility or how to apply for unemployment benefits visit www.lawhelp.org or the New York State Department of Labor's website at www.labor.state.ny.us/ui/how_to_file_claim.shtm.

Legal Momentum also has resources explaining survivors' access to unemployment benefits: www.legalmomentum.org/our-work/domestic-violence/. Your member can also apply for benefits online or by calling (888) 209-8124.

QUICK REFERENCE

Employment Rights of Survivors of Domestic Violence, Sexual Assault or Stalking

- In New York State, it is illegal for employers to discriminate against survivors of domestic violence just because of the violence.
- In New York City and Westchester County, it is illegal for employers to discriminate against survivors of domestic violence, sexual assault, or stalking just because of the violence.
- In New York City and Westchester County, employers with four or more employees must provide reasonable accommodations to survivors of such violence
- Reasonable accommodations can be used for workplace safety planning: a victim of domestic violence could ask her employer to change her phone extension, vary her hours, have security screen for her harasser, or for time off to deal with the situation.
- If a person has lost her job because of domestic violence, she may be eligible for unemployment insurance benefits.
- If a person has lost her job or has been discriminated against because of domestic or sexual violence, she may be able to bring a claim in state court or with the state or local human rights agency.
- For information about educational programs contact Cornell ILR:
**(212) 340-2826 or
kcw8@cornell.edu**
- For information about workplace rights, responsibilities and educational materials go to:
**www.legalmomentum.org and
workplacesrespond.org**

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 a particular situation.

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Legal Action

If a survivor of domestic violence has been fired in violation of the law, she can file a complaint within one year with the New York State Division of Human Rights, the New York City Commission on Human Rights, or the Westchester County Human Rights Commission, or she can sue in state court within three years.

New York State Division of Human Rights

www.dhr.state.ny.us • (718) 741-8400

New York City Commission on Human Rights

www.nyc.gov/html/cchr

or call one of these offices:

- Manhattan (212) 306-5070
- Brooklyn (718) 722-3130
- Bronx (718) 579-6900
- Queens (718) 886-6162
- Staten Island (718) 886-6162

Westchester County Human Rights Commission

<http://humanrights.westchestergov.com>

- (914) 995-7710

■ 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 groundbreaking 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/