

The Women's Legal Defense and Education Fund

February 2, 2024

Memorandum in Support of S7996 (Persaud)/A8971(Lucas)

For over five decades, Legal Momentum has been at the forefront of using the law to advance gender equality for women in the workplace and to establish legal protections for survivors of gender-based violence.¹ It is based on this expertise that we submit this memo in support of S7996 (Persaud)/A8971(Lucas), which would strengthen existing workplace protections for survivors of gender-based violence, aligning New York State law with New York City's Human Rights Law² to close several outstanding gaps. Specifically, this bill would expand protections to cover survivors of sex offenses and stalking, ensure survivors can request the reasonable accommodations they need to address abuse, require employers to engage in an interactive dialogue regarding reasonable accommodation requests, relax onerous documentation requirements that often prevent survivors from obtaining assistance, and strengthen compliance by mandating that employer policies and training on sexual harassment also include guidance on workplace protections for survivors.

Gender-based violence is pervasive³ and has significant impacts on survivors' ability to maintain their employment at the time when they need it most.⁴ Many survivors of domestic violence choose not to leave an abusive relationship because they fear they will not be able to support themselves and their families alone.⁵ Financial supports, including protections that help survivors maintain their employment during this transition, are thus essential to help survivors escape abuse.⁶ Survivors seeking to escape an abusive relationship or situation typically need to make drastic life changes that can undermine their ability to maintain their employment absent concrete legal protections. For example, survivors regularly need to engage in safety planning; obtain new housing, including transitioning to a domestic violence shelter; secure childcare or enroll children in new schools; engage with law enforcement, the criminal justice system, and the family court system to obtain orders of protection, assist with criminal proceedings, or initiate custody proceedings; secure new sources of financial support, including public benefits; and seek medical and mental health care.⁷

While New York State's Human Rights Law currently includes important protections for some survivors, it also falls short of providing the comprehensive protections needed to adequately protect survivors to escape abuse while maintaining their economic security. S7996/A8971 would address several notable gaps and significantly strengthen these protections for survivors.

To effectively address gender-based violence in New York, our laws must cover all categories of survivors. This bill would ensure that existing protections that, among other things, prohibit workplace discrimination against victims of domestic, also cover victims of sex offenses and stalking. Like survivors of domestic violence, survivors of sex offenses and stalking face similar barriers and obstacles to maintaining employment while addressing abuse and require equivalent protections.

In our longstanding work with survivors, it is clear that one of the most effective and critical benefits that helps survivors maintain employment while escaping or addressing abuse is access to reasonable accommodations. Our current law allows survivors to take leave as a reasonable accommodation in certain limited scenarios. While access to paid and unpaid leave is essential, it can also fall short of addressing survivors' actual needs and can cause workers to use up remaining leave unnecessarily, which employers then use to threaten termination. Moreover, unpaid leave is an inadequate solution for many survivors, who are in economically precarious situations as they transition to being the only source of income and support for themselves and their children. While survivors face a host of obstacles and barriers to maintaining employment, they can still keep their jobs while escaping abuse with accommodations such as a change in their shift, an adjustment to their hours, a transfer to a different work location, or assistance to address PTSD. This bill would expand access to reasonable accommodations beyond just leave to allow survivors to define for themselves what they need to continue to satisfy their essential job requirements while maintaining their safety.

In our work with survivors, we have also seen how employers narrowly construe documentation requirements to deny or delay access to workplace protections for survivors. One of our clients submitted a police incident slip to her employer to verify her status as a victim of domestic violence to get time off to get an order of protection. She did not feel comfortable providing the detailed police report because she did not want to disclose the very personal details of her situation to her employer. Her employer denied her request for time-off stating that she would need to provide the full police report, or, ironically, an order of protection. Documentation requirements under this law should not serve to thwart survivors from accessing the exact protections this law was designed to provide. Documentation requirements also should not require survivors to reveal intimate details about their abuse with employers, who we regularly see act on unconscious biases about survivors and/or fail to adequately comply with confidentiality requirements. This bill would ease documentation requirements so that employers have less leeway to use such requirements to prevent survivors from accessing the benefits under this law in a timely and effective manner.

Lastly, we have worked with too many survivors who qualify for protections under this law but are nonetheless discriminated against or denied leave because employers are not well versed on these protections. In our work, we regularly see employers discriminate against survivors based on their status, seek intrusive documentation not required by the law, deny leave that workers are entitled to, and retaliate against workers who report their status and seek assistance. The glaring lack of awareness among employers means that the majority of survivors we represent or assist are denied reasonable accommodations without any rationale or discussion and terminated within months of reporting their status as survivors. As a result, survivors who believe they are legally protected often find themselves unemployed precisely because they sought protections they were entitled to from their employer. This puts survivors at greater risk.

To address these gaps, this bill would make clear that employers must engage in an interactive dialogue with survivors seeking reasonable accommodations. Engaging in an interactive dialogue helps employers and employees work together to find solutions that provide the employees with what they need without posing an undue hardship to employers. The bill would also require employers to include guidance on survivor workplace protections in their mandated

workplace policies and training on sexual harassment and would require the DOL to include this guidance in its model training and policy. Employers need guidance and training to advance awareness and compliance and to ensure that the law actually works for survivors. By incorporating this guidance within policies and training that employers must already provide, this bill avoids adding unnecessary burden on employers.

Legal Momentum strongly supports this legislation. By closing gaps in protection under our current law, this bill ensures that survivors have access to more meaningful protections that are essential to ensuring they can escape and address gender-based violence without further compromising their economic security.

¹ For the story of one Legal Momentum client, see Chabeli Carrazana, *Domestic Violence Survivors Are Supposed To Be Protected at Work. So Why Aren't Employers Complying?*, THE 19TH (July 17, 2023), <https://19thnews.org/2023/07/domestic-violence-survivors-workplace-protections/>. See also LEGAL MOMENTUM & FUTURES WITHOUT VIOLENCE, STATE GUIDE ON EMPLOYMENT RIGHTS FOR SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING (2022), <https://www.legalmomentum.org/library/state-guide-employment-rights-survivors-domestic-violence-sexual-assault-and-stalking>.

² N.Y.C. Admin. Code § 8-107(27) - (28).

³ In New York State in 2022, 37,860 adults and 5,146 children received non-residential domestic violence services and 4,979 adults and 5,228 children received residential domestic violence services. OFF. OF PREVENTION OF DOMESTIC VIOLENCE, NEW YORK STATE GENDER-BASED VIOLENCE DASHBOARD 4 (2022), <https://opdv.ny.gov/system/files/documents/2024/01/nys-gender-based-violence-dashboard-2022.pdf>. For national data, see also SHARON G. SMITH, ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON STALKING – UPDATED RELEASE 3 (2022), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsStalkingReport.pdf> (finding 31.2% of U.S. women and 16.1% of U.S. men were stalked at some point during their lifetime); KATHLEEN C. BASILE, ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 3, 5 (2022), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf> (finding 26.8% of U.S. women and 3.8% of U.S. men reported completed or attempted rape victimization at some point in their lifetime; and 47.6% of U.S. women and 23.3% of U.S. men reported unwanted sexual contact in their lifetime); RUTH W. LEEMIS, ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 4 (2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf (finding 47.3% of U.S. women and 44.2% of U.S. men reported sexual violence, physical violence, and/or stalking by an intimate partner in their lifetime).

⁴ See ADRIENNE E. ADAMS & SARA WEE, DOMESTIC VIOLENCE AND ECONOMIC WELL-BEING STUDY: SERVICE PROVIDER REPORT 14 (Apr. 2021), https://csaj.org/wp-content/uploads/2022/05/DV_EWB_Study-Service_Provider_Report_FINAL.pdf (finding 76% of domestic violence victims said their partners made it hard for them to keep a job).

⁵ CYNTHIA HESS & ALONA DEL ROSARIO, INST. FOR WOMEN'S POL'Y RSCH., DREAMS DEFERRED: A SURVEY ON THE IMPACT OF INTIMATE PARTNER VIOLENCE ON SURVIVORS' EDUCATION, CAREERS, AND ECONOMIC SECURITY 33–35 (2018), <https://iwpr.org/dreams-deferred-a-survey-on-the-impact-of-intimate-partner-violence-on-survivors-education-careers-and-economic-security/> (finding 73 percent of study participants stayed with their abuser longer or returned to their abuser for financial reasons); Rebecca L. Heron, et al., *Why Do Female Domestic Violence Victims Remain in or Leave Abusive Relationships? A Qualitative Study*, 31 J. AGGRESSION, MALTREATMENT & TRAUMA 677, 684 (2022) (finding that 45% of study participants described economic dependence as a reason for staying in the relationship).

⁶ FREEFROM, SUPPORT EVERY SURVIVOR: HOW RACE, ETHNICITY, GENDER, SEXUALITY, AND DISABILITY SHAPE SURVIVORS' EXPERIENCES AND NEEDS 86–88 (2023), <https://www.freefrom.org/wp-content/uploads/2022/10/Support-Every-Survivor-PDF.pdf> (identifying cash to spend as they see fit as survivor's top need, and top costs as rent or mortgage assistance, food, and utility bills/arrears); see also *id.* at 115 (reporting that 38.4% of survivors said that working at a survivor-friendly workplace would help them achieve their goals).

⁷ NAT'L NETWORK TO END DOMESTIC VIOLENCE, 17TH ANNUAL DOMESTIC VIOLENCE COUNTS REPORT 2, 5–6 (2013) <https://nndv.org/wp-content/uploads/2023/03/17th-Annual-Domestic-Violence-Counts-Report-Full-Report->

[March-2023.pdf](#) (describing the services provided by domestic violence programs nationwide, including housing, legal services, housing advocacy, mental health services, and public benefits counseling).