



TIPS FOR ADVOCATES TO HELP A SURVIVOR OF DOMESTIC OR SEXUAL VIOLENCE KEEP HER JOB

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Step one: Determine what the survivor's workplace needs are:

- Does she want her employer to stop discriminating against her?
- Does she want her employer to grant her some time off to deal with the abuse?
- Does she want other accommodations to help her stay safe, such as a modified work schedule or location?
- Does she want to be reinstated to a job she lost because of discrimination or absences?
- Does she want to leave a job because of the violence? If so, can she apply for unemployment insurance benefits?

Step two: Determine what the survivor's rights are and what may be the most effective way to approach her employer. Some key questions to ask are:

- Are there accommodations that she feels she needs at work?
- Has the domestic or sexual violence been affecting her work performance?
- Is she suffering from specific physical or mental health conditions?
- Has she disclosed her situation to her employer?
- If so, has she requested time off or accommodations, and what has the reaction been?
- Does she have accrued sick time, vacation time, personal days, or any other leave? Are there any provisions in an employee handbook, such as a right to medical leave or personal leave, that can be helpful?
- Is she a member of a union? If so, are there provisions of the collective bargaining agreement that can be helpful? Can her union representative be helpful?
- How many employees does her employer employ?
- Does her employer have a workplace violence or domestic violence policy?
- Does her employer have a sex discrimination or sexual harassment policy?

Based on the answers to these questions, you will be able to determine what federal, state or local laws apply, as well as what the employer's policies are. (For information regarding relevant legal rights, visit the Employment and Housing Rights for Survivors of Abuse section of our website at www.legalmomentum.org.) Understanding the survivor's rights will help you develop a strategy together.

Step three: Help the survivor decide whether she should tell her employer about the violence.

There are pros and cons to disclosing information about domestic or sexual violence to an employer. You should help the survivor assess the potential benefits and risks and make an appropriate decision.

There are some important advantages to disclosing the violence. It can allow a victim to work with her employer to take steps to address the violence and to help keep the workplace safe for her and for co-workers. It may also be necessary to disclose the violence to access certain kinds of leave or take advantage of other policies. It can be helpful to disclose to explain a period of poor performance, especially if she has taken steps to address the violence so that there is reason to believe that issues that may be affecting on her performance will abate.

There are, however, some very real downsides to disclosing. Some employers may fire a survivor simply because she is a victim of domestic violence, even if such an action is unlawful. Some state and local laws specifically prohibit discrimination on the basis of being a victim of domestic or sexual violence and general sex discrimination and wrongful termination laws may also be applicable. For more

information on specific laws, visit our website at www.legalmomentum.org. But the fact that a survivor might have a good legal claim in the future against an employer who fires her may be less significant to her than ensuring that she has a regular pay check at present. (There are also special considerations for undocumented immigrants who are working; although they are generally protected by these employment laws, seeking to invoke their rights may increase the threat of deportation.) Also, if she discloses, her employer may pressure her to obtain a protective order or take other steps to leave an abuser. These steps may or may not be right for the victim, but she may have a hard time explaining the situation to her employer. And even if her employer has a duty to keep her situation confidential or if she asks her employer to be discreet, once she has disclosed at work, the story may begin to circulate at the office and expose her to prying questions she might reasonably want to avoid.

Deciding whether to disclose can be a very difficult decision, and unfortunately, it can be impossible to know in advance how an employer will react. Employment policies may offer a clue. Certainly, where an employer has affirmatively committed to a proactive domestic violence policy, there is considerably less risk in disclosing. If the survivor does decide to disclose her situation to her employer, she should ask her employer to keep her situation confidential and tell only those management employees who have an actual need to know.

Step four: Help the survivor prepare to talk with an employer or advocate on her behalf yourself.

Once you have worked with the survivor to determine her workplace needs and a strategy, the next step is to consider how best to realize them. In many cases, informal advocacy may be sufficient to accomplish her goals. Talking with an employer about domestic or sexual violence is usually difficult, and preparation can make the conversation go much more smoothly. It can be helpful to work with the survivor to brainstorm likely questions and answers, or to role play the conversation. Sometimes, she may be able to ask for time off or accommodations, for example, for a medical condition, without disclosing that her needs are related to domestic or sexual violence.

The survivor may advocate on her own behalf, or she may do so with the assistance of a union representative, an attorney, or any other advocate. Any such advocacy is more likely to succeed when the survivor or her advocate has an understanding of her legal rights and what she is legally entitled to expect from her employer. Sometimes, simply showing an employer a fact sheet summarizing relevant law can be sufficient.

If such independent advocacy fails, a letter from an advocate or an attorney setting forth the situation and applicable law may well be sufficient to secure the requested accommodation or otherwise to induce the employer to do the right thing. If such advocacy still fails to yield results, litigation may be necessary. Because some claims have strict time limits, it is important to make the relevant employment inquiries as soon as possible to ensure that appropriate actions or referrals can be made while her claims are still viable.

Step five: Encourage the survivor to keep records.

It is important to keep clear, accurate records of any requests that the survivor or any other advocate on her behalf made to the employee. If requests are made in writing, be sure to keep a copy of the letter and a record of how and when it was delivered. If the letter is mailed, it's a good idea to mail it certified with return receipt requested or by an express mail service that can give a record of receipt. The survivor should keep a copy of any written response received. If a representative of the employer talks to the survivor about the request, she should take notes on this conversation (either during the conversation or immediately after the conversation). The notes should be as detailed as possible. They should include the date of any conversation, what the survivor said, what the employer representative said, and the date that the notes were written up. Also, encourage the survivor to keep detailed notes of any harassment or discrimination she faces at work as a result of her having made a request or disclosing that she is a victim.