

Helping Survivors of Domestic Violence, Sexual Assault and Stalking in New York City

Stay Safe and Stay Employed

Help Your Clients Address Employment Issues

Many victims and survivors of domestic violence, sexual assault, or stalking find that the violence affects their employment; for example, their abuser could be harassing them at work, or they might need to take time off work to get restraining orders or find a new place to live. There are a number of laws that can help survivors keep their jobs.

Did you know?

- New York City's Human Rights Law protects survivors of domestic violence, sexual assault and stalking who work for employers in New York City with four or more employees.¹ (*See Sections 8-101 and 8-107.1 of New York City's Administrative Code*).
- Under this law, an employer cannot fire an employee simply because she is a survivor of domestic violence.
- Additionally, an employer has to give "reasonable accommodations" to survivors of domestic violence—such as allowing leave time, changing phone extensions or routing calls through a receptionist, or varying hours of work.
- A survivor has to tell her employer about the situation before she is entitled to reasonable accommodations and the employer can ask for proof that the survivor is experiencing or has experienced domestic violence.
- The employer is not required to make changes that would impose an "undue hardship" on the employer.
- Once a survivor tells the employer about the situation, the employer must keep the information confidential. *A letter from you can be enough to show an employer that a survivor is experiencing domestic violence.*

¹ *The New York City law protects victims of domestic violence, sexual assault, and stalking, and it protects both male and female victims. For the purposes of this pamphlet, however, we generally refer simply to domestic violence and to survivors as female.*

Step-by-Step: Keeping Clients Employed and Safe

This brochure provides you with a roadmap for helping your clients use this law so they can keep their jobs and stay safe. Most of these steps do not require going to court. Follow the suggestions below to help your clients help themselves.

1. Ask about your client's employment situation, focusing on whether she is experiencing violence that is affecting her job or whether she needs changes at work to stay safe. This is also a good time to figure out if she is covered by the New York City law. Some questions to ask include:

- Is she being harassed at work?
- Does she need accommodations in her workplace to address the situation? This could mean: a new extension, varied hours, giving the abuser's photograph to security, or taking time off to get a restraining order, attend court dates, or relocate.
- Does she think the abuse has already affected her work performance, and is she worried about losing her job?
- Does she suffer from a physical or mental health condition?
- Has she already told her boss about the abuse? If so, what was the reaction? Did she get the help that she needs?
- Has she left a job because of the violence? Or been fired?
- How many employees does her boss employ? (remember, the NYC law only applies to employers with four or more employees; other laws may apply outside NYC)

Keeping her job

Mary, the client of a Safe Horizon case manager, was about to be fired because her abuser kept showing up at her workplace. Mary educated her employer about the NYC law and their responsibilities. Rather than firing her, her employer agreed to transfer her to a different location. Mary is very happy that she got to keep her job.

Gina was fired by her employer, the New York City Department of Corrections, for being “unreachable” while on sick leave because she couldn’t give them the confidential location of the domestic violence shelter she was staying at as her home address. Gina sued her employer under the NYC law and got her job back, along with back pay.

2. **Figure out what options she might have under her employer’s policies:**

- ➔ Is she a member of a union? If so, has she or can she talk to her union representative about obtaining reasonable accommodations?
- ➔ Does she have accrued leave, such as medical leave, sick leave, or vacation time, that might give her a right to time off?
- ➔ Does her employer have a workplace violence or domestic violence policy?
- ➔ Does her employer have a sexual harassment or sex discrimination policy? (this is especially important if the abuser is a coworker)

3. Help her figure out whether to tell her employer about the violence. There are pros and cons to a survivor telling her employer about the violence:

Pros

- ➔ Telling her employer allows her to ask for accommodations and may help keep the workplace safe for her and her co-workers.
- ➔ Telling her employer might also help explain a period of poor performance and deter an employer from firing her, especially if she can assure her employer she is taking steps to stop the violence so that her performance is likely to improve.

Cons

- ➔ Telling her employer could cause her employer to fire her just because she's a survivor of domestic violence. That would be against the law, but enforcing the law might be too difficult or time consuming an option for your client to pursue. Keeping a steady paycheck might be more important to her present and future stability.
- ➔ Telling her employer might also cause her employer to push her to leave her abuser or to get a protective order; this might not be the right step for your client.
- ➔ Telling her employer might also make the situation more public—even though the NYC law requires that employers keep this information *strictly confidential*, there is no guarantee that the employer will comply with this requirement.

How to make this decision

There's no way to predict how an employer is going to react, but any policies the employer has against violence or harassment might give you an indication of how well the employer will respond. In addition, it helps to figure out how flexible the employer generally is and whether there is someone that the client is comfortable talking to who will have authority to help her.

4.

If the client decides to tell her employer, make a plan for how she will do it.

There are a number of options when a client decides to tell her employer about her domestic violence situation and to ask for accommodations under the NYC law.

- **Getting started — help her convince her employer:** A letter from you as an advocate explaining that the client is experiencing domestic violence can help convince an employer that the situation is serious and that she is protected by this law. If she is going to tell her employer about the violence, you should provide her with a letter documenting the violence. She might want to think about other documentation that she could provide if requested. This could include a police report, a protective order, medical records, or a letter from a caseworker, lawyer, clergy member, medical provider or other professional.
- **Your client could tell her employer herself:** If the goal for your client is to keep her job, strategies that are aggressive and confrontational might not be the best first plan. Instead, ask your client if she feels comfortable having a private conversation with her boss or with human resources. If she is able to do this, the process might go more smoothly, but remember—this conversation might be very difficult for her and for the employer. So if she is going to talk to someone in person, you might want to brainstorm possible questions that might come up. Even better, you might want to role-play the conversation so that she is prepared to handle this potentially uncomfortable situation. She also might want to bring a fact sheet about the law so that she can show it to her boss or HR if they ask questions.
- **Your client could bring an advocate with her:** What if she is not comfortable with a private conversation or thinks it might not work? Another option is to have your client accompanied by someone, such as a union representative, an attorney, or another advocate. With this approach, it is helpful for your client and her advocate to have an understanding of the law, and to bring a fact sheet about the law for the employer.

- **Your client could write her employer a letter:** Another option is for your client to write her employer a letter, or fill out one of Legal Momentum’s template letters, explaining her situation and the law. This option might be especially useful if your client feels uncomfortable discussing the issue with her boss in person, or if she works for a big company with a human resources department and does not feel comfortable having a personal conversation with a stranger in HR. If she chooses to write her own letter, you can help her phrase her letter in the most effective way for her.
- **Your client could ask an advocate or an attorney to write a letter:** This option is probably the most confrontational. You might want to use this option if the survivor has already been fired in violation of the law, or if the employer has not responded to other attempts by the survivor to get accommodations.

5.

Encourage your client to keep records.

Your client should keep records about any requests she makes for accommodations and how the employer responds. She should also keep notes if she has the impression, because of harassment or discriminatory treatment, that she is being discriminated against because she is a survivor of domestic violence. The notes should include the date of any incident; what happened (writing down the exact words said is helpful); and who else, if anyone, observed the incident.

- **Sending letters:** If she is giving her employer a letter, she can hand it to the employer personally, or send it by mail—if she sends it by mail, she should send it certified with a return receipt requested or by some other means that will document receipt.
- **Conversations with employers:** If your client addresses this issue with her employer in any conversations, she should take detailed notes (during the conversation or after the conversation) of what is said by both her and the employer. She should also keep notes on whether the employer makes her requested changes.

6.

What to do if your client has already lost her job because of domestic violence.

Although it's illegal for employers to fire employees in New York City because they are survivors of domestic violence, or because they need reasonable accommodations, sometimes employers do not know it is illegal or do not care. Additionally, the law does not protect employees from being fired for poor work performance (in some cases, even if the problems were related to the violence). If your client has lost her job recently, however, there may be some things you can do to help:

- ➔ **Try to get her reinstated:** Was her termination recent? If she lost her job recently and believes that it was because she is a survivor of domestic violence, it might make sense for her to send a letter to her former employer, written by her, you or an attorney, explaining her situation and the law. Letting the employer know that they broke the law might make them willing to rehire her. Also, if she was a member of a union, she should contact the union to get help in getting reinstated.
- ➔ **Try to negotiate a severance agreement:** Sometimes, even if the employer is not willing to take the employee back, or if the employee does not want to go back, the employee can negotiate a severance agreement. Important terms could include some number of months of pay; continuing health or other benefits for a period of time; not challenging a claim for unemployment insurance benefits; or giving a positive employment reference.
- ➔ **Apply for unemployment insurance benefits:** The general rule in unemployment insurance is that if an employee is fired because of misconduct she is not eligible for benefits. However, some hearing officers have held that if the "misconduct" is related to domestic violence (e.g., absences or tardies) the individual may still get benefits.



What to do if your client has chosen to leave a job because of domestic violence.

→ Apply for unemployment insurance benefits:

New York law provides that an individual who voluntarily quits a job because of “circumstances directly resulting from” being a victim of domestic violence is eligible for benefits. For more information about eligibility or how to apply for unemployment benefits visit www.lawhelp.org or the New York State Department of Labor’s website at www.labor.state.ny.us/ui/how_to_file_claim.shtm. Legal Momentum also has resources explaining survivors’ rights to unemployment benefits: <http://www.legalmomentum.org/issues/viol/Unemployment%20Benefits.PDF>. Your client can also apply for benefits online or by calling (888) 209-8124.

Legal Action

If a survivor of domestic violence has been fired in violation of this New York City law, she can file a complaint with the New York City Human Rights Commission within one year, or she can sue in state court within three years. *To contact the New York City Human Rights Commission call:*

Manhattan (212) 306-5070

Brooklyn (718) 722-3130

Bronx (718) 579-6900

Queens (718) 886-6162

Staten Island (718) 886-6162

If she is interested in pursuing a lawsuit or filing a complaint, she can contact Legal Momentum at (212) 925-6635 for more information.



395 Hudson Street

New York, NY 10014

Tel: (212) 925-6635

Fax: (212) 226-1066

legalmomentum.org

To request copies of our materials,
contact our Publications Department
at publications@legalmomentum.org
or call (212) 925-6635.

© 2007 *Legal Momentum*

Employment Rights of Survivors of Domestic Violence, Sexual Assault or Stalking

- In New York City, it is illegal for employers to discriminate against survivors of domestic violence, sexual assault, or stalking.
- In New York City, employers must provide reasonable accommodations to survivors of such violence.
- Reasonable accommodations can be used for safety planning—a survivor of domestic violence could ask her employer to change her phone extension, vary her hours, have security screen for her harasser, or for time off to deal with the situation.
- If a person has lost her job because of domestic violence, she may be eligible for unemployment insurance benefits.
- If a person has lost her job or has been discriminated against because of domestic or sexual violence, she may be able to bring a claim in state court or with the New York City Human Rights Commission.

Legal Momentum has developed this pamphlet to provide general information for individuals seeking to enforce their legal rights. You are advised to consult an attorney or appropriate agency about legal rights in your particular situation.