CENTER FOR SURVIVOR AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES

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A Comprehensive and Survivor-Centered Guide for Domestic Violence Attorneys & Legal Advocates

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CENTER FOR SURVIVOR AGENCY & JUSTICE

The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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Workplace Discrimination & Termination

EMPLOYMENT RIGHTS & PROTECTIONS FOR SURVIVORS

By Lisalyn R. Jacobs

Introduction

Domestic violence and sexual violence and harassment can put a survivor's livelihood at risk whether the violence occurs within or outside of the workplace. In fact, violence and harassment are simultaneously prevalent yet underreported workplace occurrences. Survivors of harassment and/or violence can face challenges in their workplace due to their abusive partners' actions, whether the perpetrator is an intimate partner, a co-worker, or a business customer with whom they are not intimate. Whether having to work side-by-side with the perpetrator knowing that their job hangs in the balance, or facing termination due to an abusive partner who calls or stalks him/her at work frequently, the survivor can come to be viewed by the employer as a liability regardless of their valued contributions at work, or the fact that they are not the source of the difficulty. Often, relatively uncomplicated accommodations could make the workplace and the survivor safer and more productive.

When violence arises *within* the workplace, a person may be sexually harassed or assaulted at work only to find that upon reporting it to management, the claim is dismissed as inconsequential. When violence *follows* a person to the workplace, survivors may be treated like they are the source of the problem when it is the abusive partner perpetrating harassment and violence (some of whom also work alongside the survivor). Finally, the employer may sanction the survivor for being late, or taking leave to see a counselor or attend court hearings while the co-worker/abusive partner may not suffer any

repercussions despite the fact that abusive partners often use employer resources (computers, phones, other employees) to check up on, or harass the survivor.

The upshot for the survivor is often the threat of economic upheaval: frequent late arrivals, or calling in sick at the 11th hour may make them appear unreliable to their employers; they may want to separate from the abusive partner, but cannot do so if they lose their job, and with it a source of childcare, or second salary contributing to rent, or other monthly expenses. Additionally, a survivor might fear the consequences of disclosing the abuse to an employer, including fear of additional violence directed against them or other family members.

This chapter explores the various ways violence manifests in the workplace. We then describe key legal protections available for survivors experiencing discrimination due to domestic violence as well as sexual harassment or assault within the workplace. We also review legal and non-legal advocacy strategies to protect survivors' employment and safety. As employment law and advocacy could merit an entire guidebook, extensive resources are available and referenced at the end of this chapter.

Domestic violence and employment

As described in the stories above, violence may follow a survivor into the workplace or it can manifest from within the workplace itself. Some survivors may be experiencing abuse from an intimate partner as well as hostility or violence from employers, colleagues or customers in the workplace. How employers respond to domestic and sexual violence and harassment and create a work environment of non-violence are equally critical. If employers are clear in their policies, set expectations that the workplace will be free of bias, harassment and/or violence, are also clear about what protections will be available to those who are victimized, and what sanctions will occur if employees engage in harassment or violent behavior, not only are employee perpetrators more likely to be deterred, but survivors of violence will be more likely to disclose their concerns. The result for all is improved workplace safety and productivity. Conversely, if employers do not set a tone indicating that survivors will be helped and perpetrators held accountable, the workplace atmosphere may be poisoned as a result, with harassment allowed to flourish and survivors afraid to come forward for fear of reprisals.

Assessing survivors' workplace concerns

Advocates and attorneys working with survivors can open dialogue about the risks of violence in the workplace, as well as workplace response. Explaining the prevalence of domestic violence and workplace discrimination may help give assurances to a survivor that they are not alone. Additionally, facilitating an open and judgment-free assessment of survivors' experiences are critical to understanding their needs, priorities, and goals, and can help advocates and attorneys work with survivors to determine appropriate and available strategies.

For a fuller description of a survivor-centered *approach* to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11). The screening and assessment questions presented here are for issue spotting (often called intake questions), are not meant to be prescriptive, and conversations around workplace rights and protections should not be limited to these questions.

Ana's & Marie's Stories

The scenarios below help illustrate the different ways in which violence *arises within* the workplace or *follows a survivor there.*

Ana's Story: *Ana was relieved to finally find a job as a server in her neighborhood after working at a restaurant across the city. She was determined to make this job work, since she wanted to avoid the hour commute she had to deal with in the past. Plus, the tips were great. She was well-liked by her customers and seemed to get along with the other servers. She was worried about Evan, however. He was always making sexist jokes and looking to see if she'd laugh. He called her a prude for asking him to stop, and then he began commenting on her clothes and her body. He said she should feel lucky for the attention and he repeatedly asked her to go out with him after work, but Ana always declined.*

On a particularly busy weekend night, Evan called her into the walk-in freezer saying he needed help picking up some food. Ana rolled her eyes and went in, only to have Evan pin her against the wall and grope her saying, "If you won't go out with me on your own, I'll have to get a piece of you when I can." Ana twisted away, tried to regain her composure, and continued with her shift.

She wanted and needed to keep her job, but she was terrified of being on shifts with Evan. Ana decided to report the assault to her supervisor, but when she made the report, her supervisor laughed it off saying, "That's just Evan. You've got to figure out how to deal with him quietly and keep this inside the restaurant. Don't make me have to choose between the two of you, and don't go filing any complaints. I have several applications from qualified candidates just waiting to take your job."

Think About It
What do you think Ana should do? What else do you need to know about her situation? Does she have other concerns that might play a role in her options at work?

Marie's Story: *In another case, Marie, was stalked by her ex-husband. Marie is a 15-year veteran teacher at a Catholic school in San Diego, mother of four children, and recently divorced from her abusive husband. He has repeatedly showed up at her new apartment, which did not go unnoticed by her landlord. More recently, he has also begun calling her at work, harassing the office personnel at the school when they answered the phone, and threatening to come to the school and to get her fired.*

With the help of a local domestic violence program, she obtained an order of protection prohibiting her ex-husband from making contact with her. After getting the order of protection, Marie met with the principal of the school to tell her about the terms of the order of protection and to ask the principal to call the police if Marie's ex-husband showed up at the school. The principal was surprised to hear about the abuse and asked Marie to share more details the abuse that had taken place during their marriage. Marie had kept this information to herself previously, but felt obliged to tell the principal about the years of physical, emotional, and economic abuse she endured.

The next week, Marie's worst nightmare came true. Her ex-husband showed up at the school, barging into the front office and loudly screaming about how he was going to, "get that bitch." The principal called the police, Marie was able to escape out the back door, and the school went on lock down. That afternoon, the principal called Marie at home and told her that due to safety concerns and the perpetrator's lengthy history of domestic violence, the school decided to terminate Marie and to bar her 4 children from continuing to attend the school. Despite having left her abusive partner, gotten a protection order and informed her employer, Marie lost her job and her children lost their school due to the perpetrator's actions.

Think About It
How is Marie's situation different than Ana's? Are there any similarities? Does her ex-husband continue to pose a threat to her physical safety? What does she want to do? What are her economic priorities right now? Her future goals?

Some assessment questions could include, but are not limited to:[1]

At home

- Do you feel safe at home?
- Has an abusive party made threats against the safety of your pets, property, or other family members?
- Has your intimate partner offered to provide childcare, or a ride to work, then repeatedly taken back that offer and/or failed to show up at the last minute?
- Has your intimate partner ruined your plans for transportation or childcare making it impossible for you to work?
- Has your intimate partner kept you awake, hidden your keys, destroyed uniforms or other work property or hit you in places that would be visible to the public in order to prevent you from going in to work?
- Has the abusive or harassing behavior gotten worse over time? Does it escalate for particular reasons (e.g. you are leaving town on a work trip)
- Does your intimate partner own a gun?
- Has s/he ever threatened harm to you, him/herself or others with a gun?

At work

- Do you feel safe at work?
- Have you been threatened or harassed at work? Has anyone made unwanted sexual advances toward you? Or did you ever feel like you could not refuse sexual or inappropriate behavior from someone at work?
- Have you disclosed your situation to anyone at work? If so, were they a co-worker, supervisor, etc.?
- If you have disclosed to a supervisor, how did they respond?
- Has anyone at work suggested that they would withhold your pay for any reason unrelated to your work performance (e.g. unless you complied with sexual violence or harassment or if you complained about either one)?
- Has anyone at work threatened that they will find you outside of work?
- Has an intimate partner threatened to follow you to work?
- Has an intimate partner placed harassing phone calls or texts to you or others in the workplace?
- Does your workplace offer any training to staff and management regarding domestic violence and workplace assault, or have a policy on how such incidents will be handled if the person involved is the survivor of violence? The perpetrator of violence?

[1] This is neither an exhaustive or necessary list of questions or safeguards but merely items to consider. Each individual case will have its own requirements. For example, if abuse occurs only at work, it may not be as important to develop coded language for phone calls to the survivor's home. That said, it is always best to consult the survivor.

Workplace Safety Considerations For Attorneys/Advocates
It is important to set up survivor safety mechanisms in your workplace and to explain to survivors what these are and what purpose they serve. For example, if the abusive party is self-represented and approaches your office, it may be appropriate to request law enforcement to be present outside (although this should be discussed with a survivor beforehand). It is important to keep the survivor's work and home addresses confidential. Ensuring that office staff will not reveal sensitive information such as last names or addresses is paramount. If the survivor lives with the abusive partner, an advocate should always ask if the survivor is safe to talk freely during phone calls. Developing some form of coded messages to indicate that a survivor is not safe to speak freely, or needs help could make a substantial difference.

Importantly, if the survivor no longer wishes to continue with representation, verify that it was not due to coercion from the abusive person and remind the survivor that they should not feel embarrassed to resume contact with you should they choose to reengage.

Impact of workplace discrimination

Frequently a survivor may be confronted by multiple challenges that impact their employment. Imagine the impact of a survivor's ability to show up and be productive at work while contending with the following:

- As in Marie's situation, a perpetrator has committed or threatened violence in a survivor's apartment or rented home, the survivor could be at risk of eviction (see the Housing chapter in this Guidebook);
- If the perpetrator has successfully argued in court that the domestic violence is "mutual," and obtained a protection order against the survivor;
- If the survivor also has a criminal record as a result of being coerced into criminal activities by the perpetrator (see the Criminal Records and Employment Rights chapter in this Guidebook).
- They might also have credit or debt issues that could restrict other employment options. For example, if the perpetrator maxed out credit cards, or otherwise accumulated debt for which the survivor was jointly responsible then refused to pay the debt.
- If the survivor decides to leave a perpetrator, they might lose access to a source of transportation or childcare. Similarly, if they or their dependents were being carried on the perpetrator's health insurance, they could lose access to these benefits.
- If they are simultaneously dealing with hostility, harassment, or violence from a co-worker or supervisor at work.

Think About It
What are other important factors to consider when addressing Ana and Marie's workplace issues? Why are they important? What do you need to know more about to enhance your advocacy?

Key Terms

Advocacy is the broad act of attempting to influence policy. It may take the form of lobbying, public demonstrations, or filing legal documents in support of and in furtherance of a survivor's goals.[2]

Accommodation involves requesting a change of work conditions in order to fully or partially resolve a workplace concern, e.g. requesting a different shift than a harassing co-worker, or requesting to be moved to a different floor, or a different part of the work facility.

Economic abuse "involves behaviors that control an intimate partner's ability to acquire, use, and maintain economic resources, thus threatening his/her economic security and potential for self-sufficiency."[3] It can take many forms including preventing someone from attending school, controlling their finances, threatening to or actually terminating employment, or withholding access to cash, checking, or credit accounts.[4]

Workplace harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), gender identity (under Title IX), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.[5]

Victim blaming is when the survivor of abuse is viewed as partially or fully responsible for the abuse that befell them. It marginalizes the survivor and may discourage reporting abuse for fear of being blamed for the abuse.

There are two types of **sexual harassment**:

- **Quid pro quo harassment*:*** Literally means, "this for that." This requires that submission to or rejection of harassment be used as the basis in employment decisions.[6] In Ana's case, had her employer offered to put Evan on another shift, or discipline him only if she submitted to his sexual advances, the employer would have been engaging in quid pro quo sexual harassment.
- **Hostile workplace*:*** When a workplace is difficult to work in because of negative behaviors, a hostile environment may exist, and may violate the civil rights law, Title VII. Proving that discrimination occurred based on sex may establish a valid Title VII claim. Sexual advances can create a hostile workplace, but must be unwelcome in order to establish a claim of a hostile workplace based upon sexual harassment.[7] To determine whether or not sexual advances or other behaviors are welcome, the EEOC considers the totality of the circumstances.[8] Whether there was an unreasonable interference with one's work performance is a central inquiry.

Title VII is a key employment discrimination statute that bars treating someone differently on the basis of sex, gender or gender identity. It also covers sexual harassment and sexual violence. It covers discrimination in the hiring and firing of employees as well as during employment.

Title IX requires educational institutions (pre-K -12 and higher ed.) that are recipients of federal funding to ensure access to an educational environment that is free of bias, harassment or violence on the basis of sex. Thus, if someone experiences workplace harassment, or violence at a federally funded educational institution, e.g. a work study student, a teacher's assistant, or school staff, including teachers and professors, they might be able to file a complaint with either the academic institution, or the state or federal departments of education, depending on the nature of the complaint.

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[2] The Center for Effective Government's nonprofit advocacy FAQ.
[3] Adams, Sullivan, Bybee, Greeson, Development of the Scale of Economic Abuse, 14(5) Violence Against Women Journal 563 (2008).
[4] Organizing for Economic Empowerment of Battered Women: Women's Savings Accounts
[5] The U.S. Equal Employment Opportunity Commission. https://www.eeoc.gov/laws/types/harassment.cfm.
[6] 29 C.F.R § 1604.11(a)(2)
[7] 29 C.F.R § 1604.11 (a) (1)
[8] 29 C.F.R. § 1604.11(b)

Requesting accommodations

Both Ana's and Marie's situations might have been resolved by implementing some relatively simple accommodations. That is, their employers might have been able to make some changes in the workplace to improve their safety and resolve the harassment, stalking and violence.

Seeking an accommodation requires disclosure of the domestic/sexual violence situation to the employer. This involves something of a trade-off between privacy and job and personal security. Accommodations are more likely to be granted before the survivor comes to be viewed as a complicating factor in the workplace, e.g. accumulates significant numbers of late arrivals, or absences relating to the violence. This suggests that where possible, a survivor should make a confidential disclosure to the employer or supervisor sooner, rather than later, if they feel comfortable doing so. While it is possible to request an accommodation because of, "personal reasons," if the abusive partner escalates their threatening behavior, whether calling, showing up, etc. and alerts the employer to the situation first, the survivor will not be viewed as sympathetically as would be possible if they made the disclosure first.

Case Scenario: *In Marie's case, most schools have safety protocols in place owing to recent incidents nationwide involving guns. After Marie disclosed her situation to her principal, s/he could have circulated a picture to any staff who would be responsible for permitting people to enter the building, and, if applicable, any security personnel, with instructions that despite the fact that his children attended the school, a protection order was in place, and that the police department should be contacted if he attempted to enter the building whether or not he was accompanying them. (Note: Any approach the school decided to undertake should be discussed with Marie in advance). Additionally, the principal and Marie could have discussed the possibility of transferring her to a different school, so that the abusive ex-spouse would not know where to find her. Workplace episodes are relatively prevalent because an abusive spouse knows where to find the survivor during the workday. To the extent that the survivor can telework or work at a location unknown to the perpetrator, the chance of additional workplace problems occurring is greatly reduced.*

More formal approaches

Discrimination against survivors constitutes a **hostile workplace** when it interferes with a survivor's ability to perform his or her employment duties. In Ana's situation, because she made her lack of interest in Evan's attention reasonably clear – asking him to stop, and turning down his date requests – his behavior is likely contributing to the existence of hostile workplace. Creating a workplace that is intimidating or offensive (or refusing – as a manager – to remediate it) would be evidence of this. While conduct is evaluated using a "reasonable person" standard, consideration is given to the survivor's perspective. That many people may consider some acts to be inoffensive does not excuse a potentially

Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking.
This guide from the EEOC, includes examples of:

- Situations involving domestic/sexual violence and stalking in the workplace that may violate Title VII or the Americans with Disabilities Act;
- Harassment that is severe enough to constitute, a "hostile workplace;"
- Examples of retaliation that are prohibited by Title VII.

https://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm

hostile environment if from a survivor's perspective it rises to a level of hostility. For instance, an environment that is not hostile to Ana's co-worker, Jean, who tells Evan off and is not harassed further, may nevertheless (in the opinion of the court, or EEOC) be found to be hostile to Ana if she continues to be harassed despite making clear that the behavior is unwanted and/or if she notifies her employer who then fails to intervene. Additionally, the harassment does not have to be physical in nature. Over time, verbal commentary of a sexual, demeaning or other nature can constitute a hostile workplace.

Practice Tip
Consider Ana's options.
She could request that she and Evan be scheduled on different shifts, or that either of them be transferred to another restaurant, if such option existed. Additionally, she could:

1) tell her employer nothing, and choose to call in sick or use vacation time, if she is injured or requires medical care or counseling, or needs to go to court to seek a protection order;
2) file a police report concerning the assault and not disclose this information to her employer; and
3) do any of the above while disclosing the harassment and assault to her employer.

Note: In 2013, the Supreme Court weakened sexual harassment law in the case, Vance v. Ball State University[9], in which, addressing harassment by a supervisor, they narrowed the definition of supervisor to include only, those who have the ability to make "significant change[s] in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."

The frequent repeating of the comments, and the nature and severity of the harassment/assaults will aid Ana and her advocate in demonstrating that the behavior was ongoing and unwelcome, both factors that a state Human Rights Commission or Equal Employment Opportunity Commission investigator would look at (including whether others in the workplace were being similarly harassed by Evan or others) to determine whether she had stated a complaint that they could act upon. Ana would also have an actionable complaint if one or more customers were frequently harassing her, and her employer was aware of this, yet took no action to stop it. She would also have a complaint if the employer was in any way facilitating the harassment, e.g. helping the perpetrator by making sure s/he had opportunities to be alone with the victim.

Should Ana wish to file a state or federal complaint, it's in her interest to let her employer know of the harassment for several reasons:

Think About It
How could you help Ana prepare for filing the complaint? For talking with her employer? What else do you need to know?

1) Her employer might put a stop to it, and/or assign Ana and Evan to different shifts;
2) It is important that Ana be able to demonstrate that her employer (i.e. someone in a position of authority, like a supervisor) was aware of the harassment; and
3) Should the employer choose to do nothing, or as suggested in Ana's story, leave her to work it out herself, or threaten adverse employment action, this can provide further evidence for Ana's potential hostile workplace claim.

[9] 133 S. Ct. 2434 (2013).

Additionally, if the employer is aware of the harassment, or violence and does nothing, Ana may be able to make out a case of constructive discharge (where the employer's creation or tolerating of a hostile workplace leaves an employee with little recourse except to quit).

Filing discrimination claims with the Equal Employment Opportunity Commission (EEOC)

A survivor may file a charge of discrimination or harassment with the EEOC. S/he has 180 days from the time of discrimination or the last incident of harassment (or longer, depending on state law) file a complaint.[10] Depending on the jurisdiction, the survivor might also be able to file a complaint with a state, or city human rights agency (e.g. in Washington, D.C., New York City, or the states of Minnesota or New York). In Ana's story, where a supervisor held a survivor's employment over her head if she reported abuse, the employer would be liable for violating Title VII.

The employer is liable for harassment committed by people it has control over (including contractors or customers) if the employer knew or should have known about the harassment and failed to take appropriate corrective action. Remedies for a finding of discrimination can include, reinstatement (if the survivor was fired), back pay, or damages. [11] Additionally, if the survivor lives in a jurisdiction where employers are barred from discriminating against survivors of domestic or sexual violence, the employer may be held accountable for taking adverse actions against the survivor. These actions could include a restaurant manager giving a server less or less favorable hours compared to the abusive party, demoting or firing them, or even threatening to do any of these things. [12]

Eligibility for leave

The survivor might also need time off to attend a court hearing – re: a civil protection order, a criminal case filed against the abusive partner, to get counseling or to heal from any injuries. There are several different types of leave that might be available:

- *Paid leave* – Employers may permit employees to accrue leave (sick leave and/or vacation time), which might be available for use under these circumstances. Recently, a number of states and cities have passed paid leave or paid "sick and safe days," laws permitting employees to accrue a certain amount of paid leave every pay period.
- *"Court leave"* – some states have laws that prevent employers from taking adverse action against employees who need to take time off to attend court proceedings. These laws vary widely, but generally do not require that employers pay employees for time taken off in this manner.
- *Family Medical Leave Act (FMLA) Leave* – FMLA provides 12 weeks of unpaid leave to anyone who has a "serious health condition," that requires continuing medical treatment and who has been incapacitated for 3 or more days. While some domestic or sexual violence incidents may rise to this level, many do not.

Leaving employment

States vary on the availability of protections against termination due to being a survivor of domestic violence. The EEOC makes clear that Title VII and the American Disabilities Act

[10] The U.S. Equal Employment Opportunity Commission. https://www.eeoc.gov/employees/timeliness.cfm.
[11] Additional information on the EEOC complaint process, including mediation, investigation and the issuance of a "right to sue," letter can be found here: https://www.eeoc.gov/employees/process.cfm
[12] Helpful materials, including information on state statutes that bar discrimination against survivors, draft letters to employers, how to challenge a firing or apply for unemployment benefits can be found here: http://www.legalmomentum.org/know-your-rights

(ADA) do not prohibit discrimination due to one's status as a survivor (abuse survivors are not a protected class), but it provides guidelines as to when conduct against a survivor may rise to the level of triggering Title VII or the ADA.[13]

Case Scenario: California, where Marie worked has strong anti-discrimination provisions barring the firing of survivors, however, Marie's employer was a Catholic church, and as such, was able to successfully argue that because she taught religious classes, and Title VII's protections do not extend to employees conducting religion related functions, that their choice to dismiss her was protected by the 1st Amendment.

Unemployment insurance

In general, unemployment insurance (UI) is not available to individuals who quit their jobs, however, if they can demonstrate that the reason for their departure qualifies for the "good cause," exception-- e.g. they have to relocate because their spouse has taken a job that requires that they relocate—the application for UI may be approved.

Many states have included leaving employment because of reasons connected to domestic/sexual violence among their good cause exceptions. Similarly, many locales make UI available if the person being subjected to the violence is an immediate family member with whom the employee resides (e.g. a parent or child). [14] More than 40 states and U.S. territories have passed laws regarding the availability of unemployment insurance, but in some states, a labor agency (where application for UI must be made) will permit survivors to apply despite the fact that no statute makes it available. The state of Georgia does neither of these, but there is relevant recent case law that can be used to argue for making UI available.

Ultimately, eligibility for UI will turn on a number of factors beyond a survivor's experience of domestic or sexual violence or stalking, including but not limited to how long they have worked.[15] If the survivor is found to be generally eligible for UI, the relevant state labor department will then address the question of whether, given the specific facts of the survivor's situation, their decision to leave employment qualifies under the state's "good cause," provisions. While state requirements vary, it may be helpful to provide some evidence of the domestic/sexual violence beyond the survivor's story, e.g. a medical or police report, or a statement from a service provider or clergy member. The state labor agency will contact the employer to verify the reasons for the survivor's separation from employment. They can agree or disagree with the assertions made in the survivor's application. These will be taken into account by the state labor agency, but is one of many factors that will be considered.

Practice Tip
Always apply for UI, and in states where it's not available by statute, indicate that leaving a job because of violence constitutes, "good cause," for quitting. Even if the application is initially denied, always file an appeal and make sure to do so within the statutorily prescribed number of days.

[13] Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking. https://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.
[14] Information about the process for applying for unemployment insurance can be found here: http://www.legalmomentum.org/resources/how-claim-unemployment-benefits Information about which states make unemployment insurance available to survivors can be found here: http://www.legalmomentum.org/resources/employment-rights-victims-domestic-or-sexual-violence
[15] See generally, http://www.aboutunemployment.org/eligibility-length/

Thus, both Ana and Marie should apply for unemployment insurance. Both appear to qualify, though both employers may oppose their applications (because Ana disclosed the workplace harassment after being warned against doing so, or because Marie's employer contends that her departure did not constitute "good cause.").

Advocacy Strategies

A survivor's decision to leave a job and apply for unemployment is generally a last resort. This means that you and your client should exhaust all other avenues first.

In addition to providing general advocacy and education to local employers, try to work with your client on sitting down with the employer to discuss options for safety. Conversely, if your client is an "at will," employee in a state that does not have employment protections for survivors – and in all instances, actually – it will be helpful to work with them on safety planning (including a plan to accumulate some savings in case s/he needs to escape the abusive situation sooner than anticipated).

Finally, as indicated previously, any action undertaken on the client's behalf, however well-intentioned by you or his/her employer, must be undertaken with the survivor's knowledge and consent. For example, an employer's decision to terminate a survivor's abusive partner who also works for the employer can have significant ramifications for the survivor, whether for their economic stability or their welfare, or the welfare of others with whom they reside. They should be informed of such a decision and given the opportunity to do safety planning prior to their partner being given notice.

Practice Tips

There are things that advocates can do to raise the issues of sexual and domestic violence and the workplace before they have to do so on a client's behalf.

- Ask to be added to the agenda at a meeting of your local chamber of commerce, and go talk to them from the perspective of wanting to inform them about the services that you provide to community members, and the opportunity they have to safeguard their businesses and employees by proactively implementing workplace policies. This serves the dual purpose of encouraging employers to think about the issue before it becomes *their* issue, and introducing you and your work to them before you are sitting across the table from them with a client.
- Similarly, plan a workplace violence education campaign. Identify and offer education and sexual harassment training to major employers in your area (i.e. corporations, healthcare, education). Providing proactive education and advocacy with employers to adopt or change workplace policies around violence can help foster work cultures that a) do not tolerate violence, or b) make it safer for survivors' to disclose.
- Implement a workplace violence policy in your workplace. The ability to explain the value of such policies to other employers is bolstered when you can say that you have one in place.

The website: www.workplacesrespond.org has a wealth of information, including model policies, information about workplace accommodation and links to state law guides, etc.

Final Considerations

Workplace violence is a challenge, both for survivors of violence who want desperately to be productive contributors in their jobs so as to benefit from the financial stability that provides, and for employers who may neither be aware of the simple measures they could take to make the workplace safer and more productive, nor be convinced that solving these issues is more cost effective and productive than either ignoring them or firing the survivor. The workplace is also very challenging to an abusive partner. Work provides a survivor both economic independence and time away from an abusive partner, both of which lessen a survivor's reliance on them: the last thing the abusive partner wants.

As a lawyer or advocate, your challenge will be to help your client navigate thorny issues of disclosure to their employer, the varied terrain of state protections available to them, and to always be responsive to the survivor's goals. Another challenge is to identify systems or policy change opportunities to protect and enhance employment options for survivors (e.g. raising the minimum wage, expanding workplace benefits). The simultaneous projects of navigating the employment landscape and transforming it are critical to enhancing survivors' economic stability and long-term safety.

For varied reasons, many survivors choose to stay connected to their abusive partners. In all events, helping a client to stay safe and to have a plan for how to leave a relationship if that becomes necessary, along with helping them to maintain stable employment should be your paramount goals. Hopefully, the considerations raised in these and other chapters will provide you with the tools to do so.

Additional Resources

Workplace issues facing survivors are vast, and remedies vary. We offer the following resources to assist your advocacy on behalf of survivors as well as with employers, to understand your state employment law, and to provide quick access to model policies and research to support your work.

Advocacy guides

- ABA Commission on Domestic Violence, Employment Law & Domestic Violence: A Practitioner's Guide: http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/PublicDocuments/ABA_CDV_Employ.authcheckdam.pdf
- Workplaces Respond to Domestic & Sexual Violence, Advocates guide: http://www.workplacesrespond.org/implement/guide-for-advocates
- Brochure for advocates on helping survivors in NYC: https://www.legalmomentum.org/resources/helping-survivors-domestic-violence-sexual-assault-and-stalking-new-york-city
- Sample Know Your Rights Brochure for survivors (NYC): https://www.legalmomentum.org/resources/new-york-city-know-your-rights-pamphlet

Employer resources

- ABA's Model Workplace Policy on Domestic & Sexual Violence: http://www.americanbar.org/groups/domestic_violence/policyandlegislation/model-workplace-dsv-policy.html

- Corporate Alliance to End Partner Violence: www.caepv.org
- Legal Momentum's "This Workplace Is a DV-Free Zone" Campaign: https://www.legalmomentum.org/blog/legal-momentum-launches-its-workplace-dv-free-zone-campaign
- Workplaces Respond to Domestic & Sexual Violence: Model Workplace Policy http://www.workplacesrespond.org/learn/model-policy
- Workplaces Respond: Workplaces Toolkit: http://www.workplacesrespond.org/implement/workplace-toolkit

State law guides:

- ABA Commission on Domestic & Sexual Violence Statutory Summary Charts: http://www.americanbar.org/groups/domestic_violence/resources/statutory_summary_charts.html
- Legal Momentum State Law Guides: https://www.legalmomentum.org/materials/publications-resources?combine=&tid%5B%5D=89
- Legal Momentum State Law Guide on Employment Rights for Survivors: https://www.legalmomentum.org/resources/state-law-guide-employment-rights-victims-domestic-or-sexual-violence

Other resources:

- Research compilation from Workplaces Respond: http://www.workplacesrespond.org/sites/default/files/imce/Workplace%20Research%
- Organizations that can help: http://www.workplacesrespond.org/sites/default/files/imce/Organizational%20Resources%2011.13.pdf
- Comprehensive workplace programs: http://www.workplacesrespond.org/implement/comprehensive-response-program

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A Comprehensive and Survivor-Centered Guide for Domestic Violence Attorneys and Legal Advocates

CENTER FOR SURVIVOR AGENCY & JUSTICE

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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

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