

## SURVIVOR STATE EMPLOYMENT GUIDE

# NEW YORK

### INTRODUCTION

The resource below is for informational purposes only and may not reflect new protections enacted after its publication date. While this resource is not intended to provide legal advice, it can be used as a starting point to guide you in identifying workplace protections for survivors of domestic violence, sexual assault, and stalking in your state. Note that in addition to possible other protections enacted since this resource was last updated, there may be local or federal protections available. Employers may also provide additional protections that may be reflected in employee handbooks or policies.

### ANTI-DISCRIMINATION PROTECTIONS

Under New York law (**N.Y. Exec. Law § 296(1)(a)**), employers are prohibited from treating workers negatively based on one's status as a victim of domestic violence. To qualify, employees must inform their employer regarding their status and may need to provide documentation.

### REASONABLE ACCOMMODATIONS

Under New York State law (**N.Y. Exec. Law § 296(22)(c)(2)**), employers must allow reasonable time off as an accommodation for domestic violence for the following reasons: for an employee to 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; obtain legal services; and assist in the prosecution of the offense or appear in court in relation to the incident of domestic violence.

Note that New York City (**NYC Administrative Code § 8-107.1**) law affords broader model protections, providing that employers must provide a reasonable accommodation based on one's status as a victim of domestic violence, sexual offense, or stalking. Employers must engage in a cooperative dialogue when considering a reasonable accommodation request.

### LEAVE/TIME OFF WORK

In New York, survivors of domestic violence, sexual assault and stalking have several ways they may be able to take time off work to address the impacts of the abuse:

- **Paid Sick Leave:** Under New York law (**N.Y. Exec. Law § 196b**), employers are required to provide unpaid or paid sick time, which an employee can accrue at a rate of 1 hour for every 30 hours worked. Employers with less than five employees are required to provide up to 40 hours of unpaid sick time per year. However, if an employer's net income was more than \$1 million in the previous year or an employer has more than 5 employees, the employer must provide up to 40 hours of paid sick leave. Employers with more than 100 employees are required to provide 56 hours of paid sick leave per year. Leave can be used for mental illness, injury, diagnosis, care, and preventative care for you or a covered family member or for absences related to domestic violence, a family or sexual offense, stalking, or human trafficking.
- **Leave to Address Domestic Violence:** As per above, under New York, law (**N.Y. Exec. Law § 296(22)(c)(2)**), employers must provide leave for a number of factors related to domestic violence.

- **Time Off for Crime Victims:** In New York State (**NY Penal Law § 215.40**), it is a crime for an 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. This law covers victims of a charged criminal offense, anyone subpoenaed to attend a criminal proceeding as a witness, or anyone exercising rights as a victim under applicable sections of the criminal procedure law, family court act, or the executive law. Employees seeking protection under this law must notify their employer prior to the day of attendance.

Additionally, a victim or witness to a criminal case who so requests shall be assisted by law enforcement agencies and district attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. (**NY Executive Law § 642(4)**).

Note that individuals may also be eligible to take time off under their employer's policy, including vacation time, sick time, personal days, under other state laws or protections, or under federal protections such as the Family and Medical Leave Act, which may afford unpaid leave for a severe medical condition.

### **UNEMPLOYMENT INSURANCE**

In New York (**NY Executive Law § 593**), an employee who leaves work because of circumstances directly resulting from domestic violence can still qualify for unemployment benefits if the employee shows "good cause" for quitting. An employee may have good cause if the employee left their job because the employee or an immediate family member is a victim of domestic violence or the employee believes that staying in their job would risk the employee's safety or the safety of an immediate family member. For more information, visit: **<https://dol.ny.gov/domestic-violence-and-ui-benefits-frequently-asked-questions>**.

- *Do I need to show proof of domestic violence?* Yes, an employee seeking to show "good cause" may be required to provide documentation to verify their status as a victim of domestic violence.