

# Employment Protection for Domestic Violence Victims

By Wendy R. Weiser and Deborah A. Widiss



**S**ophia Apessos was employed as a newspaper reporter in Plymouth, Massachusetts. On Saturday, July 29, 2000, her day off from work, her then-husband assaulted her in her home. The police immediately arrested her husband, charged him with assault and battery, and helped Ms. Apessos obtain a temporary restraining order. Because the temporary restraining order could not be extended unless Ms. Apessos appeared in court during regular business hours, and because her husband's arraignment was scheduled for Monday, July 31, she called her work supervisor and left a message that she would be absent on Monday to attend court proceedings relating to domestic violence. When she reported to work on Tuesday morning, the human resources director called her into her office and fired her.<sup>1</sup>

The above situation raises four important questions: (1) May an employer discriminate against an employee simply because she is a victim of domestic violence? (2) May an employer fire an employee for taking time off to obtain a protective order or to take other steps to protect herself from domestic violence? (3) Does an employee have a right to short-term leave from work to seek protection from domestic violence? (4) Is an employee who is fired for reasons related to domestic violence eligible for unemployment insurance?

As a result of recent legal developments, the answers to those questions are becoming more and more favorable to employees who are survivors of domestic violence. A growing body of legislation, case law, and legal theories protects domestic violence victims from workplace discrimination, prevents employers from penalizing victims for taking steps to protect themselves, and entitles victims to take time off from work to address the violence in their lives. In this article we discuss these legal developments and describe ways to use the law to help domestic violence victims—while seeking safety from abuse—keep their jobs.<sup>2</sup>

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<sup>1</sup>*Apessos v. Memorial Press Group*, No. 15 Mass. L. Rep. 322, 2002 Mass. Super. LEXIS 404, at \*10 (Mass. Super. Ct. Sept. 30, 2002).

<sup>2</sup>Although we refer only to protection for domestic violence victims, many of the laws and legal theories that we discuss also apply to victims of sexual assault and stalking. A detailed discussion of workplace protection for sexual assault and stalking victims is beyond the scope of this article, but more information is available at [www.nowldef.org/html/issues/vio/working-women\\_main.shtml](http://www.nowldef.org/html/issues/vio/working-women_main.shtml).



## I. The Nature of the Problem

Domestic violence has deleterious effects on many survivors' ability to find and retain work. Through their abusive conduct, batterers often seek to sabotage their victims' attempts at economic success.<sup>3</sup> The reason for this behavior is clear: a person who is employed is more likely to escape control and achieve independence from her abuser. Unfortunately many victims seeking to break out of the cycle of abuse face more obstacles at work. Most victims of domestic violence need at least some time off from work to take steps to address the abuse, such as obtaining a protective order, participating in court proceedings against the abuser, addressing physical injuries or mental stress from the abuse, or finding safe housing. But employers are often unwilling to grant them the short-term leave or other minor accommodations they need in order to secure their safety. Further, many employers fire employees simply because they are victims of domestic violence. Victims therefore often feel trapped in a Catch-22. They need to take measures to address domestic violence, but they are afraid to take action or tell their employers for fear of retaliation or losing their jobs. According to a 1998 report of the U.S. General Accounting Office, between 25 percent and 50 percent of domestic violence victims in three studies reported that they lost a job due, at least in part, to domestic violence.<sup>4</sup>

The loss of employment can be particularly devastating for victims of domestic violence. Without the economic security of a job, many victims feel compelled to return to their abusers, often to avoid homelessness or to support their children. The cumulative effect of domestic violence on

the job security of women is enormous. Women who have experienced domestic violence are more likely than other women to be unemployed, to suffer from health problems that can affect employability and job performance, to report lower personal income, and to rely on welfare.<sup>5</sup>

While job security is not a panacea for domestic violence, it is an important part of the solution. Fortunately a number of legal solutions have evolved to help victims of domestic violence keep their jobs and obtain the leave that they need to address the violence.

## II. Employment Discrimination Against Victims of Domestic Violence

An employer who fires or penalizes an employee because she is a victim of domestic violence or because she takes steps to address domestic violence may be violating the law under several theories of liability: (1) discrimination based on domestic violence in violation of new laws protecting domestic violence victims; (2) discrimination based on sex in violation of traditional sex discrimination laws; or (3) wrongful discharge in violation of public policy.

### A. Domestic Violence Discrimination Laws

An employee who experiences adverse employment consequences as a result of domestic violence may have a claim under new laws specifically prohibiting discrimination against domestic violence victims. Currently Illinois and New York City are the only jurisdictions that prohibit all forms of employment discrimination against domestic violence victims.<sup>6</sup>

<sup>3</sup>Batterers harass, stalk, and even attack their victims at work. Studies show that from 35 percent to 56 percent of battered women were harassed by their abusers at work. Batterers undermine victims' jobs by preventing them from going to work, limiting their access to cash or transportation, and sabotaging their child care arrangements.

<sup>4</sup>U.S. GEN. ACCOUNTING OFFICE, DOMESTIC VIOLENCE PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998). Similarly almost 50 percent of sexual assault survivors lose their jobs or are forced to quit in the aftermath of the assaults. S. REP. NO. 138, 103d Cong., 2d Sess. 54, n.69 (citing E. Ellis et al., *An Assessment of the Long Term Reaction to Rape*, 50 JOURNAL OF ABNORMAL PSYCHOLOGY (1981)).

<sup>5</sup>Susan Lloyd & Nina Taluc, *The Effects of Male Violence on Female Employment*, 5 VIOLENCE AGAINST WOMEN 370, 385 (1999). About a quarter of welfare recipients are currently victims of domestic violence, and over half once were; see, e.g., JODY RAPHAEL & RICHARD M. TOLMAN, TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE 5 (1997).

<sup>6</sup>820 ILL. COMP. STAT. 180/1-45 (2004); N.Y.C. Admin. Code § 8-107.1(2004).

Domestic violence discrimination laws make it illegal for an employer to discriminate against an actual or perceived victim of domestic violence in hiring, firing, compensation, or other privileges and conditions of employment. In other words, domestic violence discrimination laws include domestic violence victims as a protected class. The New York City law defines discrimination to include treating a person adversely because of the acts of her abuser, and it requires employers to provide reasonable accommodations to persons dealing with domestic violence. Several states, including Hawaii and Tennessee, have similar laws pending.<sup>7</sup> Pending federal legislation, called the Security and Financial Empowerment Act, would provide a variety of workplace measures to protect domestic violence victims, including protection from employment discrimination.<sup>8</sup>

A number of states that do not yet explicitly protect domestic violence victims from workplace discrimination protection offer employment protection to victims in certain circumstances. For example, an executive order in Maryland prohibits unfair treatment of state employees based solely on their status as domestic violence victims.<sup>9</sup> Connecticut and Rhode Island prohibit employers from penalizing employees who seek or obtain protective orders.<sup>10</sup> A number of states prohibit employers from penalizing employees for taking time off to appear in court or to participate in a criminal investigation relating to domestic violence or other crimes.<sup>11</sup>

## B. Sex Discrimination Laws

For jurisdictions that do not have domestic violence discrimination laws, sex discrimination laws—including Title VII of the Civil Rights Act of 1964 and similar state and local laws—may also prohibit discrimination against domestic violence survivors, pursuant to the following three theories of liability.<sup>12</sup>

### 1. Disparate Treatment

In certain circumstances an employer may be said to have engaged in disparate treatment sex discrimination if the employer treats battered women differently from other employees. To make out a prima facie case of disparate treatment sex discrimination in a case involving a practice that burdens women more than men, an employee must establish that (1) she is a member of a protected class (women), (2) she is qualified for her position; (3) she suffered an adverse employment action, and (4) the circumstances give rise to an inference of discrimination.<sup>13</sup> The burden of production then shifts to the employer to show a legitimate nondiscriminatory reason for the employment action. The employee must then prove that the employer's reason is merely a pretext for discrimination. The employee has the burden of proving that the employer acted with discriminatory intent.<sup>14</sup>

If a woman is penalized at work because her employer finds out that she is the victim of domestic violence or sexual assault, her employer may be said to be treating her differently (because she is a woman) and

<sup>7</sup>S.B. 2438 & H.B. 2123, 21st Leg. (Haw. 2002); H.B. 385, 102d Gen. Assembly (Tenn. 2001).

<sup>8</sup>S. 1801 & H.R. 3420, 108th Cong. (2003). The Security and Financial Empowerment Act, was introduced in the prior Congress as the Victims' Economic Security and Safety Act, S.1249 & H.R.2670, 107th Cong. (2001).

<sup>9</sup>Md. Exec. Order No. 01.01.1998.25 (1998).

<sup>10</sup>CONN. GEN. STAT. § 54-85b (2004) (civil and criminal penalties available); R.I. GEN. LAWS § 12-28-10 (2004) (civil remedies only; also prohibits discrimination against employee who refuses to seek or obtain protective order).

<sup>11</sup>These laws are discussed in Section IV.

<sup>12</sup>42 U.S.C. § 2000e (2002).

<sup>13</sup>See, e.g., *Weinstock v. Columbia University*, 222 F.3d 33, 42 (2d Cir. 2000). The seminal case setting forth the disparate treatment analysis was a hiring discrimination case in which the U.S. Supreme Court held that to establish a prima facie case a plaintiff must show that (1) she is a member of a protected class, (2) she applied for and was qualified for the position in question, (3) she was rejected, and (4) the position remained available. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1972).

<sup>14</sup>See generally *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

hence violating sex discrimination laws. The discriminatory motive could be derived from the employer's stereotypes about women who are domestic violence victims—a theory that has been successfully used in some equal protection cases against police departments for failure to treat domestic violence complaints as seriously as other crime complaints.<sup>15</sup>

Making a disparate treatment case is generally easier if a similarly situated male employee was not fired or otherwise penalized by the employer. An example of such a case, *Greer v. Beck's Pub and Grille*, involves a domestic violence victim whose batterer was her coworker.<sup>16</sup> When Ms. Greer obtained a protective order against her abuser, the employer fired her but took no action against the batterer—clearly contrasting between male and female workers. Legal Momentum and cocounsel on behalf of Ms. Greer are litigating this suit, alleging, among other claims, that the employer engaged in disparate treatment discrimination prohibited by Title VII and Iowa law.<sup>17</sup> Another example where such a contrast may be demonstrated is when an employer fires a domestic violence victim for taking time off to address the violence but allows a male employee to take time off for other reasons.

## 2. Disparate Impact

Perhaps more broadly applicable in the domestic violence context is disparate impact sex discrimination. The disparate impact theory is generally used to challenge policies or practices that are gender neutral on their face but in fact fall more

harshly on women than men.<sup>18</sup> The most critical distinction between the disparate treatment and disparate impact theories is that the former requires proof of discriminatory intent or motive, while the latter generally does not.<sup>19</sup> A plaintiff who shows that she was denied an employment opportunity because of a policy that disproportionately harms women can make out a prima facie case of disparate impact discrimination.

An employer who applies a policy or practice in such a way as to have a negative impact on domestic violence victims may be said to engage in disparate impact sex discrimination. The basic disparate impact theory is straightforward: a policy that has a negative impact on domestic violence victims burdens women more than men because most domestic violence victims are women.<sup>20</sup> While there are no reported cases based on this theory in the employment context, Legal Momentum and cocounsel successfully litigated a case—*United States ex rel. Alvera v. C.B.M. Group*—based on a similar theory under the Fair Housing Act.<sup>21</sup> Since the Fair Housing Act is interpreted in a manner consistent with Title VII, *Alvera* could be a relevant precedent in the employment context. That case involved a landlord who threatened to evict a tenant under a supposed zero-tolerance-for-violence policy because she was assaulted by her husband. The tenant claimed that the application of the landlord's policy to evict domestic violence victims constituted illegal sex discrimination because it had a disparate impact on

<sup>15</sup>See, e.g., *Balisteri v. Pacifica Police Department*, 901 F.2d 696, 701 (9th Cir. 1988); *Williams v. City of Montgomery*, 21 F. Supp. 2d 1360, 1365 (M.D. Ala. 1998); *Cellini v. City of Sterling Heights*, 856 F. Supp. 1215, 1222 (E.D. Mich. 1994); *Smith v. City of Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994).

<sup>16</sup>*Greer v. Beck's Pub and Grille*, No. C03-2070LRR (N.D. Iowa filed Nov. 13, 2003).

<sup>17</sup>*Valdez v. Truss Components Inc.*, 1999 U.S. Dist. LEXIS 22957 (D. Or. Aug. 19 1999), also involved an employer who fired a domestic violence victim when her coworker and batterer assaulted her. On behalf of Ms. Valdez, Legal Momentum brought suit alleging that the employer engaged in disparate treatment discrimination under Title VII and violated Oregon common law. Legal Momentum survived a motion to dismiss on the Title VII claim (although the employer did not challenge the basic theory of liability).

<sup>18</sup>See, e.g., *Dothard v. Rawlinson*, 433 U.S. 321 (1977); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

<sup>19</sup>*Griggs*, 401 U.S. at 430–32.

<sup>20</sup>See, e.g., CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE (2000).

<sup>21</sup>*United States ex rel. Alvera v. C.B.M. Group*, No. 01-857-PA (D. Or. filed June 8, 2001), available at [www.nowdef.org/html/issues/vio/housing.htm](http://www.nowdef.org/html/issues/vio/housing.htm).

women. The U.S. Department of Housing and Urban Development agreed and issued a charge of discrimination against the landlord.<sup>22</sup> Other courts and adjudicators also found in favor of domestic violence plaintiffs in the housing context under a similar theory.<sup>23</sup>

### 3. Sexual Harassment

Under a sexual harassment theory, sex discrimination laws can help domestic violence victims at work. For domestic violence victims, a sexual harassment theory usually is available when the batterer is a coworker who creates a hostile work environment for the victim. Domestic violence victims successfully brought sexual harassment claims against their employers when their abusers were coworkers.<sup>24</sup>

### C. Wrongful Discharge

Another claim available to employees who are fired because of domestic violence is the tort of wrongful discharge in violation of public policy. Every state, except Montana, codifies the employment-at-will doctrine.<sup>25</sup> However, most states now recognize a limited public policy exception to that doctrine.<sup>26</sup> The tort of wrongful discharge in violation of public policy provides a limited claim for at-will employees who are discharged in violation of a state's public policy. While most states require that the public policy at issue be embodied

in a specific provision of law, virtually every state has statutes that support a strong public policy in favor of protecting domestic violence victims.

Legal Momentum successfully raised this theory in *Apessos v. Memorial Press Group*, the case, described above, involving a woman who was fired for taking a day off to go to court to get a protective order.<sup>27</sup> Rejecting the employer's motion to dismiss, the state court held that the Massachusetts tort of wrongful discharge in violation of public policy covered claims "based upon the public policy against domestic violence."<sup>28</sup> The public policy interests at issue, the court found, included "the protection of a victim from physical and emotional violence; and the protection of a victim's livelihood." The court continued, "A victim should not have to seek physical safety at the cost of her employment."<sup>29</sup>

### III. Time Off from Work

Recent and preexisting laws and policies can help employees get time off from work to address issues relating to domestic violence. These include (1) laws providing employment leave to victims of domestic violence, (2) laws providing leave generally to victims of crimes, and (3) laws providing time off for medical conditions or reasonable



<sup>22</sup>Secretary, U.S. Dep't of Hous. & Urban Dev., No. HUDALJ 10-99-0538-8 (HUD Ore. Apr. 16, 2001). No federal judicial determination was reached because we achieved a significant settlement; see also Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REVIEW 708 (Mar.-Apr. 2002).

<sup>23</sup>*Winsor v. Regency Property Management*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (holding that Wisconsin Fair Housing Law, modeled after federal Fair Housing Act, prohibits housing discrimination against domestic violence victims); *O'Neil v. Karahlais*, 13 M.D.L.R. 2004 (Mass. Comm'n Against Discrimination Oct. 21, 1991) (same with respect to Massachusetts law); Formal Op. No. 8F-F15, 1985 Op. Atty. Gen. N.Y. 45 (Nov. 22, 1985) (attorney general's opinion that sex discrimination provisions of New York State Human Rights Law prohibit denial of rentals to persons based on their status as domestic violence victims); *Cox v. Related Companies*, No. 11026/86 (N.Y. Sup. Ct. Monroe County Dec. 1, 1986) (order and judgment adopting legal analysis of 1985 Op. Atty. Gen. N.Y. 45).

<sup>24</sup>See, e.g., *Excel Corp. v. Bosley*, 165 F.3d 365 (8th Cir. 1999); *Fuller v. City of Oakland*, 47 F.3d 1523 (9th Cir. 1995).

<sup>25</sup>See MONT. CODE ANN. 39-2-901-914(2004) (comprehensive wrongful discharge law).

<sup>26</sup>Courts in six states—Alaska, Florida, Georgia, Louisiana, New York, and Rhode Island—explicitly reject wrongful discharge claims based on public policy violations, and Arizona has a law prohibiting courts from recognizing wrongful discharge claims outside the statutory categories. See generally Sandra S. Park, *Note: Working Towards Freedom from Abuse: Recognizing a "Public Policy" Exception to Employment-at-Will for Domestic Violence Victims*, 59 NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW 121, 130 n.47 (2003).

<sup>27</sup>*Apessos v. Memorial Press Group*, No. PLCV2001-01474 (Mass. Super. Ct. filed Dec. 10, 2001).

<sup>28</sup>*Apessos*, No. 15 Mass. L. Rep. at 322.

<sup>29</sup>*Id.* at \*9.

accommodations for disabilities.<sup>30</sup> To take advantage of these laws, an employee may have to disclose that she is a victim of domestic violence, and this may be a difficult decision. While some laws protect the confidentiality of information relating to domestic violence, steps should be taken to ensure that the information disclosed is kept as confidential as possible.

### A. Domestic Violence Leave Laws

Domestic and sexual violence victims' need for statutory protection to permit them to take time off during business hours has been recognized more and more. To allow victims time off from work to address domestic violence

- a handful of states have passed laws,<sup>31</sup>
- several other states have pending legislation.<sup>32</sup> and
- federal legislation is pending.<sup>33</sup>

As of February 2004, California, Colorado, Hawaii, Illinois, and Maine provide an affirmative right to victims to take unpaid leave. The time off varies from up to twelve weeks in a twelve-month period (Illinois), to three days (Colorado).<sup>34</sup> Some of these state laws limit their applicability according to the employers' size. For example, Hawaii requires employers with fifty or more employees to provide thirty days' leave; smaller employers, five days.<sup>35</sup> The laws enumerate such authorized uses of the

leave as going to court, receiving medical treatment, obtaining counseling, or participating in safety planning.<sup>36</sup> To take advantage of domestic violence leave laws, victims generally must inform their employers in advance when possible, although most of the laws recognize that this may be impossible in emergency situations and require notification as soon as possible after an absence. Under most of domestic violence leave laws, employers may ask the employee to give "proof" that she is a victim of domestic violence. Most allow a range of proof. For example, Illinois's certification requirement may be satisfied by an employee's sworn statement about the violence and documentation from a service provider, police or court records, or "other corroborating evidence."<sup>37</sup> This breadth means that victims who cannot or choose not to seek a protective order or call the police can nonetheless take advantage of domestic violence leave laws. Most of the laws also explicitly require employers to keep strictly confidential any proof or other evidence given to them. Confidentiality requirements must be highlighted because an employee's safety may depend on their enforcement.

The leave under existing laws is unpaid. Some states explicitly require that an employee exhaust all existing paid leave before utilizing the protection.<sup>38</sup> Others permit an employee to choose to use paid leave rather than unpaid leave.<sup>39</sup> Maine's

<sup>30</sup>Of course, an individual employee may also have vacation leave, sick leave, personal days, discretionary days, or other leave possibilities under her employment policy or an applicable collective bargaining agreement.

<sup>31</sup>Existing state legislation includes CAL. LAB. CODE 230 & 230.1 (West 2004); COLO. REV. STAT. § 24-34-402.7 (2004); HAW. REV. STAT. § 378-72 (2004); 820 ILL. COMP. STAT. 180/1-45 (2004); 26 ME. REV. STAT. § 850 (2004). Miami-Dade County also requires employers to provide up to thirty days off. MIAMI-DADE COUNTY, FLA., CODE § 11A-61(2004); the New York City law discussed in Section III.A requires that employers provide "reasonable accommodations" to victims; the legislative history of the law makes clear that reasonable accommodations may include time off or a modified schedule.

<sup>32</sup>Pending or recent proposed legislation includes H.B. 739, 2002 Reg. Sess. (Miss. 2002); A.B. 31 & S.B. 4646, 225th Ann. Leg. Sess. (N.Y. 2003); H.B. 375 & S.B. 235, 186th Gen. Assembly (Pa. 2003); H.B. 713 & H.B. 315 102d Gen. Assembly (Tenn. 2001); S.B. 5329, 57th Leg. (Wash. 2001).

<sup>33</sup>Security and Financial Empowerment Act, *supra* note 8.

<sup>34</sup>820 ILL. COMP. STAT. 180/10(10) (2004); COLO. REV. STAT. § 24-34-402.7(1)(b) (2004).

<sup>35</sup>HAW. REV. STAT. § 378-72(a) (2004).

<sup>36</sup>See, e.g., *id.*

<sup>37</sup>820 ILL. COMP. STAT. 180/20(c) (2004).

<sup>38</sup>See, e.g., COLO. REV. STAT. § 24-34-402.7(2)(b) (employee must exhaust annual, sick, vacation, and personal leave, unless the employer waives this requirement).

<sup>39</sup>See, e.g., 820 ILL. COMP. STAT. 180/10(25) (2004).

law also provides that an employer is not required to grant a victim leave if doing so would impose an “undue hardship” on the employer.<sup>40</sup> Some employees may also be eligible for leave under other laws discussed below, and some may be able to take advantage of more than one type of leave. For example, a victim may be able to take medical leave under the Family and Medical Leave Act as well as leave to attend court or participate in safety planning under a domestic violence victim leave law.

## B. Crime Victim Leave Laws

Just under half of the states have laws protecting victims of any crime, including domestic violence, from adverse employment action for taking time off work to attend court proceedings related to the crime.<sup>41</sup> Some of crime victim laws apply only to proceedings in which the victim is subpoenaed or asked to give testimony; others cover proceedings that the victim has a right to attend, as well as preparation for those proceedings. These crime victim leave laws prohibit employers from penalizing victims who participate in covered proceedings. Sixteen additional states have laws that encourage employers not to take adverse action against victims for missing work to testify or provide that the victim

may ask for assistance in explaining to her employer that she needs to attend court.<sup>42</sup> Crime victim leave laws generally address proceedings in criminal cases, not other civil legal matters related to the violence. New York’s crime leave law, however, also covers employees who take time off to seek protective orders in family court.<sup>43</sup> Under many of the crime victim leave laws, an employee must give her employer advance notice of her absence and proof of her attendance in court.

## C. Medical Leave and Disability Laws

Victims of domestic violence may have a medical condition (such as posttraumatic stress disorder or physical injuries) that qualifies as a

- “serious health condition” under the federal Family and Medical Leave Act and state law analogues<sup>44</sup> or
- protected disability under the Americans with Disabilities Act and state law analogues.<sup>45</sup>

The Family and Medical Leave Act provides qualifying employees with a serious health condition with up to ninety days’ unpaid leave.<sup>46</sup> Limited or intermittent time off

<sup>40</sup>29 ME. REV. STAT. § 850 (2003).

<sup>41</sup>State laws that require employers to permit an employee who is a victim of a crime to attend court, at least under certain circumstances, such as responding to a request from the prosecutor, serving as a witness, or responding to a subpoena, include ALA. CODE § 15-23-81 (2004); ALASKA STAT. § 12.61.017 (Michie 2004); ARIZ. REV. STAT. ANN. § 13-4439 (West 2004); ARK. CODE ANN. § 16-90-1105 (Michie 2004); CONN. GEN. STAT. § 54-85b (2003); DEL. CODE ANN. tit. 11 § 9409 (2004); GA. CODE ANN. § 34-1-3 (2003); IOWA CODE § 915.23 (2003); MD. CODE ANN. CRIM. PROC. § 11-102 (2003); MASS GEN. LAWS ch. 258B, § 3(l); MICH. COMP. LAWS ANN. § 780.790 (West 2004); MINN. STAT. ANN § 611A.036 ( West 2003); MISS. CODE ANN. § 99-43-45 (2004); MO. REV. STAT. § 595.209.1(14) (2004); MONT. CODE ANN. § 46-24-205(3) (2003); NEV. REV. STAT. § 50.070 (2004); N.Y. PENAL LAW § 215.14 (McKinney 2004); OHIO REV. CODE ANN. § 2930.18 (2004); 18 PA. CODE. § 4957 (2004); S.C. CODE ANN. § 16-3-1550 (Law. Co-op. 2003); VA. CODE ANN. § 18.2-465.1 (Michie 2004); 13 VT. STAT. ANN. § 5313 (2003); WYO. STAT. ANN. § 1-40-209(a) (2003). The U.S. Virgin Islands law in this regard is 34 V.I. CODE ANN. § 203 (e) (2003). All of the domestic violence leave laws discussed in the text accompanying *supra* note 30 also prohibit employers from taking action against employees who are victims of domestic violence for attending court.

<sup>42</sup>COLO. REV. STAT. 24-4.1-302.5(n) (2003); FLA. STAT. ANN. § 960.001(i) (2004); 725 ILL. COMP. STAT. 120/5 (2004); KY. REV. STAT. ANN. § 421.500(8) (2003); LA. REV. STAT. ANN. § 46:1844(E) (2004); NEV. REV. STAT. § 178.5694(1) (2004); N.J. STAT. ANN. § 52:4B-44(b)(13) (2004); N.M. STAT. ANN. § 31-26-4(j) (2003); N.D. CENT. CODE § 12.1-34-02(6) (2003); 19 OKLA. STAT. § 215.33(8) (2003); TEX. CODE CRIM. PROC. art. 56.02(a)(10) (2004); UTAH CODE ANN. § 77-37-3(1)(g) (2003); VA. CODE ANN. § 19.2-11.01 (2004); WASH. REV. CODE § 7.69.030(2004); W. VA. CODE § 61-11A-6(a)(8) (2003); WIS. STAT. § 950.04(1v)(bm) (2003).

<sup>43</sup>N.Y. PENAL LAW § 215.14 (McKinney 2004).

<sup>44</sup>29 U.S.C. § 2601 (2004); see also 29 C.F.R. pt. 825 (2004).

<sup>45</sup>42 U.S.C. § 12101 (2004).

<sup>46</sup>29 U.S.C. § 2612(a)(1)(D) (2004).

can be a “reasonable accommodation” under the Americans with Disabilities Act.<sup>47</sup>

#### IV. Unemployment Insurance

A domestic violence victim who chooses to leave her job or who is fired as a result of the violence may be eligible for unemployment insurance benefits under recent laws. In most states the general rule is that individuals are ineligible for unemployment benefits if they leave work voluntarily without “good cause” or if they are discharged for “misconduct.”<sup>48</sup> Historically these provisions barred many victims who left or lost their jobs from receiving benefits. In recent years, however, more and more state laws explicitly make victims eligible for benefits if they left or were fired from their jobs for reasons relating to domestic violence.<sup>49</sup>

In 1996 Maine was the first state to amend its unemployment insurance law to acknowledge the effects that domestic violence may have on employment.<sup>50</sup> As of February 2004, just eight years later, twen-

ty-five states have amended their unemployment insurance laws to address domestic violence.<sup>51</sup> Fourteen additional states, as well as the District of Columbia, have introduced legislation in current or recent legislative sessions.<sup>52</sup> Most of these laws define “good cause” to include leaving a job for reasons related to domestic violence. Some states require an applicant to make “reasonable efforts” to keep her job, or to inform her employer about the domestic violence.<sup>53</sup> A few states have laws excluding situations related to domestic violence (e.g., absences or tardiness) from “misconduct.” Even if a state has not passed a specific law, a victim of domestic or sexual violence who leaves her job or is discharged may still be eligible for benefits.<sup>54</sup> In most cases the applicant must fulfill all other eligibility requirements for unemployment insurance, and often the applicant must also document or certify to the violence. Advocates must educate clients in this area because a victim’s natural inclination may well be *not* to mention the violence because she believes that it either is irrelevant or would hurt her claim. As always, advocates must consider confi-

<sup>47</sup>See, e.g., *Haschmann v. Time Warner*, 151 F.3d 591 (7th Cir. 1998) (allowing intermittent time off when employee’s lupus flared up could be required reasonable accommodation under the Americans with Disabilities Act).

<sup>48</sup>For a good overview of the history—written by key advocates—of legislation in this area, see Rebecca Smith et al., *Unemployment Insurance and Domestic Violence: Learning from Our Experiences*, 1 SEATTLE JOURNAL FOR SOCIAL JUSTICE 503 (2002).

<sup>49</sup>*Id.*

<sup>50</sup>ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (providing “misconduct” may not solely be founded on actions that were taken by an employee and were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment).

<sup>51</sup>CAL. UNEMP. INS. CODE §§ 1030, 1032, §1256 (2004); COLO. REV. STAT. ANN. § 8-73-108(4)(f) (2003); CONN. GEN. STAT. § 31-236(a)(2)(A) (2003); DEL. CODE ANN. tit. 19, § 3315(1) (2004); 820 ILL. COMP. STAT. 405/601 (2004); IND. CODE § 22-4-15-1(1)(C)(8) (2004); KAN. STAT. ANN. § 44-706(A)(12) (2004); ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (2003); MASS. GEN. L. ANN. ch. 151A, §§ 1, 14, 25, 30 (2004); MINN. STAT. § 268.095(1)(8) (2004); MONT. CODE ANN. § 39-51-2111 (2003); NEB. REV. STAT. ANN. § 48-628(1)(a) (2003); N.H. REV. STAT. ANN. tit. 23, § 282-A:32(l)(a)(3) (2004); N.J. REV. STAT. § 43:21-5(j) (2004); N.M. STAT. ANN. § 51-1-7(A) (Michie 2003); N.Y. LAB. LAW § 593(1)(a) (2004); N.C. GEN. STAT. § 96-14(1f) (2004); OKLA. STAT. TITLE 40, § 40-2-405(5), §40-3-106(G)(8) (2003); OR. REV. STAT. § 657.176(12) (2003); R.I. GEN. LAWS § 28-44-17.1 (2004); S.D. CODIFIED LAWS § 61-6-13.1 (2004); TEXAS LAB. LAW §§ 207.045, 207.046 (2004); WASH. REV. CODE §§ 50.20.050, 50.20.100, 50.20.240, 50.29.020 (2004); WIS. STAT. § 108.04(7)(s) (2003); WYO. STAT. § 27-3-311 (2003).

<sup>52</sup>See S.B. 1206, 46th Leg., 2d Reg. Sess. (Ariz. 2004); H.B. 591, 147th Gen. Assembly (Ga. 2003); S.B. 936 & H.B. 109, 22d Leg. (Haw. 2003); H.F.2250, 79th Gen. Assembly (Iowa 2002); H.B. 360, 2004 Reg. Sess. (Ky. 2004); S.B.626, 2003 Reg. Sess. (La. 2003); H.B.541, 2002 Reg. Sess. (Md. 2002); H.B. 5508, 2004 Reg. Sess. (Mich. 2004); H.B. 831 & S.B. 864, 2003 1st Spec. Sess. (Minn. 2003); H.B. 183, 2004 Reg. Sess. (Miss. 2004); S.B.1634 & H.B.33, 103d Gen. Assembly (Tenn. 2003); H.B. 661, 2003-04 Sess. (Vt. 2003); H.B. 840, 2004 Sess. (Va. 2004); H.B.2127, 78th Leg. (W. Va. 2003); B.15-436, City Council Bill (Wash., D.C. 2003).

<sup>53</sup>See, e.g., CONN. GEN. STAT. § 31-236(a)(2)(A).

<sup>54</sup>See, e.g., *Matter of C.R.H.*, ALJ Case No. 001-08794 (Unemp. Ins. App. Bd. July 20, 2001), available at [www.nowdef.org/html/issues/work/cjr\\_decision.pdf](http://www.nowdef.org/html/issues/work/cjr_decision.pdf). (employee who was fired for missing work for circumstances relating to domestic violence, including for medical treatment and child custody disputes, did not commit misconduct and hence is eligible for unemployment benefits).



dentiality provisions and take precautions to ensure that information submitted to the unemployment insurance board remains confidential.

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Recent legal developments have made increasingly acceptable that (1) an employer may not discriminate against an employee because she is a victim of domestic violence, (2) an employer may

not penalize or fire an employee for taking steps to address domestic violence, (3) an employee has a right to short-term leave to address domestic violence, and (4) a person may not be denied unemployment insurance if she left or was fired from her job for reasons relating to domestic violence. Because this is an expanding area of law, domestic violence victims in a growing number of states can claim these rights and thus establish the economic independence that they need to address the violence in their lives.



## Illinois Victims' Economic Security and Safety Act

The Illinois Victims' Economic Security and Safety Act (VESSA), 820 ILL. COMP. STAT. 180/1-45 (2004), promotes employment stability, economic security, and safety for survivors of domestic violence, dating violence, sexual assault, and stalking.

VESSA provides for

■ **Entitlement to Leave for Addressing Domestic or Sexual Violence.** VESSA permits eligible employees to take up to twelve weeks of unpaid leave (during any twelve-month period) from work to address domestic or sexual violence (for medical attention, victim services, counseling, safety planning, or legal assistance or other specified purposes). Eligible employees are those who work for an employer with fifty or more employees or who work for any state or local government or school district and who are victims of domestic or sexual violence or are employees who have a family or household member (e.g., spouse, parent, child, and persons jointly residing in the

same household) who is a victim of domestic or sexual violence.

■ **Victims' Employment Sustainability.** VESSA prohibits employer discrimination regarding conditions or privileges of employment (e.g., income, hiring, termination, promotion, harassment, retaliation) predicated upon an employee's status, or perceived status, as a victim of domestic or sexual violence. The law requires employers to make reasonable accommodations for employees such as a job transfer, change in telephone number, or installation of a lock.

■ **Enforcement.** The Illinois Department of Labor is responsible for enforcing VESSA. A complaint must be filed within three years after the alleged violation occurred. An employee may recover damages (e.g., lost wages, employment benefits), attorney fees, and other relief such as reinstatement and promotion