



Know Your Rights

A QUICK REFERENCE GUIDE

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Victims of violence often lose their jobs at least in part due to the violence they have experienced in their personal lives. Employment and Housing Rights for Survivors of Abuse (EHRSA) aims to help victims of abuse escape the cycle of violence by advocating for their employment rights. This “Quick Reference Guide” is a compilation of the “know your rights” guides and other educational materials on the specific legal rights and remedies that may be available to victims of abuse. However, because laws and legal procedures are subject to frequent change and differing interpretations, Legal Momentum cannot ensure that the information in this guide is current nor be responsible for any use to which it is put. Many types of claims are subject to very strict time limits. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your particular situation. If you need assistance in finding a lawyer, contact Legal Momentum, the bar association in your state, or your local legal services office, domestic violence coalition, or service provider.

Safety Planning in the Workplace

If you are a victim of domestic violence and your abuser is stalking, harassing, or attacking you at work, you can take steps to reduce the impact of this conduct on your job.

Some possible steps include: talking to your employer; changing your hours, desk, worksite, locks, and/or route to work; getting a restraining order; and alerting co-workers and security personnel and providing them with photos of the abuser.

Find out what policies exist in your workplace. Leave policies, disability policies, collective bargaining agreements, sexual harassment policies, and domestic violence or workplace violence policies can all be helpful for your situation.

Although there are steps you can take on your own, it may be necessary to tell your employer or supervisor about your domestic violence situation. Before you ask your employer to help you, think about what you need and how to ask for it.

If you decide to speak with your employer, start by asking them to keep your situation confidential. Be aware that there may be times when your employer may tell others what you tell them. For example, if you tell your employer that you are afraid that the abuser may harm you at work, your employer may think that it must tell other employees of your situation in order to improve safety in the workplace. There is also the risk that your employer may believe you must be fired to keep the workplace safe. Talk with a lawyer or domestic violence advocate for more information or contact Legal Momentum.

Employment and Housing Rights for Survivors of Abuse is a project of Legal Momentum. See the last page of this guide for further information.

Employment Discrimination Against Abused Women

If you are being sexually harassed at work by a co-worker (if the abuser makes sexual or gender-specific degrading comments that distract you from your job, and/or sexually assaults you while you are at work), notify your employer.

If your employer treats you differently because you are a target of violence, you may have a legal claim of sex discrimination against your employer. For example, you may have a claim if your employer refuses to discipline an abusive co-worker, or disciplines or fires you and not your abuser. You may also have a claim if your employer learns you are in an abusive relationship and disciplines or fires you because you asked for time off to obtain an order of protection, but does not punish other employees who take time off for comparable personal business.

Find out whether your employer has a complaint or grievance procedure for sex discrimination and harassment. File a workplace complaint if you can.

If you are not satisfied with how your employer is handling the situation, you can call the Equal Employment Opportunity Commission at (800) 669-4000, TTY (800) 669-6820 and file an administrative complaint.

If you are not satisfied with the outcomes of filing workplace or administrative complaints, you may also file a lawsuit, but remember that legal proceedings are usually time-consuming. Please note that administrative complaints and lawsuits may be subject to strict time limits and other restrictions.

Domestic Violence or Sexual Assault at Work

If an abuser injures you at work, you may be eligible for Workers' Compensation (an insurance system that pays for medical, hospital, and rehabilitation expenses and for a portion of the lost wages of workers who are injured on the job).

Injury generally must "arise out of employment" and occur "in the course of employment."

Contact the local Workers' Compensation board or an attorney in your state. Within the applicable deadlines, tell your employer about the injury, file a claim, and ask how to appeal in case your claim is denied.

You may also have a legal claim for money damages against your employer if it was negligent in hiring, retaining, or insufficiently supervising the abuser. In these cases you must usually show that your employer knew or should have known that its action (hiring, retaining, or failing to supervise the abuser) would subject you to an unreasonable risk of harm; and that your employer's action actually caused your injuries.

You may have additional claims if the abuser is a supervisor or high-level employee. Your employer may be legally responsible for such an employee's conduct.

Time Off to Participate in Criminal Proceedings

Many states allow crime victims to take time from work to participate in criminal proceedings and make it illegal for an employer to fire them if they do so.

If your employer threatens to, or does, fire you for participating in criminal proceedings, some states allow you to sue your employer for money damages (like lost pay or benefits).

A few states have laws preventing employers from firing domestic violence survivors who take time from work to go to civil court to obtain a protective order or for other reasons.

To find out what your state's laws are, contact Legal Momentum.

Medical Leave for Survivors and Family Members

Even a single act of violence by a family member may cause long-lasting trauma as well as immediate harm to a victim or an observer. Repeated abuse and severe violence causes significant psychological distress and may result in post-traumatic stress disorder, depression, dissociative anxiety, or mood disorders as well as physical injury. If domestic violence has caused serious health conditions for you or a family member, you may have a right to take leave from work to address those conditions.

The federal Family and Medical Leave Act (FMLA) and many states' laws provide certain employees with the right to take up to twelve weeks of unpaid leave from work for a "serious health condition" or to care for a family member who has a "serious health condition." The FMLA also prohibits your employer from discriminating against you because you miss work to care for a disabled family member. Ask your employer for information about these rights.

To be covered by the FMLA, you must: have worked for your employer for at least a year, have worked at least 1,250 hours during that year (an average of about 25 hours per week), have at least 50 co-workers within a 75-mile radius, and have a "serious health condition." If you are covered, your employer must continue to pay your health insurance benefits during your leave and restore you to your job, or to an equivalent one, upon your return. In some cases, you may use family or medical leave to work part-time, or take your leave on an intermittent schedule. However, you must show that intermittent leave is medically necessary and that your serious health condition is best accommodated through an intermittent or reduced schedule.

If you know in advance that you will need to take leave that is covered by the FMLA, you must give your employer 30 days notice. If you need leave suddenly or if there is a medical emergency, you or a family member must notify your employer as soon as possible, usually within a few days.

If you think your employer has violated the FMLA, you can file a complaint with your local office of the United States Department of Labor, Wage and Hour Division (check the blue U.S. Government listings in your local phone book).

For information about the application of family and medical leave laws to your situation, contact Legal Momentum.

Disabled Victims of Domestic and Sexual Violence

Just as the trauma and harm resulting from domestic violence or abuse may be a “serious health condition” for which some employees can take Family and Medical Leave (see previous section), such violence may also lead to conditions that qualify as “disabilities” under the Americans with Disabilities Act. If domestic violence has caused you to become “disabled” as defined in the law, you may have the right to protection from discrimination and to reasonable accommodations.

A person with a physical or mental impairment that “substantially limits a major life activity” is considered disabled under the federal Americans with Disabilities Act (ADA). State and local laws may have other definitions of what is a “disability” and what rights a disabled person has--and they may be broader than the federal ADA.

If your employer is covered by the ADA, you may be able to obtain a “reasonable accommodation” to enable you to perform your job, such as modification of facilities, a part-time work schedule, time away for therapy, policy changes, transfers, or modified supervision.

You should demonstrate to your employer the existence of your impairment, and its substantial impact on a major life activity, although disclosure of the precise nature of your disability is a personal decision and is not mandatory.

To protect your ADA rights, do the following: Present your request for accommodations in writing; if possible, suggest alternative accommodations; offer referrals to accommodation specialists like the Job Accommodation Network (800-526-7237) or the Disability and Business Technical Assistance Centers (800-949-4232); and schedule and attend meetings to discuss accommodations.

Employers cannot ask questions about your disability or require a medical examination unless there is a job-related reason to do so.

Eligibility for Unemployment Insurance Benefits

If you are afraid of your abuser harming you while you are at work, you may feel too unsafe to stay at your job or you may lose your job.

Unemployment insurance provides temporary, partial wage replacement to formerly employed people who lose their jobs through no fault of their own. Eligibility for unemployment insurance, and how much you can receive, usually depends on how long you worked and how much you earned during a particular time period. To qualify, you must be available for and actively seeking work, but unable to find any; although a few states may have some exceptions for survivors of domestic violence.

Most states only pay benefits to a worker who quits a job for “good cause.” Some states recognize domestic violence as “good cause.” If you are fired because you are a victim of domestic violence, you may be eligible for unemployment insurance benefits, depending on your state’s laws.

Contact an agency in your state that administers the unemployment insurance program. Apply for unemployment, and fully describe your situation in the interview. If you are denied assistance, call

the state department or agency that mailed you the denial notification and ask them how to appeal the denial.

A domestic violence survivor who has left or lost a job may be eligible for both welfare benefits and unemployment benefits, but may not collect both at the same time.

Lesbian, Gay, Bisexual and Transgender Domestic Violence Survivors

If you are lesbian, gay, bisexual, or transgender, you may face the possibility of double discrimination, based on your sexual orientation or gender identity, and on your status as a domestic violence survivor, when you seek assistance from the police, the judicial system, a service provider, or your employer.

Refer to Legal Momentum’s guide “know your rights” Safety Planning in the Workplace: Protecting Yourself and Your Job for information on steps to take if your abuser is harassing you at work. Some of these steps may not require you to disclose your sexual orientation or gender identity. If you choose to do so, or you are already “out” at your job, and you believe your employer has treated you differently because of your sexual orientation or gender identity, you may be entitled to protections under anti-discrimination laws.

If you think you have been discriminated against because of your sexual orientation or gender identity, contact the agency in your state or city that enforces employment discrimination laws to find out if sexual orientation or gender identity discrimination in employment is prohibited where you live. You may also want to contact: Lambda Legal Defense and Education Fund (212-809-8585), the ACLU Lesbian and Gay Rights Project (212-549-2627), or the National Center for Lesbian Rights (415-392-6257) for information about these laws in your area.

Welfare-to-Work Programs

If you are on welfare and unable to comply with a work requirement because of the violence in your life, you may be excused from the work requirement under any of these three programs: the hardship exemption, the Family Violence Option (both of which some states provide), and the child support “good cause” exemption (which all states provide).

Welfare-to-work program participants are not excluded from coverage under federal anti-discrimination or workers’ rights laws. Whether a particular federal law covers a particular welfare-to-work program activity depends upon that law’s coverage rules.

If domestic violence will affect your ability to participate in a welfare-to-work program, tell someone—a caseworker, an advocate, or a legal aid lawyer—and ask for help and information. Request a fair hearing at any point in the process where you feel you are not getting your benefits or your rights are being violated by the welfare agency.

If you are physically or mentally unable to work, you may be excused from work requirements. You may also be entitled to Supplemental Security Income (SSI) or Social Security Disability benefits instead of welfare. Contact a domestic violence or disability rights advocate for more information.

Contact Legal Momentum to find out if the Family Violence Option applies in your state and for a list of advocacy organizations that may be able to assist you.

For more information or assistance, please contact 212-925-6635 or ehrsa@legalmomentum.org.

This guide is available for downloading at www.legalmomentum.org.

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