

Domestic or sexual violence does not always stop when a woman leaves home in the morning to go to work. For example, the abuser, stalker, or perpetrator of a sexual assault may come to the victim's job and harass or assault her at work or the victim and the perpetrator may work together. This guide explains the legal remedies you may have against your employer if you have been injured at work by an abuser or perpetrator of an assault or if you have been assaulted at work.

1. What are my legal rights if I am injured at work?

If the abuser or the perpetrator of a sexual assault or stalking injures you at work, you may be able to recover money for some of your injuries. Your rights depend on the laws in your state and the specific facts of your situation (for example, whether the person who injures you is a coworker). Under certain circumstances:

- You may be eligible for Workers' Compensation.
- You may have a legal claim for money damages against your employer.

In most states, if you are eligible for workers' compensation for a particular injury, you will not be able to bring a lawsuit against your employer for the same injury.

There may also be things you can do to improve your safety at work and prevent a violent incident from occurring. To learn more about safety planning in the workplace, please see the **Employment and Housing Rights for Survivors of Abuse** guide, "*Safety Planning in the Workplace: Protecting Yourself and Your Job.*"

2. Can I collect Workers' Compensation for injuries caused by my abuser or the perpetrator at work?

Yes, in some cases. Workers' Compensation is an insurance system that pays for the medical, hospital, and rehabilitation expenses and for a portion of the lost wages of workers who are injured on the job. The amount of money an injured worker receives is set by state law. Workers' Compensation is a "no-fault" system. This means that the employee does not have to prove that the employer was at fault in order to get benefits. Workers' Compensation is available in every state. Each state requires certain types of employers to participate in the system and has its own rules concerning who is eligible for benefits.

If you are eligible for Workers' Compensation benefits for a particular injury, then Workers' Compensation may be your exclusive or only remedy for that injury. This means that you would not be able to bring other legal claims against your employer for the same injury (such as the claims

described below). There are some exceptions. For example, you may be able to bring a sex discrimination claim. (See the **Employment and Housing Rights for Survivors of Abuse** guide, *“Employment Discrimination Against Abused Women”*).

When are injuries at work covered by Workers’ Compensation?

The law is different in each state. Here are some general principles about which injuries and employees are covered:

- You will be covered only if your type of employer and your type of job is specifically included in your state’s Workers’ Compensation system. In New York, for example, many nonprofit employees are not covered. Federal employees are covered by the federal Workers’ Compensation system.
- Your injury must **“arise out of employment.”** This means the injury must be linked to your job. In some states, assaults by coworkers or non-employees are covered. In other states, such assaults are not.
- Your injury must occur **“in the course of employment.”** This usually means the injury must happen while you were performing your job or while you were on your employer’s property during working hours (eating lunch in the cafeteria, for example).
- Your injury must be an **“accident.”** Intentional injuries inflicted by your employer are not accidents. However, intentional injuries inflicted by a coworker or a non-employee may count as “accidents” in some states.

How do I apply for Workers’ Compensation?

- Contact your local Workers’ Compensation board or an attorney in your state for information on how to apply and about the specific laws in your state.
- Make sure to ask about deadlines. Most states have a time period during which you must inform your employer about your injury and file your claim.
- Be sure to tell your employer about your injury within the deadlines.
- File a claim on time with your state’s Workers’ Compensation board or the appropriate organization.
- Remember to ask about how to appeal in case your claim is denied at first.

3. Can I recover money damages from my employer if I am injured at work?

Your employer is not legally responsible for every injury that happens at work. However, in some cases, you may be able to recover money damages from your employer when the abuser or perpetrator injures you on the job.

What if my abuser or the perpetrator is my coworker or supervisor?

When the person who injured you is also your coworker or supervisor, your employer may be liable for its negligence in hiring the person in the first place, for continuing to employ the person after it became aware of a problem, or for failing to adequately supervise the person. Under certain circumstances, you may have a claim for:

- negligent hiring

- negligent retention (continuing to employ)
- negligent supervision; and/or
- negligence (such as failure to warn or protect)

In each of these claims, you must show:

- the abuser or perpetrator is or was an employee of your employer; and
- your employer knew or should have known that its action (e.g., hiring, retaining, or failing to supervise the abuser or perpetrator) would subject you to an unreasonable risk of harm; and
- your employer's action caused your injuries.

In addition, you may have additional claims if the person who injured you is a supervisor or high-level employee. Your employer may be legally responsible for his conduct. If your injuries are covered by your state's Workers' Compensation system, your relief will probably be limited to Workers' Compensation (see above). Depending on the facts of your situation, you may also have a claim for sexual harassment. (See the **Employment and Housing Rights for Survivors of Abuse** guide, *"Employment Discrimination Against Abused Women"*).

What if I am assaulted at work by someone who is not an employee of my employer?

When the person who assaults you is not an employee of your employer, it is much more difficult to recover money damages from your employer for your injuries. Most courts have decided that employers have no duty to protect their employees from unpredictable assaults by non-employees. The reason for this is that violence is very hard to anticipate and employers will not be liable for violence they could not have predicted. However, in limited cases, you may have a negligence claim against your employer if your employer's negligence caused your injuries. To prove negligence, you would have to prove that your employer knew or should have known about the risk of violence, that there were reasonable steps your employer could have taken to reduce the risk of violence, and that your employer's failure to take those steps caused your injury.

4. What about federal occupational health and safety laws?

A federal law called the Occupational Safety and Health Act of 1970 requires that your employer provide each employee with a workplace that is free from "recognized hazards" that are causing or are likely to cause death or serious physical harm to its employees. 29 U.S.C. § 654(a). This law gives a federal government agency, the Occupational Safety and Health Administration (OSHA), the power to investigate complaints about unsafe working conditions and to issue citations with fines to employers. At this time it is unclear whether OSHA would issue a citation to an employer who failed to prevent injuries at work caused by domestic violence. Under regulations codified at 29 C.F.R. § 1904.5, employers are not exempt from reporting workplace injuries due to assaults by family members or ex-spouses in their record-keeping requirements. Many states also have state occupational health and safety laws that may apply.

5. Consult the appropriate agency or an attorney about your rights.

This guide is intended to provide accurate, general information regarding legal rights relating to employment. Yet, because laws and legal procedures are subject to frequent change and differing interpretations, Legal Momentum cannot ensure the information in this guide is current nor be responsible for any use to which it is put. 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, sexual assault coalition, or service provider.

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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