

TIME OFF TO PARTICIPATE IN CRIMINAL PROCEEDINGS

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Survivors of domestic violence, sexual assault, or stalking often have to go to criminal court to testify in a case against the perpetrator of the crime. For example, an abused women may be asked to testify as a witness when the district attorney prosecutes a batterer for hitting, kicking, or attempting to murder the victim or a survivor of a sexual assault may be asked to testify in a rape trial. Many survivors will need to miss work to testify; survivors may also need to take time off from work to meet with the prosecutor to prepare for a criminal trial. Additionally, survivors may need to take time off from work to go to court for a civil protection order.

Requiring survivors of domestic violence, sexual assault, or stalking to testify in criminal court can place them in a difficult situation. Often survivors are afraid they will be fired or disciplined if they take time off to testify in court. On the other hand, without the victim's testimony, abusers or perpetrators may not be prosecuted for their crimes and abused women will continue to live in danger.

Fortunately, several states have passed laws that allow a victim of crime, including a domestic or sexual violence victim, to take time from work to testify in criminal court without fear of losing her job.

1. Can I take time from work to testify in criminal court without being fired?

Many states have enacted laws that permit crime victims, including domestic violence victims to take time off from work to testify in **criminal court** without being fired from their jobs. Some states grant time off for a witness to testify as well. This is an area where state laws change quickly. For more specific information about any state's laws or to see whether additional states have passed relevant laws, see Legal Momentum's state-law guide "*Time Off From Work*," available online at <http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml>, which is updated frequently.

As of January 2005, thirty-two states (AL, AK, AZ, AR, CO, CT, DE, FL, GA, HI, IN, IA, MD, MA, MI, MN, MS, MO, MT, NV, ND, OH, PA, RI, SC, TN, UT, VT, VI, VA, WI, WY) have laws specifically permitting an employee who is a victim of a crime leave to attend court, at least under certain circumstances, such as responding to a subpoena, responding to a request from a prosecutor, or serving as a witness. Some of these states also allow a victim to take time off from work to meet with an attorney to prepare for trial.

If you work in one of the states listed above and your employer threatens to fire you or discriminates against you for testifying in criminal court, you may want to notify the prosecuting attorney or judge and ask for assistance. If your employer either threatens to fire you or does fire you for taking time from work to testify in criminal proceedings against the abuser, some of these states allow you to sue your employer so that a court could award you money damages (like lost pay or benefits). Some states could require the employer to rehire you, or could hold the employer in

contempt of court for violating the law. Please contact **Legal Momentum** or a local legal aid organization if an employer fires you for exercising your rights under these laws.

Other states provide more limited protections for victims of crime who need to take time from work to participate in criminal proceedings. Nineteen states encourage employers to cooperate with employees who were victimized by crime, but do not require your employer to permit you to take time from work to testify. These states include CO, FL, IL, KY, LA, NE, NV, NJ, NM, NC, ND, OK, RI, TX, UT, VI, WA, WV, and WI. In these states, your employer still may be able to legally terminate you if you take time off to testify.

Domestic violence victims who work in a state that is not listed here have no job-protected time off to testify in a criminal proceeding. However, if your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

2. Can I take time from work to go to court to get a civil restraining order without being fired?

As of January 2005, five states (California, Colorado, Hawaii, Illinois, and Maine) provide either specific amounts of time off or “reasonable time off” for individuals to address a range of needs related to the violence, including attending court to get a civil restraining order, as well as receiving medical treatment or counseling, relocating to safe housing, or engaging in safety planning. Additionally, New York protects the right of individuals to seek protective orders and North Carolina provides individuals with “reasonable time off” to seek a protective order or otherwise enforce their rights under the State’s domestic violence law. This is an area where state laws change quickly. For more specific information about any state’s laws or to see whether additional states have passed relevant laws, see Legal Momentum’s state-law guide “*Time Off From Work*,” available online at <http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml>, which is updated frequently.

3. 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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