



Know Your Rights

NEW YORK CITY: EMPLOYMENT RIGHTS AND BENEFITS FOR SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE

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Domestic or sexual violence often affects victims or survivors at work. Victims may need time off to address the violence. They may also need changes made at work to stop the abuser or perpetrator from harassing them at work or to make the workplace safer. Some victims are illegally fired because of the violence. There are many laws that give victims working in New York City important rights and benefits. This guide answers some common questions.

1. Do I need to tell my boss or someone else at work about the violence?

No. There is no legal requirement that you tell your employer about the domestic or sexual violence (such as rape or sexual assault). However, to take advantage of some of the rights discussed below (such as asking for time off or other changes to help you at work), you may need to tell your employer that you are a victim of domestic or sexual violence. If you do decide to tell someone at work about your situation, be sure to ask him or her to keep it as confidential as possible. In New York City, the law generally requires that employers keep any information you share in “strictest confidence.”

2. Can I be fired or otherwise treated badly because of the violence?

No. In New York City it is illegal for an employer to fire you, punish you, or discriminate in any other way against you *because* you are a victim of domestic violence, sex offenses, or stalking. If you believe your employer has discriminated against you because of the violence, you may bring a lawsuit in state court or file a complaint with the New York City Human Rights Commission based on the New York City law protecting victims from discrimination. You may also bring a lawsuit in federal or state court based on laws that make sex discrimination illegal. (For more information on these issues, see the EHRSA guide “Employment Discrimination Against Abused Women.”)

3. Can I be fired if I am harassed at work by my abuser, stalker, or the perpetrator of an assault?

No. It is common for abusers, stalkers, or perpetrators of sexual assault to harass their victims at work, often by telephone or in person. Sometimes, such actions may disrupt the workplace. You can ask your employer to make “reasonable accommodations” for you (such as changing your telephone extension or enforcing a protective order) to help stop such harassment. Reasonable accommodations are generally required under New York City law. Also, under New York City law, it is *illegal* for your employer to fire you or take other actions against you solely because of the actions of an abuser, stalker, or perpetrator of an assault. If your employer is threatening to fire you because

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of the actions of an abuser, stalker, or perpetrator, you can inform your employer that this would be against the law. If you have already been fired, you can bring a lawsuit or file a complaint.

4. Can I ask my boss for changes at work to help me deal with the situation, protect my safety, or allow me to do my job?

Yes. Under a New York City law that was passed in December 2003, employers must make “reasonable accommodations” so that a victim of domestic violence, sex offenses, or stalking can do the “essential requisites” (key duties) of her job. “Reasonable accommodations” are changes that could include:

- Allowing you time off or a modified schedule
- Changing your telephone number or extension or routing calls through the receptionist
- Keeping your home address and telephone information confidential
- Transferring you to a different desk, department, shift, or work site
- Having a security guard escort you to your car or the nearest public transportation stop
- Giving a copy of a protective order to security or the receptionist
- Posting a photograph of the abuser, stalker, or perpetrator at the front desk or with security and asking the receptionist or guards not to let the person come in

Your employer must make a reasonable accommodation that you need to do your job unless it would be an “undue hardship” to the employer. Whether or not it would be an “undue hardship” can depend many factors, including your employer’s budget, the cost of the accommodation you are requesting, and the nature of the business.

To ask for an accommodation, you should explain to your employer that you are a victim and that you need this accommodation to allow you to do your job. It can be helpful to be flexible in working with your employer to figure out what will work, but you should not feel that you need to agree to something that will not meet your needs. If your employer refuses to give you a reasonable accommodation, you can challenge that decision by filing a lawsuit in court or filing a complaint with the New York City Human Rights Commission.

5. What are my legal rights to take time off from work to address the violence?

Time off to go to court: Under New York State law, employers cannot punish a victim of a crime for taking time off from work to appear in court at proceedings related to the crime, meet with the prosecutor, or try to get a protective order in family court. Under this law, you must tell your employer before you miss work that you will be absent. Your employer is not required to pay you for time you miss. Your employer can also ask you for proof that you were actually in court. You can ask the prosecutor or the clerk of court for a document showing that you were in court.

Time off to find safe housing, get medical treatment or counseling, or take care of other needs (including other court appearances) related to the violence: Employers in New York City must give employees who are victims “reasonable accommodations” to let them do their jobs. The report written by the City Council committee that recommended this law makes clear that “reasonable accommodations” can include giving employees time off. You should ask for time off like any other kind of reasonable accommodation.

Other time off: You may also be able to use any other employment leave you are entitled to, such as sick leave, vacation leave, discretionary days, or family and medical leave. You might be able to use these kinds of benefits without telling your employer that you need the time off because you are a victim of domestic or sexual violence. (For more information about taking time off, see the EHRSA guide “*Medical Leave For Survivors and Family Members.*”)

6. Can I get unemployment insurance benefits if I lose my job or leave my job because of the violence?

Yes. Generally in New York State, you cannot get unemployment benefits if you quit a job without “good cause” or are fired from a job for “misconduct.” The law specifically says, however, that domestic violence can be “good cause” for leaving a job. (The law does not specifically refer to sexual assault or stalking but victims of such offenses may also be covered under this provision.) This means that if you quit a job as a result of the violence, you should not be denied benefits on the ground that you voluntarily left the job without good cause. Also, if you were fired because of “misconduct” that resulted from the violence (for example, if you were often absent or late), there are legal decisions stating that you should not be denied benefits. To take advantage of this law, you should explain in your application for benefits how the domestic or sexual violence caused you to leave or lose your job. Even if you are a victim of domestic or sexual violence, you must still meet other requirements (such as level of earnings and length of employment) to get benefits.

7. What benefits can I get if I cannot work because of a disability or injury from domestic or sexual violence?

New York State law requires most employers to provide “short-term disability” benefits to workers who cannot work for a period of time because of an injury that occurs outside of work (such as an injury from domestic or sexual violence). Benefits can be available for up to 26 weeks out of a 52-week period. You cannot receive short-term disability benefits for any period that you are also receiving a salary (for example, paid sick leave) or unemployment insurance benefits. To receive benefits, you will need to meet other eligibility requirements, and you may need to provide proof from a doctor that you are unable to work.

8. What documentation do I need to prove I am a victim of domestic or sexual violence?

If you believe you have been fired or discriminated against because you are a victim or if you are claiming unemployment benefits after leaving a job because of the violence, there is no specific documentation that you need to give to the judge or hearing officer. You will, however, have to prove with some kind of evidence that you are victim of domestic or sexual violence to take advantage of the specific legal protections described above. Your sworn statement could be enough to prove that you are a victim. You could also use statements from professionals such as counselors or shelter workers who have helped you to address the violence; medical records; police reports; or a protective order. Although the unemployment insurance law does not require that you seek a protective order or take steps to maintain your employment, sometimes judges or hearing officers consider such factors in making their decision. If you are denied unemployment insurance benefits based on such factors, contact Legal Momentum.

If you are asking for “reasonable accommodations” under the City’s law, your employer can ask you for “certification” of the violence. You can meet this proof requirement by giving your employer a copy of: a sworn statement or other documentation from a professional helping you address the violence (this could be a shelter or victims’ services agency, doctor, lawyer, or member of the clergy); a police record; a temporary or permanent restraining order or other court record; or “other corroborating evidence.” You can ask for accommodations at work even if you do not have a restraining order or police report.

9. Where can I get more information or help?

Legal Momentum’s Employment and Housing Rights for Survivors of Abuse project has guides with more information on how some federal laws can help victims of domestic or sexual violence:

- *Disabled Victims of Domestic and Sexual Violence*
- *Employment Discrimination Against Abused Women*
- *Medical Leave For Survivors and Family Members*
- *Safety Planning in the Workplace: Protecting Yourself and Your Job*

There is also a guide on “*New York State: Welfare-to-Work*” that describes how parts of the welfare law can help domestic violence survivors. All of these guides are available on our website at www.legalmomentum.org or by phone at 212-925-6635.

10. Ask an appropriate agency or an attorney about your rights.

This guide is intended to provide accurate, general information regarding employment rights for victims of domestic and sexual violence in New York City. However, because laws and legal procedures frequently change and are subject to 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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