

The Impact of



Violence in the Lives



of Working Women

Creating

Solutions —



Creating

Change



NOW Legal Defense and Education Fund gratefully acknowledges

THE AMERICAN EXPRESS FOUNDATION & THE LIZ CLAIBORNE FOUNDATION

National leaders in corporate responsibility to end violence against
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Kathy Rodgers, President

Now Legal Defense and Education Fund



NOW Legal Defense and Education Fund is pleased once again to join in partnership with the business community to address the important issue of violence against women. Society now recognizes that such violence is epidemic, that we can no longer treat violence as a private matter, but must confront it as an issue of public concern. This second edition of *Creating Solutions – Creating Change: The Impact of Violence in the Lives of Working Women* is designed to help employers create a workplace environment supported by comprehensive, legally sound policies to assist women employees affected by violence and ensure that serious legal issues raised as a result of violence against women are addressed. This updated publication answers questions most often asked by employers, human resource professionals, legal counsel, and employees, and provides a framework for creating policies and procedures.

Today, companies that fail to develop policies to create a workplace safe for all employees can face substantial liability. Employers who take action will not only avoid legal costs, but also make an important difference in the lives of women and their families and improve productivity and safety in their workplaces. The model policy we feature, furnished by Liz Claiborne Inc., is an excellent example of how companies can take measures to confront violence against women in the workplace.

NOW Legal Defense and Education Fund has long been at the forefront of addressing violence against women. We chair a National Task Force on Violence Against Women, and we have worked closely with Congress to craft national public policies to end violence, including the federal Violence Against Women Act, which has dedicated \$5 billion dollars over 10 years to services for victims of violence. Our National Judicial Education Program to Promote Equality for Women and Men in the Courts addresses the way current stereotypes about violence against women affect the judicial process. And we of course also work closely with corporations dedicated to ending violence and its devastating effects on women.

We are grateful to the American Express Foundation and the Liz Claiborne Foundation, the two funders of this publication and strong leaders among American corporations in the fight to end violence against women. The funding for this updated second edition came from the American Express Foundation on behalf of American Express Financial Advisors Inc.; American Express Travel Related Services Co., Inc.; and the American Express Bank Ltd, and the Liz Claiborne Foundation, whose award-winning “WOMEN’S WORK” public education and outreach campaign has generated significant national awareness about the impact of domestic violence and improved the welfare of many women. Their dedication to this issue will greatly advance the effort to end the violence.

We also appreciate the time and recommendations contributed by experts from Colgate-Palmolive Company; Consolidated Edison Company of New York; The Family Violence Prevention Fund; Mintz, Levin; Mitsubishi Chemical America; the Pennsylvania Coalition Against Domestic Violence; and Safe Horizon, who reviewed the first edition of the publication to ensure that we addressed the most pertinent issues of concern to employers, as well as the Liz Claiborne Foundation and the Phillip Morris Companies, which underwrote the publication of the first edition. Of course, this publication could not be produced without the dedication and work of many NOW Legal Defense staff members and interns. In particular, we would like to acknowledge the contributions of former staff attorney Julie Goldscheid and staff attorneys Geoff Boehm and Mary Davis, and editing work done by the Communications Department.

Thank you for joining in the effort to end violence against women and its effects in the workplace. The corporate bottom line – and the lives of women – will benefit from your commitment. Please feel free to contact us to discuss how your company can take further steps to address violence.

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Responding to

Violence Against Women at Work

Violence is the leading cause of physical injury to women.¹



Violence against women has long been considered a “private” matter, a problem with which employers believed they should not interfere. Yet today, attitudes are changing. Employers are realizing that violence against women can have dramatic and far-reaching effects on business, effects they can no longer afford to ignore. The sad fact that women are threatened, raped, assaulted and murdered by co-workers, supervisors, strangers, and current or former intimate partners has serious consequences – regardless of where that violence occurred. Many employers are not only unsure how to deal with employees who are traumatized victims and witnesses to violent crimes, they are also concerned about their company’s liability.

As national awareness of the epidemic of violence has grown, more and more businesses are instituting policies and procedures designed to stop all forms of violence against women, including rapes, sexual assaults and stalking by supervisors, co-workers, intimates, or strangers.¹ And employers are taking steps to ameliorate the destructive effects of violence against their employees, whether it occurs onsite or away from the workplace.

NOW Legal Defense and Education Fund’s resource guide, *Creating Solutions – Creating Change: The Impact of Violence in the Lives of Working Women*, provides background information about violence against women in the workplace, explains key pertinent legal issues, and suggests ways employers can develop responses and solutions that fit their company’s needs. While this guide focuses on violence against women, many of the legal issues and suggested corporate actions described here apply to all forms of violence and its effects in the workplace.

The scope of the problem

Violence Against Women is Epidemic



Violence against women pervades all aspects of our society, including the workplace.² The U.S. Department of Justice estimates that intimate partners – husbands, ex-husbands, and current and former boyfriends – commit violent crimes against approximately 937,000 women every year.³ And over 25% of women have been victims of violence perpetrated by an intimate partner in their lifetime.⁴ “Domestic violence,” commonly thought of as occurring only in the home, affects the workplace when an abuser attacks, stalks or harasses his partner at work, or intentionally sabotages her ability to work productively. Domestic violence also occurs when intimate relationships between co-workers escalate to harassment, battering, sexual assault, or other violence at work.

WHEREVER VIOLENCE OCCURS, IT AFFECTS THE WORKPLACE:

COST

Violence against women takes a devastating toll on our nation’s economy. The Bureau of National Affairs estimates that domestic violence costs employers at least \$3 to 5 billion a year in lost days of work and reduced productivity.⁵ The National Institute of Justice found that victims’ out-of-pocket costs attributable to rape and sexual assault totaled \$7.5 billion in economic harm annually.⁶ And each year, when pain, suffering, and lost quality of life are quantified, the cost of rape and sexual assault is \$127 billion.⁷ The aggregate annual cost to victims of domestic violence is about \$8.8 billion, or \$67 billion when pain, suffering, and lost quality of life is included.⁸ In addition to this staggering financial burden, crimes of violence increase employers’ security costs while reducing productivity, job performance, and employee morale.

ABSENTEEISM

Domestic abuse results in thousands of lost work days each year. Studies of battered women have found that 50 to 85 percent of abused women missed work because of abuse; over 60 percent reported arriving late due to abuse.⁹

IMPAIRED JOB PERFORMANCE

The obstacles faced by women who have survived rape, sexual assault, or domestic violence and who want to continue working are complex and can interfere with job performance and career advancement. Survivors can suffer from physical and emotional damages that may distract them from their work.¹⁰ Studies show that domestic violence has a particular impact on job performance because batterers commonly harass their partners at work through means such as stalking and telephone harassment.¹¹ Batterers sabotage women’s ability to work in other ways by failing to provide promised child care or transportation, stealing car keys or money, hiding clothing, or inflicting visible injuries.¹² In addition, many co-workers and supervisors harbor stereotypes about rape and domestic violence survivors, which affect their performance evaluations. Prejudice and hostility lower the employee’s morale and diminish her job performance.

LOSS OF EXPERIENCED EMPLOYEES

Businesses lose dedicated employees due to violence against women. Studies show that 24 to 52 percent of surveyed battered women had lost their jobs – at least in part – because of domestic violence.¹³ Even Congress recognized that “[a]lmost 50% of rape victims lose their jobs or are forced to quit in the aftermath of the crime.”¹⁴

Legal Issues for Employers

LEGAL ISSUES FOR EMPLOYERS

Federal and state laws are rapidly changing to reflect our country's deepening commitment to ending all forms of violence against women.¹⁵ In 1994, Congress enacted the Violence Against Women Act ("VAWA"), which launched multi-strategic initiatives to eliminate violence against women. VAWA authorized funding to increase services, education, and research addressing domestic violence, rape, and sexual assault, and created new federal felonies to address interstate domestic violence.¹⁶ In recent years, other federal legislation has been introduced that specifically addresses the impact of domestic

violence on the workplace. Some proposals, for example, authorize leave for battered women; require states to permit women who have left or lost their jobs due to domestic violence to obtain unemployment benefits; prohibit employers from taking adverse job actions against women who have survived domestic violence, rape, or sexual assault; and create tax incentives for employers who implement domestic violence awareness training programs.¹⁷

Similarly, over the last decade, state initiatives combating violence against women, including anti-stalking and domestic violence laws, have expanded.¹⁸ Some of these laws specifically address the impact of domestic violence on the workplace.¹⁹ What follows is a brief overview of the broad range of federal and state anti-discrimination laws, tort laws (including negligence laws), and other federal and state statutes that can apply when violence against women enters the workplace. A subsequent section suggests measures that not only help prevent liability, but also address the effects of violence on employees.

VIOLENCE AGAINST WOMEN AT WORK MAY CONSTITUTE SEXUAL HARASSMENT

Under certain circumstances, acts of violence against women at work may constitute a form of sexual harassment in violation of federal or state anti-discrimination laws.²⁰ Sexual harassment includes not only assault and rape, but also verbal harassment. It can involve domestic violence, for example, when intimate relationships between co-workers become violent and physical, or when verbal abuse is brought into the workplace. For example, the Supreme Court's landmark 1986 decision outlawing sexual harassment, *Meritor Savings Bank v. Vinson*, found the bank liable for a supervisor's repeated unwelcome sexual advances and assaults on a female employee (with whom he had a prior social relationship).²¹

Whether an employer is liable for any given incident of domestic violence at work will depend on the facts of the case. Generally, a company will be liable if an employee's immediate (or successively higher) supervisor harasses her and takes action against her professionally, by discharging, demoting, or giving her undesirable assignments.²² If there was no tangible job action, the company may still be liable for sexual harassment unless it establishes a two-part affirmative defense: (a) that reasonable care to prevent and correct the harassment was exercised by the employer, and (b) that the victimized employee unreasonably failed to take advantage of any preventive or corrective opportunities.²³ A company is much more likely to establish this affirmative defense if it has a written, clear, and effectively enforced anti-harassment/domestic violence policy, as well as an effectively implemented complaint procedure.²⁴

Companies may also be liable for sexual assaults or harassment by co-workers or customers if a supervisor knew or should have known about assaults, potential assaults, or harassment and failed to take appropriate action.²⁵ Even a single instance of rape or sexual assault on the job could be enough to hold an employer liable for the resulting damages.²⁶

In all instances, employers increase the safety of their workplaces and reduce their liability by taking reasonable steps to prevent or stop problems once they know of them. Ignoring threatened violence or hoping that recurring problems of sexual assault or harassment will go away does not make the problem disappear, and will not insulate employers from liability should violent incidents occur.²⁷

*In the workplace,
homicide is the
leading cause of
death for women."*





Anti-Discrimination Laws

ANTI-DISCRIMINATION LAWS APPLY TO ACTS THAT ARISE OUT OF DOMESTIC VIOLENCE

Employers' obligations under anti-discrimination laws apply regardless of any relationship that might exist outside the workplace between the perpetrator and the victim. For example, if an employee works with an abusive current or former partner who sexually harasses or stalks her on the job, creating a hostile environment, a company that knowingly fails to take action to stop the abuse may be liable.²⁸

Even if a woman's abusive partner does not work at her company, her employer may be liable if the abuser creates a hostile environment at her workplace. If an abusive partner shows up at the workplace and harasses a woman or her co-workers in a way that creates a sexually hostile work environment, and the company knowingly fails to take reasonable corrective action, liability may result.

PREVENTION AND PROMPT REMEDIAL ACTION CAN PREVENT LIABILITY

Employers sometimes fear that they will expose themselves to liability by taking action to prevent or remedy domestic violence. However, it is much more likely that an employer would instead face liability due to inaction. Companies can best promote workplace safety and avoid liability by taking prompt and effective remedial action after learning about a situation involving sexual harassment.²⁹ Specifically, employers should adopt a policy against sexual harassment by employees, supervisors, and outsiders (such as clients, customers, and vendors), and distribute that policy widely and regularly. Employers should closely monitor adherence to the policy, especially among supervisory personnel. In addition, employers should implement clear procedures for employees to raise concerns about sexual harassment, whether verbal or physical, including a strong statement that no adverse action or retaliation will result from reporting the sexual assault or harassment.

Employers should promptly investigate complaints in a thorough and discreet manner. In responding to employees' complaints, employers must ensure that women are not additionally penalized after being raped, sexually assaulted, or battered.³⁰ For example, a woman who complains of violence at the hands of a co-worker should not be forced to change her job assignment, although her voluntary request to be transferred should be honored wherever possible.³¹ A company could face liability if violence resulted after a supervisor refused to transfer a batterer from the department where his victim worked to an available position elsewhere in the company.

Women may ask their employers for help in assuring their safety. For example, in order to avoid working with a harasser, a woman who was sexually assaulted or harassed by a co-worker might ask for a transfer or ask to have the batterer transferred. A battered woman may request a transfer so that an abusive partner she has left can no longer find her. She may ask the company's security staff to enforce an order of protection and make sure her batterer or stalker does not enter the workplace. Women may also ask for time off to go to the doctor or to go to court. Employers should attempt to accommodate employees' safety-related requests.

Traditional common law principles require companies to maintain a safe workplace. When rapes or sexual assaults are threatened or occur at work and companies fail to take preventive or remedial steps, employees may be able to recover damages under state workers' compensation laws or may be able to pursue claims against their employers in state and federal court.

State Law Remedies

WORKERS' COMPENSATION MAY COVER INJURIES RESULTING FROM RAPE, SEXUAL ASSAULT, AND DOMESTIC VIOLENCE

Workers' compensation provides no-fault, generally exclusive coverage for work-related injuries as defined by each state's laws. The amount of recovery is limited by state statute. Some women and their families have recovered workers' compensation awards for injuries resulting from sexual assaults, rapes, and murders that occurred at work, whether they were committed by a supervisor, a customer, or an intimate partner who tracked the victim on her job.³²

COMPANIES MAY BE LIABLE FOR WORKPLACE RAPES AND ASSAULTS

Where injuries are found to be exclusively covered by workers' compensation, employees are not permitted to bring negligence claims against their employers in court and are limited to the damages available under the state workers' compensation statute. Yet exceptions in workers' compensation laws in many states allow women to pursue tort claims against employers for damages resulting from violent incidents.³³ In addition, a number of courts have refused to restrict a woman's recovery to the more limited amounts generally available under workers' compensation laws, holding instead that workers' compensation statutes only apply when the employee's status as an employee precipitated the attack or rape. Thus, if an assault or rape is found to be committed for "personal" reasons (i.e. the victim knew her attacker), workers' compensation may not apply.³⁴ Where workers' compensation does not limit recovery, women may pursue state tort claims for their employers' role in the violence. For example, employers may be liable for rapes and sexual assaults if the perpetrator used the authority his employer vested in him to commit the attack.³⁵ A company also could be liable for its failure to take prompt and remedial action once it knew or should have known of the risk of the attack.³⁶

COMPANIES MAY BE LIABLE FOR NEGLIGENT HIRING OR RETENTION

An employer may be liable for negligently hiring an employee who later injures someone in the course of the job. Some courts have held companies liable when they knew or should have known that the employee might commit a violent act or when they could foresee that the employee would create a risk of danger.³⁷ For example, one court found that an employee's record (sexual harassment of female co-workers, threats to male co-workers, and sexual advances and threats to the female employee he ultimately killed) made it foreseeable that he could act violently, thereby creating a duty of care by the company to take steps to prevent further harm.³⁸

In responding to complaints that their employees committed violent acts, however, company officials must take care not to violate other legal obligations nor jeopardize the rights of the accused. For example, in many jurisdictions, companies may not discriminate against employees who have criminal records unless the employer's action was based on job-related factors.³⁹ In this area, knowledge of relevant local laws is essential.

PUNISHING VICTIMS MAY VIOLATE PUBLIC POLICY

Although most employees are "employees at will," and generally can be terminated for any reason, the "employment at will" doctrine has an exception that is recognized in nearly every state. Under the exception, employers cannot fire employees for reasons that violate established public policy; for example, if the employee exposed company fraud or wrongdoing.⁴⁰

The exception varies widely from state to state, and has not been construed specifically to cover employers' responses to domestic violence.⁴¹ However, this area of the law is likely to develop as national public policy addressing all forms of violence against women becomes even more firmly embedded in the law, and legislators increasingly recognize that it violates public policy to penalize women who have experienced domestic violence.





Additional Laws

OCCUPATIONAL SAFETY AND HEALTH LAWS

Federal and state occupational safety and health laws require employers to make sure their employees work in safe environments. The federal Occupational Safety and Health Act of 1970 (“OSHA”) contains a “general duty clause” that requires every employer to provide a workplace free from recognized safety hazards.⁴² State laws impose similar requirements. OSHA’s general duty clause may be interpreted to require employers to take reasonable steps to protect workers from violent attacks in the workplace.

UNEMPLOYMENT COMPENSATION

Women who have left their jobs as a result of domestic violence, workplace rapes, or other forms of sexual harassment may be eligible for unemployment benefits in some states if they can prove that they quit for “compelling” reasons that constituted “good cause.” Each state has its own definition of what constitutes “good cause.” In an increasing number of states, women who have left their jobs because of domestic violence are able to receive unemployment compensation under a “good cause” provision that explicitly covers domestic violence.⁴³

THE AMERICANS WITH DISABILITIES ACT

An employee who has a disability due to domestic violence and is able to perform the essential functions of a job may not be terminated, demoted, harassed, or otherwise disadvantaged because of her disability and may be entitled to “reasonable accommodations” under the Americans with Disabilities Act (“ADA”).⁴⁴ Under the ADA, employers with 15 or more employees cannot discriminate against a qualified individual with a disability. An individual with a physical or mental impairment that substantially limits a major life activity is protected by the ADA. Employees who are dealing with domestic violence may experience many forms of abuse that cause mental and/or physical disabilities which would qualify them for protection under the ADA. Reasonable accommodations in such cases might include time away from the office for appointments with doctors, caseworkers, or attorneys; a modified work schedule; additional training or supervision; or a transfer or medical leave.

THE FAMILY AND MEDICAL LEAVE ACT

An employee who needs time off from work for herself or a family member for a “serious health condition” resulting from domestic violence may be entitled to job-protected leave under the federal Family and Medical Leave Act (“FMLA”).⁴⁵ The FMLA defines “serious health condition” as an illness, injury, impairment, physical condition, or mental condition that causes a period of incapacity which requires an overnight stay in a hospital or similar medical-care facility and/or continuing treatment by a health care provider. In order to be eligible for FMLA leave, the employee must have worked for a “covered employer” – one who employs 50 or more employees within a 75 mile radius – for at least one year and at least 1,250 hours during the 12 months preceding the date of leave. If an employee qualifies for family/medical leave under this law, an employer must not fire the employee for taking up to 12 weeks of leave, must give the same or equivalent job to the employee upon return from FMLA leave, and must continue to provide the same level of health plan coverage during the leave.

Several states have passed family and medical leave laws with guaranteed-leave provisions and job protections similar to FMLA for employees who are victims of domestic violence, stalking, or sexual assault.⁴⁶ Any state or local law, employment benefit program, or collective bargaining agreement that provides greater family or medical leave rights than the rights established under FMLA preempts FMLA.

VICTIM PROTECTION LAWS

Several states have enacted laws encouraging or requiring employers to provide time off for employees to tend to their legal and medical needs and pursue claims against rapists, batterers, stalkers, and other defendants. For example, California has passed a law requiring employers to permit employees to take time off from work without retaliation or discrimination to seek judicial relief related to domestic violence, and requiring larger employers to permit time off for employees to obtain support services or counseling, seek medical attention, participate in safety planning, or relocate.⁴⁷ A Maine law also covers employees seeking relief related to sexual assault and stalking; and Rhode Island prohibits employers from discriminating against employees because they seek to obtain, or have obtained, a protective order.⁴⁸ Also, many states have enacted laws that make it illegal for an employer to fire or otherwise discriminate against a victim of crime who takes time off from work to testify pursuant to subpoena in a criminal proceeding.⁴⁹ In addition, several states promote “employer intercession services” for victims of domestic violence and sexual assault, through which employers encourage employees to cooperate with the criminal justice system and agree to minimize employees’ loss of employment benefits.⁵⁰

Action Steps to Address the Impact of Violence



*Women are twice
as likely as men
to be victims of
assaults at work.ⁱⁱⁱ*



Companies can take many steps to make their workplaces safer for employees and at the same time maintain their financial stability and promote growth. In the past, these two objectives were sometimes considered incompatible, but employers today increasingly recognize that these goals support and complement one another.

Your first step is to develop a comprehensive violence protection plan that protects employees from violence in the workplace and assists them in dealing with its effects. A thoughtful and well-publicized policy will encourage employees to disclose threats and potential incidents of violence to their employers and will encourage employees suffering from trauma to seek medical and professional counseling services.

Employers should encourage, but not mandate, disclosure so that they can take appropriate preventive steps. In addition to the preventative plan of action printed on pages 16-17, an excellent example for reference is the Liz Claiborne Inc. Company Policies on Domestic Violence printed on pages 24-25.



Preventative Plan of Action

ESTABLISH CLEAR, FAIR, AND SENSITIVE HUMAN RESOURCE POLICIES

Your human resource policies should be based on several premises:

- all employees deserve fair and equitable treatment regardless of whether they are currently, or have been in the past, exposed to violence
- flexible policies that assist all employees by tending to medical, legal and psychological needs in the wake of violence serve sound business practices
- failing to take violence against women seriously and failing to treat women with respect and confidentiality compounds the harm to survivors of rape, sexual assault and domestic violence who already have suffered grave injury

EDUCATE YOUR EMPLOYEES ABOUT THE PROBLEM

Hold training seminars on domestic violence, rape, and sexual assault so that employees understand the seriousness of this crime. Consult with local rape crisis and domestic violence organizations about local laws and resources. Broadly and frequently disseminate information, including reading materials and lists of resources and local organizations that can help women who are suffering from violence and men who are batterers.

MAKE ANTI-VIOLENCE AND SEXUAL HARASSMENT POLICIES CLEAR AND CONSPICUOUS

Use your company newsletter, e-mail, and personnel and union bulletin boards to make sure employees understand that your company's policies reflect a serious commitment to stopping violence. Post the telephone numbers of local and national domestic violence and sexual assault hotlines and support services in visible places throughout your company, including cafeterias, restrooms, and lounges. Adopt a policy regarding violence in the workplace that mandates disciplinary measures for abusive employees who threaten or commit acts of violence at work, including those who use office resources, phones, faxes, or e-mail to harass or stalk others.

PROVIDE MANDATORY TRAINING FOR SECURITY PERSONNEL AND SUPERVISORS

Be certain that your security personnel and all supervisors learn about workplace violence and how to handle potential crimes. If your company has an employee assistance program, make sure its staff is thoroughly trained in addressing rape, sexual assaults, and domestic violence. For example, they should:

- understand protective orders and how to enforce them under local law;
- be able to deal with employees' intimate partners or stalkers, who may be able to talk their way past sophisticated security systems;
- recognize possible warning signs of domestic violence, rape, and sexual assault, and know how to respond sensitively and confidentially when victimized employees are identified.

FOLLOW COMMON-SENSE SECURITY PROCEDURES

Train security personnel in enforcing protective orders. To the greatest extent possible, ensure that hallways, elevators, parking lots, and offices are well-lit. Install security mirrors or emergency contact alarms. Develop procedures so that employees can accompany one another to their cars or to public transportation, particularly after dark.

DESIGNATE "ANTI-VIOLENCE" CONTACT PEOPLE FOR EMPLOYEES WHO FEEL THREATENED

Identify several people in your company with particular training in the problem of violence against women. Encourage employees to contact these people if they have concerns. Be sure that all supervisors, contact persons, and employee assistance program personnel know about local domestic violence and rape crisis hotlines and counseling centers – working with such organizations can add immeasurably to your program's effectiveness.

*The United States
Department of
Justice estimates
that eleven percent
of rapes occur
in the workplace.^{iv}*



Specific Policy Recommendations

SUPPORT LOCAL INITIATIVES

Create partnerships with local domestic violence and rape crisis programs to support their important work. Develop public education campaigns to help inform local communities about the problems of violence against women and what every person can do to help stop it. Join together with other companies, service providers, and government agencies to build collaborative partnerships aimed at creating productive workplaces that are safe and supportive for all employees.

COMPANIES SHOULD CHECK LOCAL LAWS FOR SPECIFIC GUIDELINES AND PROCEDURES, BUT NOTE THE FOLLOWING SUGGESTIONS:

CONFIDENTIALITY

Anti-violence policies work best when there is a general policy of confidentiality. Letting a victim of violence know that her confidentiality will be maintained to the full extent of the law underscores your staff's respect for her view of the situation and how it should be handled. When discussing your company's general policies and practices concerning violence against women, maintain employees' confidentiality by keeping names anonymous.

ANTI-DISCRIMINATION

An effective policy should state that the company will not discriminate or retaliate against employees because they are or are perceived to be victims of domestic violence, sexual assault, or stalking.

ABSENCES

Victims of violence need time off for various valid purposes. Review your company's medical leave and disability leave policies to ensure that nothing restricts supervisors from flexibly accommodating your employees' needs. Personal and discretionary leave policies should allow employees to waive advance notice requirements in emergency situations.

RELOCATION

An employee may request a change in work shift or location to prevent further incidents of violence. Supervisors should ask each victim of violence what solutions best suit her circumstances. Encourage your supervisors to accommodate a woman's requests for relocation whenever possible.

SECURITY

Home phone numbers and addresses of employees should not be given out without specific authorization. Whenever possible, pictures of identified batterers or stalkers should be kept at the front entrance to help prevent access. Security or other personnel can protect women who have been subjected to incidents or threats of violence by escorting them to the parking lot, bus stop, or subway station. Some companies provide designated parking spaces close to the building for employees threatened by violence. Some offer silent alarms at desks or provide cellular telephones to women who are at risk.

RECRUITING AND HIRING

Questions about an applicant's past or current exposure to violence should not be part of the recruiting and hiring process. Only job-related questions, such as the applicant's education, employment history, skills, and willingness and ability to do work, should be considered.

INVESTIGATION OF COMPLAINTS OF SEXUAL AND PHYSICAL VIOLENCE BY EMPLOYEES

When the alleged assailant is a fellow employee, whether a co-worker or supervisor, a thorough investigation is critical. The investigator should be neutral and even-handed, should keep records, and should speak to all employees who may have information about the incident. He or she should also be aware of the need to respect the rights of the accused. The investigator should maintain confidentiality to the greatest extent possible and should ensure that no one retaliates against the victim or any witnesses.



Responding to Violence

An employee who is assaulted usually does not report the incident either to her employer or to the police. Women have many reasons for not reporting violent incidents; prominent among them is the widespread belief that employers “don’t want to know about it.” However, a clear commitment from management that the company will support the victim and take steps to respond, while maintaining as much confidentiality as possible, will make victims more likely to report violence. This creates an opportunity for the employer to discuss with the victim which remedial measures will constitute the best course of action. Remember that the victim is the best judge of how to safeguard herself and her family. Her decisions about what steps are right for her should be respected.

HELP EMPLOYEES DEVELOP A SAFETY PLAN

Trained employees, counselors or employee assistance program staff can assist victims develop a safety plan. Every woman’s circumstances will be unique, but an objective, trained listener can help her develop a program to minimize the risk of continued violence.

PROVIDE HELP IN OBTAINING PROTECTION ORDERS

Obtaining a civil protection order does not usually require a lawyer; however, it is helpful for legal department staff or others familiar with the legal system to walk employees through the process. Make sure human resources personnel, employee assistance program staff, and supervisors know about and can refer an employee to victim advocates in her community.

Since victims are in the best position to judge their own safety, particularly in domestic violence or stalking cases in which they know the batterer’s or stalker’s pattern of abuse, it is essential that employees be the sole judge of whether or not to obtain a protective order. Employers should not pressure or require women who are battered to obtain a protective order or to disclose whether they have obtained such an order.

Some states have enacted laws that permit a corporation to obtain a restraining order on behalf of an employee who has suffered unlawful violence or a credible threat of violence.⁵¹ Such corporate restraining orders are preferred by some women, because they can help keep batterers and stalkers out of the workplace without requiring the woman to confront the harasser or stalker in court.⁵² However, some women may not want their employers to obtain such orders. Since every instance of domestic violence or sexual abuse is unique, it is essential to listen carefully to each woman’s wishes and to respect her confidentiality at all times.

DOCUMENT THE ABUSE

An employer can assist a woman who has survived violence by encouraging her to document what happened. It may be helpful for her employer to document a victim’s bruises or record the fact that she reported a violent incident to someone at the company. Local advocates and experts can help determine what documentation an employer should keep and ensure that a victim’s privacy is not compromised.

PROVIDE AN UP-TO-DATE RESOURCE LIST

A list of emergency shelters, counseling services, hotlines, and support groups can be of enormous help. Get to know local resources for battered women; speakers from these organizations can provide valuable training against violence against women. The list of national organizations and hotlines on page 26 is a good place to start.

DEVELOP A CONSISTENT AND FAIR RESPONSE

Companies will best serve the needs of their employees by taking prompt and reasonable measures to stop violence every time a problem or potential problem arises.

Violence against women affects thousands of working women every day. It not only impacts the victims’ ability to provide and care for themselves and their families, but it also affects the financial strength and success of the companies for which they work. As the problem has become more visible in recent years, the legal response has changed.

It is now accepted in the business community that employers have both a legal obligation and a social responsibility to prevent violence against their employees, and to respond to such violence and its effects if it does occur. By addressing the impact of violence against women in the workplace, your company will reap the double benefit of limiting liability and maximizing employees’ productivity. Addressing violence will also benefit the community at large, helping all women who are victims of domestic and sexual violence deal with trauma.

*Half of all female
victims of
violent workplace
crimes know
their attackers.^v*

Ten Principles for the Workplace

A national coalition of employer, labor, and government organizations set out to define a set of standards that would guide workplace responses to domestic violence. The result of that process was a consensus document, Ten Principles for the Workplace, which describes the attributes of a comprehensive and compassionate workplace response to domestic violence.⁵³

CREATING SAFE WORKPLACES:

- 1 We will strive to create a workplace environment that is safe from all forms of violence including domestic violence and which supports victims of domestic violence to understand and access services, information, and protections available to them.
- 2 We will to the fullest extent possible take active measures to increase the safety of all employees who request assistance because they are victims of domestic violence. We acknowledge the importance of keeping all requests for assistance in confidence, making information available only on a “need to know” basis.
- 3 In all workplace responses to domestic violence, we will respect the authority and autonomy of the adult victim to direct her or his own life.

CREATING FAIR WORKPLACES:

- 4 We acknowledge that employees who are victims of domestic violence should have the same rights, opportunities, and benefits as all other employees.
- 5 We believe that employees should not be disciplined or terminated simply because they have been victims of domestic violence or because the employer fears the impact of domestic violence on the workplace. Nor should any person be denied opportunities for employment, benefits, or promotion because they are or have been victims of domestic violence.

- 6 We are committed to nondiscrimination against domestic violence victims in all aspects of our business and operations, including the delivery of services to customers.
- 7 We believe that employees who commit acts of domestic violence at or from the workplace must be treated or disciplined in the same manner as employees who commit other acts or violence or harassment at or from the workplace. Where appropriate we will attempt to provide employees with referrals to certified batterers’ treatment programs.

CREATING INFORMED AND PRODUCTIVE WORKPLACES:

- 8 We will strive to provide education on domestic violence to employees and/or union members. We believe that this education should include information about resources available in the workplace and/or community for victims of domestic violence and batterers.
- 9 We will strive to make all personnel, benefits, security policies, and employee assistance programs responsive to the needs of employees who are victims of domestic violence.

CREATING SOCIALLY RESPONSIBLE WORKPLACES:

- 10 As members of local, state, and national communities, we believe in our responsibility to support community efforts to end domestic violence.

Over half of battered women surveyed in one study report that their abusers harassed them at work.^{vi}



You Can Help Put an End to Violence Against Women

LIZ CLAIBORNE INC. COMPANY POLICIES ON DOMESTIC VIOLENCE

Liz Claiborne is committed to helping end domestic violence through the Women's Work program, a public awareness, education and prevention campaign. By building awareness of the issue and talking about it in an open forum, we hope to proactively discourage people from participating in abusive behavior and accepting it in others. Our goal is to create a society intolerant of abuse. Since 1991, we have donated funds through Women's Work to national and local family violence organizations. Each year the campaign incorporates new initiatives designed to reach different constituencies.

More information about the Women's Work program can be found on the Liz Claiborne Web site – www.lizclaiborne.com – or by calling the Public Relations Department.

SOME DISTRESSING FACTS:

- Violence against women and children is an epidemic in American society.
- Every 12 seconds a woman is beaten by her partner.
- Domestic violence is the leading cause of emergency room visits by women.
- More than half of American men and women personally know someone who has been involved in relationship violence – either as a victim or an abuser.

The violence lives on, in families, in communities and in the workplace.

- 81% of men who batter had fathers who abused their mothers.
- Children raised in violent homes are 74% more likely to commit assault.
- Husbands and boyfriends commit 13,000 acts of violence against women in the work place every year.

WHAT ABOUT OUR ASSOCIATES?

Many of us may consider ourselves immune to the tragedy of relationship abuse, but the truth is that domestic violence does not discriminate. It rips across every strata of society. It respects no financial borders, recognizes no ethnic boundaries and excludes few age groups. Domestic violence touches the lives of people we care about. At Liz Claiborne, we believe our responsibility to our associates goes beyond the traditional role of an employer. Through Women's Work, the Company tries to give something of value back to you. Our goal is to create an environment of support within the Company and encourage those who may need help to seek it and to enable those who want to get involved in preventing abuse to do so. Together we can help stop domestic violence.

We demonstrate our commitment by displaying posters featuring anti-violence messages and promoting the National Domestic Violence Hotline and our Employee Assistance Program hotline around the Company, including in rest rooms, and by desk-dropping informational memos or enclosing domestic violence resource information in paychecks. These activities are intended to show anyone who may need help that they can find it at Liz Claiborne.

WHERE IS HELP AVAILABLE?

We have a very strong Employee Assistance Program. They have trained counselors who are equipped to handle Domestic Violence cases, providing counseling and referrals. This is one avenue you should take if you are dealing with family violence, or if you want to learn more about how to help a friend or relative.

Employee Assistance Program can be reached at: 1-800-424-4314

UNITE's Member Assistance Program can be reached at: 1-800-732-MAPP (6277)

Human Resources and Liz Claiborne Security personnel are available to you as alternatives to the EAP Hotline. Associates in these departments have been trained to respond to your needs in this area and will know how to assist you. Of course, any communication with these departments or help given will be kept confidential to the extent possible.

As a Company, we help associates victimized by domestic violence by assigning special parking spots; escorting people to and from their cars or other points of transportation; and allowing time off so that associates can seek safety and protection, attend court appearances, arrange for new housing or take care of such matters. We can also arrange for flexible hours, short-term leaves of absence, and extended leaves with the guarantee in most cases of a position upon return. The Company will also assist associates who are perpetrators of abuse in finding appropriate Battersers' Intervention Programs, defined as programs designed to eliminate violence in intimate relationships, stop other forms of abusive behavior and increase victim safety.

All individuals who apply for or obtain a protective restraining order which lists Company locations as being protected areas must provide Corporate Security a copy of the petition and declarations used to seek the order, and a copy of any temporary or permanent protective or restraining order which is granted. Corporate Security understands the sensitive nature of the information requested and has developed confidentiality procedures, which recognize and respect the privacy of the reporting associates.

National Organizations and Hotlines

AMERICAN BAR ASSOCIATION

Commission on Domestic Violence
740 15th St., NW, 9th Flr.
Washington, DC 20005
(202) 662-1737
www.abanet.org/domviol

BATTERED WOMEN’S JUSTICE PROJECT

Criminal Resource Center
4032 Chicago Ave. South
Minneapolis, MN 55407
(800) 903-0111
www.vaw.umn.edu/bwjp

CENTER FOR THE PREVENTION OF SEXUAL AND DOMESTIC VIOLENCE

2400 45th St., #10
Seattle, WA 98103
(206) 634-1903
www.cpsdv.org

COALITION OF LABOR UNION WOMEN

1925 K St., NW, Suite 402
Washington, DC 20006
(202) 223-8360
www.cluw.org

FAMILY VIOLENCE PREVENTION FUND

383 Rhode Island St., Suite 304
San Francisco, CA 94103
(415) 252-8900
www.endabuse.org

GAY AND LESBIAN ANTI-VIOLENCE PROJECT

240 West 35th St.
New York, NY 10001
(212) 714-1184; (212) 714-1141 (24 hours)
www.avp.org

LAMBDA LEGAL

120 Wall St., Suite 1500
New York, NY 10005
(212) 809-8585
www.lambdalegal.org

MEN STOPPING VIOLENCE

1020 DeKalb Ave., Suite 25
Atlanta, GA 30307
(404) 688-1376
www.menstoppingviolence.org

NATIONAL CENTER FOR VICTIMS OF CRIME

2000 M Street, Suite 480
Washington, DC 20036
(800) FYI-CALL; (202) 467-8700
www.ncvc.org

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

1201 East Colfax Ave., Suite 385
Denver, CO 80218
(303) 839-1852
www.ncadv.org

NATIONAL DOMESTIC VIOLENCE HOTLINE

(800) 799-SAFE (7233)
www.ndvh.org

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

660 Pennsylvania Ave., SE, Suite 303
Washington, DC 20003
(202) 543-5566
www.nnedv.org

NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE

6400 Flank Dr., Suite 1300
Harrisburg, PA 17112-2778
(800) 537-2238

NATIONAL SEXUAL VIOLENCE RESOURCE CENTER

123 N. Enola Dr.
Enola, PA 17025
(877) 739-3895
www.nsvrc.org

NOW LEGAL DEFENSE AND EDUCATION FUND

395 Hudson St., 5th Fl.
New York, NY 10014
(212) 925-6635
www.nowldef.org

RAINN—RAPE, ABUSE & INCEST NATIONAL NETWORK

635-B Pennsylvania Ave., SE
Washington, DC 20003
(800) 656-HOPE (24 hours)
www.rainn.org

SAFE AT WORK COALITION

www.safeatworkcoalition.org

STOP FAMILY VIOLENCE

www.stopfamilyviolence.org

U.S. DEPARTMENT OF JUSTICE VIOLENCE AGAINST WOMEN OFFICE

810 7th St., NW
Washington, DC 20531
(202) 307-6026
www.ojp.usdoj.gov/vawo

WOMEN’S LAW INITIATIVE

P.O. Box 310-340
Brooklyn, NY 11231
(917) 748-1245
www.womenslaw.org

End Notes

END NOTES FOR SIDEBARS

- i Evan Stark & Anne Flitcraft, Women at Risk: Domestic Violence and Women’s Health xvii, 10, 202 (1996).
- ii Nat’l Institute for Occupational Safety and Health, U.S. Dep’t of Health and Human Services, Current Intelligence Bulletin 57, Violence in the Workplace: Risk Factors and Prevention Strategies 3 (June 1996).
- iii Bureau of Labor Statistics, U.S. Dep’t of Labor, Survey of Occupational Injuries and Illnesses, 1999 supp. tbl. 5, at http://www.bls.gov/iif/oshwc/osh/case/ostb0905.pdf (March 2001).
- iv Greg Warchol, U.S. Dep’t of Justice, Workplace Violence, 1992-96 2 (July 1998).
- v Greg Warchol, supra note c, at 4.
- vi U.S. Gen. Acct. Office, Domestic Violence Prevalence and Implications For Employment Among Welfare Recipients 19 (Nov. 1998).

END NOTES

- 1 See, e.g., American Bar Association Commission on Domestic Violence, A Guide for Employers: Domestic Violence in the Workplace 3 (1999) [hereinafter ABA Commission Guide]; Senator Joseph R. Biden, Jr., Safer Streets, Safer Homes: The Successes of the Violence Against Women Act and the Challenge for the Future 16 (Sept. 1999); Roper Starch, for Liz Claiborne, Inc. Addressing Domestic Violence: A Corporate Response, (Aug. 1994) (reporting on survey that documented increasing perception by corporate leaders that domestic violence is a grave social problem that impacts companies and their employees).
- 2 See, e.g., H.R. Rep. No. 106-891, at 24-25 (2000) (Committee Report on H.R. 3244, reauthorizing Violence Against Women Act of 1994); ABA Commission Guide, supra note 1, at 7; Biden, supra note 1, at 69-70.
- 3 See Callie Marie Rennison & Sarah Welchans, U.S. Dep’t of Justice, Intimate Partner Violence 2, 8 (May 2000) (finding that between 1993 and 1998 an average of 937,490 women annually were victims of intimate partner violence; and reporting 1320 murders of women by intimate partners in 1998); see also Patricia Tjaden & Nancy Thoennes, U.S. Dep’t of Justice, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women 26, 30-31 (Nov. 2000) (finding 1,812,546 women per year are victims of rape, physical assault, and stalking by an intimate partner, and describing disparities from studies based on other methodologies).
- 4 See Tjaden & Thoennes, supra note 3, at 26.
- 5 See Bureau of Nat’l Affairs, Violence and Stress: The Work/ Family Connection, at 2 (Aug. 1990); ABA Commission Guide, supra note 1, at 3 (“[D]omestic violence has direct impact on the ‘bottom line’ – costing U. S. companies an estimated four to five billion dollars per year in absenteeism, employee turnover, reduced productivity, higher health insurance premiums, and the like.”).
- 6 Ted R. Miller, et al., U.S. Dep’t of Justice, Victim Costs and Consequences: A New Look 1, 17 (Jan. 1996). These crimes are committed against women at a rate 13 to 20 times greater than against men. See Callie Marie Rennison, U.S. Dep’t of Justice, Criminal Victimization 2000 6 (June 2001) (annual rate of rape/sexual assault against women approximately 20 times rate against men); Diane Craven, U.S. Dep’t of Justice, Sex Differences in Violent Victimization 2 (Sept. 1997) (annual rate of rape/sexual assault against women 13 times rate against men); Lawrence A. Greenfeld, U.S. Dep’t of Justice, Sex Offenses and Offenders 2 (Feb. 1997) (annual rate of rape/sexual assault 19 times greater against women).
- 7 See Miller, supra note 5, at 17.

- 8 See Miller, supra note 5, at 18-19; see also Lawrence A. Greenfeld et al., U.S. Department of Justice, Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends 21-22 (Mar. 1998) (during 1992-1996, average yearly medical expenses incurred by female victims of intimate violence was over \$61 million).
- 9 Louise Laurence & Roberta Spalter-Roth, Institute for Women’s Policy Research, Measuring the Costs of Domestic Violence Against Women and the Cost-Effectiveness of Interventions: An Initial Assessment and Proposals for Further Research 25 (May 1996) (reporting several studies which calculate economic costs due to domestic violence, including days of work lost, lateness, disruption at the work place, and job loss of victims).
- 10 See, e.g., Karen Scott Collins et al., Health Concerns Across A Woman’s Lifespan: The Commonwealth Fund 1998 Survey of Women’s Health 8-9 (May 1999) (Women with a history of violence or abuse more often reported being in fair or poor health, were more likely to report high levels of depressive symptoms, and were more likely to have been diagnosed with depression or anxiety); U.S. General Accounting Office, Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients 8-9 (November 1998) (reporting that women who have been abused are more likely to have chronic health problems, low self-esteem, and depression, and display behaviors associated with post-traumatic stress disorder).
- 11 See, e.g., Thomas Moore, Ph.D. & Vicky Selkove, The Institute for Wisconsin’s Future, Domestic Violence Victims in Transition from Welfare to Work: Barriers to Self-Sufficiency and the W-2 Response 6 (Sept. 1999) (41.5% of low-income female victims of domestic violence surveyed reported that their abusers called them at work repeatedly); U.S. General Accounting Office, supra note 10, at 7-8 (35 to 56% of battered women reported that their abusers had harassed them at work by phone or in person).
- 12 See, e.g., Moore & Selkove, supra note 11, at 6 (low-income female victims of domestic violence reported various behaviors of their abusers which negatively impact their ability to maintain and succeed at work and education: 84.5% report that their abuser keeps them from sleeping, 57.8% were threatened to the point they were afraid to go to work or school, 47.1% report their abuser refused child care at the last minute, 34% report their abuser refused transportation to work at the last minute, and 33.9% were beaten so that they could not work); U.S. General Accounting Office, supra note 10, at 7 (summarizing research finding that abusers often prevent women from working or advancing to higher employment by refusing to provide promised child care, destroying or hiding items a woman needs for her job, and inflicting visible signs of abuse so that a woman will be too embarrassed to go to work);

END NOTES CONTINUED

Jody Raphael & Richard M. Tolman, Trapped by Poverty/ Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare 22 (1997) (reviewing several studies which “report interference from intimate partners with education, training and work, as well as arguments about child support, visitation and child custody which can prevent abused women from using child care necessary for employment or deter them from getting other needed support. The studies also confirm that abused women do seek employment but are not able to maintain it.”) (citations omitted).

13 See Moore & Selkove, *supra* note 11, at 5 (29.8% of low-income domestic violence victims reported being fired or losing a job due to domestic abuse); U.S. General Accounting Office, *supra* note 10, at 19 (summarizing three studies which found that 24%, 30%, and 52%, respectively, of victims of domestic violence reported that they lost their job as a result of the abuse).

14 S. Rep. No. 103-138, at 54, n.69 (1993), citing E. Ellis, B. Atkeson & K. Calhoun, An Assessment of the Long Term Reaction to Rape, 90 J. Abnormal Psychology, 264 (1981).

15 NOW Legal Defense and Education Fund maintains a clearinghouse of information on federal and state legislation and laws regarding domestic violence, stalking, and sexual assault and the workplace. Such information is available upon request or from the NOW Legal Defense website, <http://www.nowldef.org>.

16 Pub. L. No. 103-322, tit. 4, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 16, 18, 42 U.S.C.), and passed as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-222, 108 Stat. 1796 (1994).

17 E.g., Victims’ Economic Security and Safety Act, S. 1249 & H.R. 2670, 107th Cong. (2001); Violence Against Women Act of 1999, H.R. 357, 106th Cong. §§ 721-48 (1999); Battered Women’s Economic Safety and Security Act, S. 1069, 106th Cong. §§ 2021-48 (1999).

18 See, e.g., Robin R. Runge, Marcellene E. Hearn & Spenta R. Cama, Domestic Violence as a Barrier to Employment, 34 Clearinghouse Review 552, 553-59 (2001); Developments in the Law – Legal Responses to Domestic Violence, 106 Harv. L. Rev. 1505 (1993); National Inst. of Justice, Domestic Violence, Stalking, and Antistalking Legislation: Annual Report to Congress (Mar. 1996).

19 See, e.g., Cal. Lab. Code §§ 230, 230.1 (Deering 2000) (permitting an employee who is a victim of domestic violence to take time off to appear in court to obtain or attempt to obtain relief to help ensure the health, safety or welfare of the employee or the employee’s child); N.Y. Lab. Law § 593(1)(a) (2000) (for unemployment compensation eligibility, deeming an employee’s separation from work to be for “good cause” if it was a result of domestic violence); Tx. Hum. Res. Code Ann. § 31.0321 (1999) (prohibiting discrimination against victims of family violence in welfare to work programs).

20 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. (2000) (as amended) (“Title VII”), prohibits sexual harassment as well as other forms of discrimination in the workplace. See Harris v. Forklift Sys., Inc., 510 U.S. 17, 20 (1993); Meritor Sav. Bank v. Vinson, 477 U.S. 57, 73 (1986). Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 (2000), prohibits sexual harassment in schools, including sexual harassment of school employees. See Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992). Most states have anti-discrimination laws that similarly prohibit sexual harassment and sex discrimination. Public employers may also be liable under laws prohibiting illegal acts by public officials. See also 42 U.S.C. § 1983 (2000).

21 Meritor, 477 U.S. at 73. See also 29 C.F.R. § 1604.11 (2000) (EEOC sexual harassment guidelines).

22 See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (“An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee.”); Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998).

23 See Burlington Industries, 524 U.S. at 765; Faragher, 524 U.S. at 807.

24 *Id.*

25 See, e.g., Burns v. McGregor Elec. Indus., Inc., 989 F.2d 959, 961, 966 (8th Cir. 1993) (employer liable because it knew of co-worker harassment and used it to further his own harassment rather than stopping it); Hall v. Gus Constr. Co., 842 F.2d 1010, 1016 (8th Cir. 1988) (unwanted touching and offensive comments by co-workers); Menchaca v. Rose Records, Inc., 67 Fair Empl. Prac. Cas. (BNA) 1334, 1337-38 (N.D. Ill. 1995) (employee harassed by employer’s customer); see also 29 C.F.R. § 1604.11(d)-(e) (2000) (EEOC guidelines addressing employers’ liability for sexual harassment by co-workers and customers, respectively).

26 See, e.g., Al-Dabbagh v. Greenpeace, Inc., 873 F. Supp. 1105, 1111-12 (N.D. Ill. 1994); Radtke v. Everett, 501 N.W.2d 155, 168 (Mich. 1993) (single incidents of rape and sexual assault may be sufficiently traumatic to violate Michigan Civil Rights Act); cf. Brock v. United States, 64 F.3d 1421, 1423 (9th Cir. 1995); Simon v. Morehouse Sch. of Medicine, 908 F. Supp. 959, 969-70 (N.D. Ga. 1995).

27 See, e.g., Burlington Industries, 524 U.S. at 765; Faragher, 524 U.S. at 807; Jonasson v. Lutheran Child and Family Services, 115 F.3d 436, 438 (7th Cir. 1997) (“The jury was entitled to conclude that the incidents for which damages could be awarded were the product of a long term ostrich-like failure on the part of [the employer] to deal forthrightly with ... [the] treatment of female employees.”).

28 See, e.g., Fuller v. City of Oakland, 47 F.3d 1523, 1528-29 (9th Cir. 1995) (holding city liable for failing to take steps to stop a police officer from harassing another officer after she ended their relationship).

29 See Burlington Industries, Inc, 524 U.S. at 765; Faragher, 524 U.S. at 807; Phillips v. Taco Bell Corp., 83 F. Supp. 2d 1029, (E.D. Mo. 2000) (entering judgment in favor of the defendant/ employer where plaintiff/employee failed to report incident of sexual harassment immediately as per openly posted company policy); Gary v. Long, 59 F.3d 1391, 1398 (D.C. Cir. 1995) (finding that the employer had taken “energetic measures” to discourage harassment); Trotta v. Mobil Oil Corp., 788 F. Supp. 1336, 1351 (S.D.N.Y. 1992) (finding no liability when company responded and took effective remedial measures); cf. Kauffman v. Allied Signal, Inc., 970 F.2d 178, 184 (6th Cir. 1992) (finding a “less flawed” sexual harassment policy might have prevented liability).

30 See Gilardi v. Schroeder, 833 F.2d 1226, 1233 (7th Cir. 1987) (upholding Title VII claim by woman who was raped by employer and then fired); Al-Dabbagh, 873 F. Supp. at 1110-11 (upholding Title VII claim by woman who was raped by a co-worker and claimed that she was forced to quit because of the rape).

31 In sexual harassment cases, companies have been held liable when they transferred a woman who complained of sexual harassment rather than transferring the harasser. See, e.g., Steiner v. Showboat Operating Co., 25 F.3d 1459, 1464 (9th Cir. 1994); Intlekofer v. Turnage, 973 F.2d 773, 780 n.9 (9th Cir. 1992).

32 See, e.g., Williams v. Munford, Inc., 683 F.2d 938, 940 (5th Cir. 1982); Lui v. Intercontinental Hotels Corp., 634 F. Supp. 684, 688 (D. Haw. 1986); Murphy v. Workers’ Comp. Appeals Bd., 86 Cal. App. 3d 996, 1002 (Ct. App. 1978); Rogers v. Aetna Cas. & Sur. Co., 173 So. 2d 231, 237 (La. Ct. App. 1965); cf. Cremen v. Harrah’s Marina Hotel Casino, 680 F. Supp. 150, 156 (D.N.J. 1988) (providing workers’ compensation coverage for negligence claims arising out of sexual assault by supervisor, but permitting plaintiff to pursue state claims for battery and intentional infliction of emotional distress).

END NOTES CONTINUED

33 See Eliot J. Katz, Annotation, Workers’ Compensation: Sexual Assaults As Compensable, 52 A.L.R.4th 731 (2000) (analyzing the cases in which courts discussed whether employees can seek damages for injuries resulting from sexual assaults under state workers’ compensation acts); Jane Byeff Korn, The Fungible Woman and Other Myths of Sexual Harassment, 67 Tul. L. Rev. 1363, 1380 n.94 (1993) (“[A]bout half of the states have held that workers’ compensation is the exclusive remedy [for victims of sexual harassment] while half have held that it is not.”) (citations omitted).

34 See, e.g., Krasevic v. Goodwill Indus. of Cent. Pa., Inc., No. 1621-MDA-1999, 2000 Pa. Super. LEXIS 3143, at *13-15 (Pa. Super. Ct. Nov. 16, 2000) (holding that the plaintiff need not show a history of personal animosity to recover damages from the employer under this exception to workers’ compensation and affirming a judgment against the employer for negligence where the employee was raped and sexually assaulted during an unmonitored and unsupervised bathroom break); Johnson v. Motel 6, No. C7-96-897, 1996 Minn. App. Lexis 1279, at *6 (Minn. Ct. App. Nov. 12, 1996) (citing Hanson v. Robitshek-Schneider Co., 297 N.W. 19, 21-22 (Minn. 1941)); McGowan v. Our Savior’s Lutheran Church, 527 N.W.2d 830, 834 (Minn. 1995).

35 See, e.g., Gilstrap v. Amtrak, 998 F.2d 559, 562 (8th Cir. 1993) (rape of passenger by railroad employee); Cremen, 680 F. Supp. at 156-57 (sexual assault by supervisor); see also Lyon v. Carey, 533 F.2d 649, 655 (D.C. Cir. 1976) (jury question whether employer was liable for sexual assault by its truck driver).

36 See Krasevic, 2000 Pa. Super. LEXIS 3143; Restatement (Second) of Agency § 219(2)(b), (d) (1958).

37 See, e.g., Watson v. Bally Mfg. Corp., 844 F. Supp. 1533, 1537 (S.D. Fla. 1993), *aff’d*, 84 F.3d 438 (11th Cir. 1996) (holding employer may be liable for negligent hiring and retention of an employee who sexually harassed plaintiff when it became aware of employee’s unlawful acts and failed to take adequate protective steps); Oslin v. Minnesota, 543 N.W.2d 408, 415 (Minn. Ct. App. 1996) (holding that an employer may be liable for negligent supervision and retention when employer knew of harasser’s propensity for harassment and failed to supervise him properly); Yunker v. Honeywell, Inc., 496 N.W.2d 419, 424 (Minn. Ct. App. 1993) (finding employer owed a duty of care under theory of negligent retention to an employee who was killed by a co-worker when his violence was foreseeable in light of incidents at work that demonstrated his propensity for violence and his threats to the woman); cf. Duffy v. City of Oceanside, 224 Cal. Rptr. 879, 884-885 (Cal. Ct. App. 1986) (finding a question of fact whether city acted reasonably in not notifying employee of co-worker’s previous convictions for rape and sexual assault).

38 See Yunker, 496 N.W.2d at 424.

39 See Louis P. DiLorenzo & Darren J. Carroll, The Growing Menace: Violence in the Workplace, N.Y. St. B.J., Jan. 1995, at 25-27; John P. Furfaro & Maury B. Josephson, Workplace Violence, N.Y.L.J., May 5, 1995, at 3, 12.

40 By 1989, all states except Georgia, Vermont and Wyoming had recognized an exception to the employment at will rule for retaliatory discharges or discharges that violate public policy, such as firing an employee in retaliation for filing a workers’ compensation claim, or for “whistle-blowing” on the employer’s illegal conduct. See Janice Goodman, NELA Employee Rights Litigation: Pleading and Practice, § 603 at 6-46 et seq. (1992); see also *id.* at § 6.04 (state-by-state chart listing public policy exceptions). See generally Arthur Larson & Lex K. Larson, Employment Discrimination at §§ T118.22; T119.11 (1996).

41 See, e.g., Green v. Bryant, 887 F. Supp. 798 (E.D. Pa. 1995) (declining to recognize public policy exception to at-will employment doctrine for employee who was discharged because she was the victim of spousal abuse).

42 29 U.S.C. § 654(a) (2000).

43 See Cal. Unemp. Ins. Code §§ 1030, 1032, 1256 (West 2000); Colo. Rev. Stat. Ann. § 8-73-108(1)(r) (West 2000); Conn. Gen. Stat. § 31-236(a)(2)(A) (West 2001); Del. Code Ann. tit. 19, § 3315(1) (2000); Me. Rev. Stat. Ann. tit. 26, § 1043(23)(B)(3) (West 1999); 2001 Mass. Acts 69 (to be codified at Mass. Gen. Laws ch. 151A, §§ 1, 14, 25, 30); 2001 Minn. Laws 175 (to be codified at Minn. Stat. § 268.095(1)(8)); 2001 Mont. Laws 520; Neb. Rev. Stat. Ann. § 48-628(1)(a) (Michie 2000); N.H. Rev. Stat. Ann. tit. 23, § 282-A:32 (2000); 1999 N.J. Rev. Stat. § 43:21-5 (2000); N.Y. Lab. Law § 593(1)(a) (McKinney 2000); N.C. Gen. Stat. § 96-14(1)(b)(1f) (2000); 2001 Or. Laws 144 (to be codified at Or. Rev. Stat. § 657.176(12); Or. Admin. R. 471-030-0038 (2000); R.I. Gen. Laws § 28-44-17.1(2000); Wis. Stat. § 108.04(7)(s) (2000); Wyo. Stat. § 27-3-311 (2000).

44 42 U.S.C. § 12101 et seq. (2000); see also 29 C.F.R. Part 1630 (2000).

45 29 U.S.C. § 2601 et seq. (2000); see also 29 C.F.R. § 825.100 et seq. (1999).

46 See, e.g., Cal. Lab. Code § 230 (2000) (leave for victims of domestic violence); 26 Me. Rev. Stat. § 850 (2000) (leave for victims of domestic violence, stalking, or sexual assault); c.f. Miami-Dade Cty., Fla., Code ch. 11A, art. VIII (1999) (leave for domestic violence victims).

47 See Cal. Lab. Code §§ 230(c), 230.1 (2000).

48 See 26 Me. Rev. Stat. B 850 (2000); R.I. Gen. Laws ‘ 12-28-11 (1999).

49 See, e.g., Ala. Code. § 15-23-81 (2000); Alaska Stat. § 12.61.017 (Michie 1999); Ark. Code Ann. § 16-90-1105 (1999); Cal. Lab. Code §230(b) (Deering 2000); Colo. Rev. Stat. § 24-4.1-303(8) (1999); Conn. Gen. Stat. Ann. § 54-203(b) (West 1999); Del. Code Ann. tit. 11, § 9409 (1999); Ga. Code Ann. § 34-1-3 (2000); Haw. Rev. Stat. § 621-10.5 (2000); Ind. Code Ann. § 35-44-3-11.1 (Michie 2000); Iowa Code § 915.23 (1999); Mass. Ann. Laws Ann. ch. 258B, § 3(l) (2000); Minn. Stat. § 611A.036 (1999); Miss. Code Ann. § 99-43-45 (2000); Mo. Rev. Stat. § 595.209(1)(14) (1999); Mont. Code Ann. § 46-24-205 (1999); Nev. Rev. Stat. Ann. § 50.070 (Michie 2000); N.Y. Penal Law § 215.14 (Consol. 2000); Ohio Rev. Code Ann. § 2930.18 (Anderson 2000); 18 Pa. Cons. Stat. Ann. § 4957 (1999); S.C. Code Ann. § 16-3-1550 (1999); Tenn. Code Ann. § 4-4-122 (1999) (applies to state employees only); Vt. Stat. Ann. tit. 13, § 5313 (2000); Va. Code Ann. § 18.2-465.1 (Michie 1999); V.I. Code Ann. tit. 34, § 203(e)(1) (2000); Wyo. Stat. §§ 1-40-203, 1-40-209 (2000).

50 See, e.g., Colo. Rev. Stat. § 24-4.1-302.5(1)(n) (1999); Md. Code Ann. art. 27, § 848(8) (1999); Mass. Ann. Laws ch. 258B, §§ 3(k), 5(e) (2000); Neb. Rev. Stat. Ann. § 81-1848(2)(h) (2000); N.C. Gen. Stat. § 15A-825(4) (1999); N.D. Cent. Code §§ 12.1-34-02(6), 12.1-34-04(5) (2000); Okla. Stat. Tit. 19 § 215.33(8) (1999); R.I. Gen. Laws §12-28-3(a)(7) (2000); Utah Code Ann. § 77-37-3(1)(g) (2000); V.I. Code Ann. tit. 34, § 203(e)(1) (2000); Va. Code Ann. § 19.2-11.01(A)(3)(a) (2000); Wash. Rev. Code § 7.69.030(8) (2000); Wis. Stat § 950.04(2)(g) (1999).

51 See, e.g., Cal. Code Civ. Proc. § 527.8 (Deering 1999). Notably, the statute makes explicit that obtaining a corporate protective order does not expand an employer’s duty to provide a safe workplace, so that an employer’s failure to obtain a corporate restraining order alone will not impose liability.

52 See Eve F. Sheedy, Esq., “There Ought to Be a Law: Corporate Restraining Orders,” Sojourn News (Spring 1995).

53 Furnished by the National Workplace Resource Center on Domestic Violence, a project of the Family Violence Prevention Fund. www.endabuse.org

Creating Solutions – Creating Change

The Impact of Violence in the Lives of Working Women

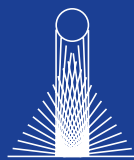
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Violence against women has become a workplace issue, affecting thousands of working women in companies and organizations nationwide. As national awareness of the epidemic of violence against women has increased, more companies are instituting policies and procedures designed to prevent all forms of violence against women in the workplace and assist survivors of violence.

NOW Legal Defense has developed this guidebook to help employers address the issue of violence against women in the workplace effectively. "Creating Solutions – Creating Change" provides background information about violence against women in the workplace, explains key pertinent legal issues, and suggests ways employers can develop solutions to fit their needs.

The largest and oldest national legal organization devoted to defining and defending women's rights, NOW Legal Defense pursues equality for women and girls in the workplace, through litigation, education, and public information programs.

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