

Checklist of Considerations When Developing Employment-Related Protections for Survivors of Domestic Violence, Sexual Assault and Stalking

As a result of reviewing every state law providing employment protections for survivors of domestic violence, sexual assault, and stalking, we noticed several common legislative trends across the states. We believe there are some key changes that could be made to these laws to improve their effectiveness and make them more accessible to survivors of domestic violence, sexual assault, and stalking. Below is a compilation of our suggestions to consider when drafting or amending federal, state, or local law or drafting employee policies.

ANTI-DISCRIMINATION PROTECTIONS

Include survivors of domestic violence, sexual assault, and stalking in any anti-discrimination protections. These groups should be included in both employment anti-discrimination statutes and any broader anti-discrimination statutes to ensure survivors of domestic violence, sexual assault and stalking are a protected class in addition to being protected from discrimination in employment situations.

- Define “domestic violence,” “sexual assault” and “stalking”. Use definitions that are not drawn directly from criminal law definitions to (1) ensure that cooperation with the criminal justice system is not tied to asserting anti-discrimination protections and (2) ensure that victims of forms of abuse not adequately captured by criminal laws are covered by these protections (e.g., coercive control). If cross references to criminal definitions are used, ensure the language is clear to cover “acts that could constitute” certain criminal offenses.
- Extend anti-discrimination protections to all adverse job-related actions, not only termination.
- Include retaliation protections that create a separate protection against retaliation for asserting one’s rights under the anti-discrimination protections.
- Include specific training requirements for employers, with separate requirements for supervisory and human resources staff, regarding employers’ obligations under anti-discrimination provisions.

REASONABLE ACCOMMODATIONS

Include reasonable accommodations for survivors of domestic violence, sexual assault, and stalking that is separate from reasonable accommodations for disabilities already required under federal, state, or local law. Mandating accommodations is an essential component of providing meaningful workplace protections for survivors.

- Define “domestic violence,” “sexual assault” and “stalking”. Use definitions that are not drawn directly from criminal law definitions to (1) ensure that cooperation with the criminal justice system is not tied to asserting anti-discrimination protections and (2) ensure that victims of forms of abuse not adequately captured by criminal laws are covered by these protections (e.g., coercive control). If cross references to criminal definitions are used ensure the language is clear to cover “acts that could constitute” certain criminal offenses.

This project is supported by Grant No. 2019-WW-AX-K001 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this guide are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

- When drafting reasonable accommodation provisions, include broad language that affords survivors flexibility to request any accommodation needed to address their specific circumstances and vulnerabilities
 - avoid limiting reasonable accommodations to leave, time off, or an enumerated list.; or
 - ensure the language is clear that any enumerated list of possible accommodations is non-exhaustive.

Reasonable accommodations should include, but not be limited to, periods of absence from work while also encouraging reasonable accommodations short of absence that enable a survivor to continue to perform the essential functions of their job (for e.g., a shift change, a change of phone number or email, location change, removal of employee from public facing websites and communications).

- Avoid an onerous requirement for the survivor to “certify” the abuse. Ideally, laws and employee policies should avoid requiring a survivor to certify their abuse in order to receive protections or accommodations. However, if a certification requirement is included, it should not be automatic but at the request of an employer and should ensure that a broad range of documentation sources is acceptable, e.g., court related records from any related proceeding (family, civil or criminal courts) or certification from a healthcare provider, victim services organization or advocate, mental health provider, clergy, law enforcement or prosecutor’s office, attorney, etc., and an option for a victim to self-certify.
- Require employers to engage in an interactive process and a cooperative dialogue with respect to a survivor’s reasonable accommodation request. Failure to engage in this process should constitute an independent violation.
- Reasonable accommodation protections should be accompanied with a specific anti-retaliation provision that makes the separate protection against retaliation for requesting a reasonable accommodation.
- Build in robust confidentiality provisions ensuring that anyone receiving information regarding a survivor’s status as a survivor of domestic violence, sexual assault or stalking or their residence or location is required to maintain confidentiality.
- Include specific training requirements for employers, with separate requirements for supervisory and human resources staff, regarding employers’ obligations with respect to reasonable accommodations for survivors.

LEAVE FROM WORK

Access to paid safe leave from work is critical to ensure survivors of domestic violence, sexual assault, and stalking maintain economic stability.

- Include survivors of domestic violence, sexual assault, and stalking in legislation or employee policies related to leave from work.
- Define “domestic violence,” “sexual assault” and “stalking”. Use definitions that are not drawn directly from criminal law definitions to (1) ensure that cooperation with the criminal justice system is not tied to asserting anti-discrimination protections and (2) ensure that victims of forms of abuse not adequately captured by criminal laws are covered by these protections (e.g., coercive control). If cross references to criminal definitions are used ensure the language is clear to cover “acts that could constitute” certain criminal offenses.
- It is critical that safe leave is expressly job-protected and subject to a specific anti-retaliation protection, meaning a survivor-employee cannot be terminated or penalized for requesting or taking safe leave and retaliation for requesting or taking leave is separately actionable.
- Permissible purposes for use of safe leave should be broadly available for use to address all effects of the abuse. When drafting legislation or employee policies either:

- avoid an enumerated list of possible uses for safe leave, in favor of broad language that permits use of safe leave for any need connected to the abuse; or
- ensure the language is clear that any enumerated list of possible accommodations is non-exhaustive.

An enumerated list should include use of safe leave to address: medical and/or mental health care; services from a victim services organization or advocate; attorney or legal services provider; law enforcement or prosecution; housing; child care; economic abuse or sabotage by their partner (e.g. meetings at banks); immigration services provider; relocation and activities associated with relocating (e.g. packing, moving, finding new school or child care). This is a non-exhaustive list.

- Consider working within existing paid sick leave and/or paid family leave frameworks, simplifying and aligning requirements, and limiting bureaucratic complexity.
- Avoid an onerous requirement for the survivor to “certify” the abuse. Ideally, laws and employee policies should avoid requiring a survivor to certify their abuse in order to receive protections or accommodations. If a certification requirement is included, it should not be automatic but at the request of the employer and should ensure that a broad range of documentation sources is acceptable, e.g., court related records from any related proceeding (family, civil or criminal courts) or certification from a healthcare provider, victim services organization or advocate, mental health provider, clergy, law enforcement or prosecutor’s office, attorney, etc., and an option for a victim to self-certify.
- Employers should be barred from imposing leave upon a survivor who has not requested it.
- Build in robust confidentiality provisions ensuring that anyone receiving information regarding a survivor’s status as a survivor of domestic violence, sexual assault or stalking or their residence or location is required to maintain confidentiality.
- Include specific training requirements for employers, with separate requirements for supervisory and human resources staff, regarding employers’ obligations related to safe leave.

UNEMPLOYMENT INSURANCE

Include survivors of domestic violence, sexual assault, and stalking when drafting unemployment insurance laws, ensuring survivors can access unemployment insurance if they needed to leave a job related to abuse they were experiencing.

- Define “domestic violence,” “sexual assault” and “stalking”. Use definitions that are not drawn directly from criminal law definitions to (1) ensure that cooperation with the criminal justice system is not tied to asserting anti-discrimination protections and (2) ensure that victims of forms of abuse not adequately captured by criminal laws are covered by these protections (e.g., coercive control). If cross references to criminal definitions are used ensure the language is clear to cover “acts that could constitute” certain criminal offenses.
- Avoid an onerous requirement for the survivor to “certify” the abuse. Ideally, laws and employee policies should avoid requiring a survivor to certify their abuse in order to receive protections or accommodations. If a certification requirement is included, ensure that a broad range of documentation sources is acceptable, for e.g., court related records from any related proceeding (family, civil or criminal courts) or certification from a healthcare provider, victim services organization or advocate, mental health provider, clergy, law enforcement or prosecutor’s office, attorney, etc., and an option for a victim to self-certify.
- Build in robust confidentiality provisions ensuring that anyone receiving information regarding a survivor’s status as a survivor of domestic violence, sexual assault or stalking or their residence or location is required to maintain confidentiality.