

7



Domestic Violence, Sexual Assault & Stalking

It is unlawful for an employer to discriminate against you in the workplace based on your status as a victim of domestic violence. Depending on where you live, additional protections may exist, including protections for victims of sexual assault or stalking, that can help you keep or leave your job while addressing the abuse.



Domestic violence causes far more pain than the visible marks of bruises and scars.”

— Dianne Feinstein,
U. S. Senator, CA

How Can Domestic Violence, Sexual Assault, or Stalking Impact Your Job?

Domestic violence, sexual assault, or stalking can destabilize your life at home and at work. Victims of domestic violence, sexual assault, or stalking often face unique challenges in the workplace due to consequences of the abuse. You may have trouble performing your work duties, getting to work on time, or you may need time off due to various factors, including:

- Psychological impact of the abuse, including difficulty concentrating, anxiety, and depression.
- Physical injuries from the abuse that require rest, recovery, and/or medical care.
- Housing instability, including the need to flee, find a safe place to stay, find new housing, or enroll children in a new school.

- Legal obligations, including the need to go to court to get an order of protection, attend a court appearance, meet with the district attorney's office, or attend a custody hearing.
- Safety concerns at work, either because the perpetrator works with you or knows where you work, has appeared at your work, is making harassing phone calls to you at work, or has made other threats.

If domestic violence, sexual assault, or stalking is impacting your ability to get or keep a job, you may qualify for certain legal protections or be able to negotiate with your employer to secure changes at work to better protect your health and safety while staying employed.

What Qualifies as Domestic Violence, Sexual Assault, or Stalking?

Note: These are not legal definitions, which vary based on federal, state, and local laws; depend on the context; and are often tied to specific criminal laws.

DOMESTIC VIOLENCE: Typically involves acts or threats of violence or a pattern of threats or abuse committed by a person such as a spouse, intimate partner, a person with whom the victim shares a child in common, or family or household member.¹³⁰ As of July 4, 2023, New York City includes economic abuse under the definition of domestic violence. Economic abuse involves acts

that control or interfere with a person's ability to acquire, use, or maintain economic resources.¹³¹

SEXUAL ASSAULT: Typically covers specific nonconsensual sexual acts that are prohibited under criminal laws.¹³²

STALKING: Typically covers specific acts prohibited under criminal laws. You may be a victim of stalking if you have been the target of a pattern of behavior that causes you to fear for your safety or the safety of others or to suffer substantial emotional distress.¹³³

Who is Protected by the Law?

In New York, you are entitled to protections in the workplace if you are a victim of domestic violence.¹³⁴ Note that the abuse can occur anywhere and does not have to occur in the workplace in order for you to qualify for protections.

NYC & WESTCHESTER: If you work for any employer in New York City,¹³⁵ or Westchester County¹³⁶ you are entitled to additional protections if you are a victim of domestic violence, sexual assault, or stalking.

What are My Legal Rights?

PROTECTIONS AGAINST DISCRIMINATION: In New York State, your employer is prohibited from treating you negatively because you are a victim of domestic violence.¹³⁷ This protection means you cannot be: denied a job; fired; or be treated differently with respect to salary, or terms, conditions, or privileges of employment based on your gender or status as a Victim of Domestic Violence.

This means that it is unlawful for your employer to change your schedule, reduce your hours, deny you a promotion, change your job responsibilities, or reduce your pay because you are a victim, unless your employer takes any of those actions specifically at your request.

This also means that your employer is prohibited from firing you because you are being harassed at work by your abuser or based on gender-based stereotypes. For example, it's unlawful for your employer to fire or demote you because your boss does not want to deal with the "drama battered women bring to the workplace."

Even if you are not legally entitled to a reasonable accommodation (see below), your employer may be engaging in unlawful discrimination if it denies your request for an adjustment to address the abuse if your employer has provided similar adjustments to your co-workers on other grounds.

NOTE: In order to be covered by these protections, you will have to inform your employer about your status as a victim of domestic violence and may need to provide documentation of such. Keep in mind that domestic violence can have a significant impact on your attendance and performance, which are both grounds for discipline or termination. If you think that the abuse is impacting your work performance, it may help to notify your employer; otherwise, you will not be covered by these protections. It is a violation of the law if your employer retaliates against you for disclosing your status.

REASONABLE ACCOMMODATIONS: A "reasonable accommodation" is a change or adjustment to your working conditions, including your work duties or schedule. These adjustments can help a victim address the range of workplace impacts of the abuse or trauma.

NOTE: Examples include, but are not limited to, a request for time off, a change in your work location, a change in your hours or shifts, a new phone number, a reassignment or a transfer to another location, implementation of certain security protocols such as an escort, or a temporary reduction in hours.

Under federal law you are not generally entitled to a reasonable accommodation for domestic violence, sexual assault, or stalking. However, if, as a result of the abuse, you suffer from a mental or physical condition that qualifies as a disability, you may be able to request a reasonable accommodation under federal law (if you work for an employer with **15 or more employees**) or under state law.¹³⁸ Your employer must work with you to accommodate your disability, unless your request would create an undue hardship for your employer or would prevent you from fulfilling your essential work functions.

NOTE: Under federal law, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.¹³⁹ Under NYS law, a disability is defined as a physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.¹⁴⁰

Even if a reasonable accommodation is not legally required, remember that your employer is prohibited from denying your request for an accommodation simply because of your status as a victim. As noted above, if it has granted requests for similar

circumstances or conditions. This type of denial may constitute unlawful discrimination.

You may have an order of protection from the court. Note that this is an order from the court directing an individual to do or not do something, e.g., to stay away from you. However, your employer is not a party to that order and so may not be required to enforce it (meaning your employer may not be required to take action to ensure the perpetrator is abiding by the order or take action if it is violated).

As of November 18, 2019, employers in NYS must allow reasonable time off as an accommodation in order to:¹⁴¹

- Seek medical attention for injuries caused by domestic violence.
- Obtain services from a domestic violence shelter, program or rape crisis center.
- Obtain psychological counseling related to an incident of domestic violence.
- Participate in safety planning or to take other actions to increase safety from future incidents of domestic violence.

When an employee cannot give advance notice of the reason for the absence, the employer can request certification, which the employee must provide within a reasonable time:

- A police report indicating that the employee or his or her child was a victim of domestic violence;
- A court order protecting or separating the employee or his or her child from the perpetrator of an act of domestic violence;
- Other evidence from the court or prosecuting attorney that the employee appeared in court; or
- Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee or his or her child was undergoing counseling or treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

NYC & WESTCHESTER: If you are a survivor of domestic violence, sexual offense/sexual assault or stalking and you work for an employer in New York City¹⁴² or in Westchester County¹⁴³ you have greater protections and are entitled to a reasonable accommodation based on your status as a victim.

In New York City, your employer must engage in a "cooperative dialogue" or an "interactive process"¹⁴⁴ when considering a reasonable accommodation request. Your employer is not required to make adjustments that would create a significant hardship for them or would mean that you could no longer fulfill the essential functions of your job. This means that you and your employer should be able to work together to find a solution that helps you and still works for them.

CAN I TAKE TIME OFF? You may be able to take time off in certain circumstances.

- **FOR COURT:** In New York State, it is unlawful for your employer to terminate or penalize "a victim of a crime" for taking time off to appear in court, appear as a witness, consult with the district attorney's office, or obtain an order of protection.¹⁴⁵ This law covers victims of a charged criminal offense, anyone who has been subpoenaed to attend a criminal proceeding as a witness, or anyone exercising rights as a victim under applicable sections of the criminal procedure law, the family court act, or the executive law. If you seek protection under this provision, you must notify your employer prior to the day of your attendance.

- **VACATION/SICK/PERSONAL TIME:** Under your employer policy or handbook, you may be able to use available vacation, sick, or personal time off to address the abuse. Note, that your employer may be engaging in unlawful discrimination if it denies your request but has approved request from your coworkers on other comparable grounds such as for personal needs and family emergencies. Be sure to inform your employer as early in advance as possible and comply with your workplace policy for requesting and taking personal time off.
- **DISABILITY:** As discussed above, if you suffered a disability as a result of the abuse, you may be entitled to request time off as a reasonable accommodation for your disability and you may qualify to receive short term disability benefits.
- **MEDICAL LEAVE:** If you have suffered a serious health condition as the result of the abuse, you may qualify to take up to 12 weeks of unpaid job-protected leave under the Family and Medical Leave Act (FMLA) if you are eligible and have worked sufficient days and hours (at least 1 year and at least 1,250 hours in the past year for an employee with **50 or more employees**).

PAID SAFE TIME: In New York State, employees may use their accrued paid sick time for absences because the employee or employee's family member is a victim of a family offense, sexual offense, stalking, or human trafficking:¹⁴⁶

- to obtain services from a domestic violence shelter, rape crisis center, or other services program;
- to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
- to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
- to file a complaint or domestic incident report with law enforcement;
- to meet with a district attorney's office;
- to enroll children in a new school; or
- to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

Employees accrue sick leave at a rate of one hour of leave for every 30 hours worked. Employees of employers with 100 or more employees accrue up to 56 hours of paid sick leave per year; employees of employers with 5 to 99 employees accrue up to 40 hours of paid sick leave per year; and employees of employers with 4 or fewer employees accrue up to 40 hours of unpaid sick leave per year.¹⁴⁷ When this leave lasts 3 or more days, the employer can request the employee provide an attestation from a medical provider or from the employee verifying employee's eligibility for leave. However, the employer cannot require that the employee explain the details of the domestic violence, sexual offense, family offense, human trafficking, or stalking.¹⁴⁸

- **NYC:** If you work in New York City for an employer with **5 or more employees**, or you are a domestic worker, your employer must provide paid safe time to eligible employees.¹⁴⁹ Paid safe time is time off to allow you to obtain services for abuse, to relocate, take measures to secure your safety, meet with an attorney or service provider, file a complaint, meet with a district attorney, enroll your

kids in a new school, or take other necessary measures to protect your mental and physical health.

If you meet this requirement, you are eligible to earn 1 hour of safe or sick time for every 30 hours worked up to 40 hours a year.¹⁵⁰ Note that you must provide adequate notice for foreseeable events.¹⁵¹

In order to receive these protections, you do have to reveal to your employer that you are a victim of domestic violence and provide documentation to verify your status as a victim of domestic violence, if your employer requests it. You can satisfy this requirement by providing documentation from a victim services organization, an attorney, a member of your religious institution, or a medical or other professional service provider who you went to for assistance for the abuse; a police or court record; or a notarized letter you wrote explaining why you need this time off. Once you tell your employer about your situation, your employer must keep all of your information confidential.

RETALIATION: Your employer is legally prohibited from retaliating against you for exercising your rights under these laws. Unfortunately, many employers will still engage in unlawful discrimination. If your employer does penalize you for invoking these protections, remember that retaliation is a separate violation of the law, meaning that in some cases, even if an employer is found not to have discriminated against you, it may still be liable for retaliating against you and may have to pay damages. Note, however, that you must still comply with workplace rules, and you can still be subject to discipline or penalized for poor performance or for breaking workplace rules, so long as your employer's conduct is not based on your sex or gender.

UNEMPLOYMENT BENEFITS: If you feel that you need to quit your job because of domestic violence, you may qualify for unemployment benefits. To obtain benefits, you will need to explain that you left your job because of the domestic violence and because you believed that staying at your job would jeopardize your safety or the safety of your family. You may be required to submit documentation to verify that you are a victim of domestic violence. For more information, visit: <https://www.labor.ny.gov/unemploymentassistance.shtm>.

CRIME VICTIM'S COMPENSATION: If you are a victim of a crime in New York State, including domestic violence or sexual assault, you may be eligible to receive compensation to cover specific expenses such as medical and counseling costs, lost wages, shelter costs, and transportation. You can file a claim with the NYS Office of Victim Services. For more information, visit: <https://ovs.ny.gov>.

HOUSING: It is unlawful for a landlord to discriminate against you because you are a victim of domestic violence.¹⁵² This means that a landlord is prohibited from evicting or refusing to rent to you because of your status as a victim of domestic violence. If you have an order of protection and you no longer feel safe in your rental apartment, you can request that your landlord terminate your lease early and you can obtain a court order from the judge who issued your order of protection if your landlord refuses to let you out of your lease.¹⁵³


As of May 13, 2022, New York State Human Rights Law specifically protects against discrimination in public accommodation and housing on the basis of status as a victim of domestic violence.¹⁵⁴

PUBLIC ASSISTANCE: If you are a victim of domestic violence, sexual assault, or stalking, you may be facing various types of instability and you may need assistance to make ends meet. For more information on the types of public assistance, including

cash, food, healthcare, and housing assistance, see Section 12 of this Toolkit on Public Benefits. If you would like to apply for public assistance but are concerned that meeting certain requirements may place you or your children at greater risk of harm or make it difficult to escape the abuse, you can request a waiver to temporarily delay those requirements. Requesting a waiver does initiate screening for domestic violence. For more information, visit: <https://opdv.ny.gov/financial-compensation>.

WORKPLACE SAFETY: Although there are no specific federal standards for workplace violence, under the federal Occupational Safety and Health Act, workers have the right to working conditions that do not pose a risk of serious harm. Workers can file a confidential complaint with the U.S. Occupational Safety and Health Administration if they believe someone is creating a safety risk that the employer has failed to address: https://www.osha.gov/workers/file_complaint.html or call 1-800-321-OSHA.

WORKERS' COMPENSATION: Workers injured while working, regardless of immigration status and including domestic workers who work at least 40 hours a week for a single employer, can qualify for workers' compensation, which is a form of insurance that covers your wages and medical benefits to assist employees recover. You must meet eligibility requirements. Claims are filed with the NYS Workers' Compensation Board: <http://www.wcb.ny.gov/content/main/Workers/Workers.jsp>.

 **IMMIGRATION STATUS:** The protections above apply regardless of your immigration status.

Note also that if you are an immigrant victim of certain crimes, you may qualify for a special visa to stay in the country and obtain a green card. You may qualify for a U Visa if you are an immigrant victim of certain crimes, including violent and sexual crimes, and you are willing to assist law enforcement in a criminal investigation or prosecution. You may qualify to petition for lawful status, receive employment authorization, and be eligible for public benefits under the Violence Against Women Act (VAWA) if you are an abused spouse, child, or parent of a U.S. Citizen or permanent resident. Additionally, you may qualify for a T Visa to obtain lawful status and employment authorization if you are a survivor of sex or labor trafficking and if you are willing to assist law enforcement in a criminal investigation and/or prosecution. The National Immigrant Women's Advocacy Project provides a directory of service providers, including advocates and attorneys who may be able to assist you: <http://directory.niwap.org>.

Note also, that you may be suffering from unlawful discrimination if you are denied employment because an employer does not want to "deal with the hassle" of hiring someone with your type of work authorization, requires that you provide verification documents before making you an offer, or demands more paperwork than is legally required.¹⁵⁵ For more information, including the list of acceptable verification documents, visit: <https://www.uscis.gov/i-9-central/employee-rights-resources/preventing-discrimination>. If you think your rights have been violated, contact a legal advocate or attorney. See the Additional Resources section at the end of this Toolkit.



What Can I Do to Assert My Rights?

If you have concerns or believe that your rights have been violated, there are various actions you can take to advocate for yourself. In addition to the general guidance in Section 1, consider the following:

CONSIDER WORKPLACE IMPACT OF THE ABUSE:

As a victim of domestic or sexual violence, you may not be contemplating how the abuse is impacting your workplace. As a starting point, consider how the abuse is affecting your work and whether you need to take steps to assist you if the abuse is impacting your performance, attendance, timeliness, or other aspects of your work.

REVIEW WORKPLACE POLICIES/UNION

CONTRACTS: It is always beneficial to check your employment policy, if one exists, in case your employer provides broader protections than the legally required minimum or has a procedure in place for reporting. Places to look for relevant information include: leave policy; sexual harassment policy; disciplinary and termination procedures: collective bargaining agreement: workplace violence policy: or any specific policy on gender-based violence.

DOCUMENT PROBLEMS: If you feel like your employer is not responding appropriately to your disclosure or requests, be sure to document everything that happens in detail as early as possible (including names, dates, places, times, witnesses, and nature of the incident). Keep a paper trail of relevant evidence, including threats of retaliation. Save copies of any and all evidence, including copies of emails, text messages, written letters or notes, voicemails, and photos.

SPEAK TO YOUR EMPLOYER: If you are being harassed by your abuser at work or if you are having difficulty at work as a result of abuse, speak to your employer about ways in which you can enhance your safety or make changes at work to help you better address the abuse or obtain necessary assistance. If you believe that your work performance may be suffering as a result of the abuse, consider whether it would be helpful to speak to your employer to explain your situation and see if there are solutions that may help improve your performance.

If you are concerned that your employer is treating you negatively because of your status as a victim of domestic violence, consider notifying your employer that you

are protected under New York law. It may be helpful to consult an attorney about the best way to have this conversation with your employer to protect yourself. For assistance, contact Legal Momentum or see the Additional Resources section at the end of this Toolkit.

FILE A COMPLAINT: If you were discriminated against based on your status as a victim of domestic violence, or denied reasonable time off as a reasonable accommodation, you can file a claim with the NYS Division of Human Rights: <https://dhr.ny.gov/contact-us>.

If you were discriminated against or denied a reasonable accommodation for domestic violence, sexual assault, or stalking and you work in New York City or Westchester County, you can file a complaint with the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/about/contact-us.page>) or the Westchester County Human Rights Commission (<https://humanrights.westchestergov.com/file-a-complaint/filing-a-complaint>). If you were improperly denied earned safe time in New York State, you can file a complaint with the Department of Labor: <https://dol.ny.gov/unpaidwithheld-wages-and-wage-supplements>

If you were improperly denied earned safe time in New York City, you can file a complaint with the NYC Department of Consumer Affairs: <https://www1.nyc.gov/site/dca/workers/workersrights/file-workplace-complaint.page>.

FILE A LAWSUIT: You also have the option of filing a lawsuit in state court instead of the New York State Division of Human Rights or the New York City Commission on Human Rights.

SEEK ASSISTANCE FOR THE ABUSE: If you are a victim of domestic violence, you can receive various types of assistance, including crisis intervention, safety planning, assistance identifying emergency shelter or temporary housing, counseling, advocacy, referrals, and other types of supportive services for yourself and your children.

If you live in New York State, you can seek assistance by contacting the NYS Office for the Prevention of Domestic

Violence (<https://opdv.ny.gov>), which has a Domestic and Sexual Violence Hotline: 1-800-942-6906 (English and Spanish). If you reside in NYC, you can contact the NYC 24-Hour Domestic Violence Hotline: 1-800-621-HOPE or 1-800-621-4673.

Resources, including a program directory of domestic violence service programs across the state, are also available at the New York State Coalition Against Domestic Violence: <https://www.nyscadv.org/find-help/>.

NYC: If you live in New York City, you can visit a Family Justice Center in your borough, which can assist you to develop a safety plan, apply for benefits, get mental health counseling, obtain referrals for job training, obtain legal assistance, and connect to law enforcement or the district attorney's office. For a list of Family Justice Centers, visit: <https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>. Sanctuary for Families also provides counseling and crisis services, legal representation for individuals seeking to escape abuse, career readiness and technology training, and crisis shelters. To get help, visit: <https://sanctuaryforfamilies.org/get-help/>.

FIND A SHELTER OR HOUSING: Survivors of domestic violence residing in New York City may receive temporary housing, emergency shelter, and supportive services for themselves and their children through the Human Resources Administration and Safe Horizon. Programs provide counseling, advocacy, and referral services. Safe Horizon offers 8 confidential domestic violence shelters located throughout New York City. To reach their hotline: 1-800-621-4673. Based on your status as a victim of domestic violence, sexual assault, or stalking, you may be eligible to receive certain preferences or priorities when applying for federal housing assistance. Contact your local housing provider for more information.

OBTAIN INFORMATION IN YOUR LANGUAGE: You can obtain information about paid safe time in over 25 languages on the City's website: <https://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page>.