



## The Women's Legal Defense and Education Fund

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### Re: Request for Information on Paid Leave

Dear Working Group Members:

Legal Momentum welcomes the opportunity to respond to this request for information. We are grateful to the Congressional working group and its members for their leadership on this important issue.

Legal Momentum, the Women's Legal Defense and Education Fund is the nation's first and longest serving legal advocacy organization dedicated to advancing women's rights and gender equality. For more than 50 years, we have used strategic litigation, innovative public policy, and education and training initiatives to ensure that all women are protected under the law. Addressing employment discrimination, economic insecurity for women, and gender-based violence has been a priority throughout our five decades of work.

We write to emphasize the importance of including **paid safe leave for survivors of domestic violence, sexual assault, and stalking** in a federal paid leave program, and to provide recommendations on such a program. As an organization that advocates for the employment rights of survivors of gender-based violence,<sup>1</sup> we know how important it is for survivors to access job-protected, *paid* leave as they take steps to ensure their safety, address the far-reaching impacts of violence, and seek longer-term security.

Millions of workers experience intimate partner violence, sexual assault, and stalking,<sup>2</sup> which often impact the workplace and can compromise a survivor's employment at a time when they

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<sup>1</sup> 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>.

<sup>2</sup> 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

need it most. “Safe leave” provides workers with paid time off to address needs that arise in relation to sexual assault, stalking, domestic violence (including intimate partner and family violence), and other forms of gender-based violence and harassment. While some states have enacted innovative and important safe leave protections, which should serve as a roadmap, these laws currently protect too few workers. We therefore need robust national Paid Safe Leave.

Enacting paid safe leave as part of a comprehensive national paid leave program is essential to empower survivors to escape abuse while maintaining their economic security. Because underserved populations, including women of color and members of the LGBTQ community, face disproportionate rates of violence, paid safe leave is critical to advancing equity. Moreover, by providing critical supports to survivors to remain in the workforce, paid safe leave serves businesses and the economy. Congress should act to ensure workers who need it can access Paid Safe Leave.

## **I. Congress Should Include Paid Safe Leave as Part of a Comprehensive Paid Leave Law.**

### *1. Survivors Need Time Off from Work to Ensure Their Safety, Health, and Healing.*

Survivors might need to take time away from work for a range of reasons,<sup>3</sup> often at short notice. To escape an abusive situation or to address other forms of gender-based violence, survivors often need to engage in safety planning, find new housing, obtain medical care, arrange childcare, begin legal proceedings, and engage with the criminal justice system.

For example, survivors may need to attend legal proceedings to get a restraining order, file for divorce, or participate in a criminal trial. When survivors decline to pursue protection orders or other safety measures, it is often because of the lack of paid time off or other economic pressure.<sup>4</sup> Further, by facilitating court participation, paid safe leave gives survivors a meaningful choice in their engagement with the criminal justice system.<sup>5</sup> As it stands, 13 states do not even guarantee

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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](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).

<sup>3</sup> See Kiersten Stewart & Jennifer Becker, *Thirty Years After the FMLA, Lawmakers Must Guarantee Paid Leave for People Facing Violence*, MS. MAGAZINE (Feb. 3, 2023), <https://msmagazine.com/2023/02/03/fmla-congress-paid-leave-domestic-sexual-violence/>.

<sup>4</sup> Nilpa D. Shah et al., *Factors Influencing the Use of Domestic Violence Restraining Orders in Los Angeles*, 29 VIOLENCE AGAINST WOMEN 1604 (2023) (citing “losing economic stability” and “no paid time off” as barriers to obtaining and enforcing domestic violence restraining orders); T.K. Logan, et al., *Protective Orders in Rural and Urban Areas: A Multiple Perspective Study*, 11 VIOLENCE AGAINST WOMEN 876, 891–92 (2005) (finding “lack of resources” and “costs” were a barrier to obtaining a protective order for rural women in this study).

<sup>5</sup> Cf. ALL. FOR SAFETY & JUST., CRIME SURVIVORS SPEAK: NATIONAL SURVEY OF VICTIMS’ VIEWS ON SAFETY AND JUSTICE 21 (2022), <https://allianceforsafetyandjustice.org/wp-content/uploads/2022/09/Alliance-for-Safety-and-Justice-Crime-Survivors-Speak-September-2022.pdf> (discussing victims’ views on the criminal justice system).

unpaid leave for any crime victims, so many survivors are forced to choose between work and safety.<sup>6</sup>

Equally, survivors regularly need to move, including to domestic violence shelters in different areas.<sup>7</sup> Moving can result in significant upheaval, including the need to arrange for transportation, enroll their children in a new school, or find new forms of childcare. Additionally, survivors who move into emergency shelters will need time to search for permanent housing.<sup>8</sup> Survivors also regularly need to seek supportive services like counseling or services from domestic violence advocates, who provide a wide range of assistance.<sup>9</sup> Finally, survivors of gender-based violence, including survivors of rape, often need to seek medical care for physical and mental health needs that are not addressed by other kinds of leave. For these reasons, it is important that survivors have access to job-protected time off.

## 2. *Safe Leave Must Be Paid to Truly Ensure Workers' Safety.*

Survivors are often caught between a rock and a hard place; they need income to be able to leave a violent situation but the violence they are subjected to severely impacts their ability to work. Victims of sexual violence, domestic violence, and stalking often miss work, or even lose their jobs, because of their experiences.<sup>10</sup> For example, a 2020 survey found that 76 percent of survivors of domestic violence said that their partners made it hard to keep a job.<sup>11</sup> Perpetrators may prevent a survivor from going to work by physically restraining her, beating her severely enough that she cannot or does not want to go to work, keeping her from sleeping, making a car

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<sup>6</sup>As of November 2022, states with no guaranteed paid or unpaid leave for crime victims include Idaho, Indiana, Iowa, Kentucky, Louisiana, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. See LEGAL MOMENTUM & FUTURES WITHOUT VIOLENCE, *supra* note 1. Some of these states, such as North Carolina and North Dakota, do have limited safe leave for victims of gender-based violence, but this leave does not cover all victims. *Id.* at 77-80.

<sup>7</sup> NAT'L NETWORK TO END DOMESTIC VIOLENCE, 17TH ANNUAL DOMESTIC VIOLENCE COUNTS REPORT 2 (2013) <https://nnedv.org/wp-content/uploads/2023/03/17th-Annual-Domestic-Violence-Counts-Report-Full-Report-March-2023.pdf> (finding that on a single day in 2022, 44,882 adult and children victims of domestic violence were housed through domestic violence programs nationwide).

<sup>8</sup> *Id.* at 5–6 (discussing the challenges of securing permanent housing).

<sup>9</sup> *Id.* at 6 (listing non-residential supportive services provided by domestic violence programs, including children's support or advocacy, transportation, public benefits advocacy, and support or advocacy related to child welfare).

<sup>10</sup> See Gladys McLean & Sarah Gonzalez Bocinski, *The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking*, INST. FOR WOMEN'S POL'Y RSCH. (August 2017), <https://iwpr.org/iwpr-general/the-economic-cost-of-intimate-partner-violence-sexual-assault-and-stalking> (finding that victims “who were stalked lost an average of 10.1 days of paid work per year, those who were raped lost an average of 8.1 days per year, and those who experienced physical violence lost 7.2 days per year”); ELLEN RIDLEY, ET AL., ME. DEP'T OF LAB. & FAM. CRISIS SERVS., HOW PERPETRATORS IMPACT EMPLOYMENT, A JOINT RESEARCH PROJECT 4, 14 (2005) [https://www.maine.gov/labor/labor\\_stats/publications/dvreports/survivorstudy.pdf](https://www.maine.gov/labor/labor_stats/publications/dvreports/survivorstudy.pdf) (finding seventy-eight percent of survivors reported being late to work as a result of domestic abuse; 47 percent reported being assaulted before work; and 96 to 98 percent experienced problems at work related to the violence); see *id.* at 15 (describing how survivors miss work because of health conditions caused by or exacerbated by domestic violence); Angela M. Moe & Myrtle P. Bell, *Abject Economics: The Effects of Battering and Violence on Women's Work and Employability*, 10 VIOLENCE AGAINST WOMEN 29 (2004) (describing the economic harms of abuse including loss of jobs because of physical injury, psychological abuse, and economic exploitation).

<sup>11</sup> 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](https://csaj.org/wp-content/uploads/2022/05/DV_EWB_Study-Service_Provider_Report_FINAL.pdf).

unavailable, or cutting up work clothes.<sup>12</sup> Perpetrators also abuse their victims by coming to the workplace, making harassing phone calls to victims and their supervisors, and stalking the victim to and from the workplace.<sup>13</sup>

More broadly, economic abuse—defined as “behaviors that control a [partner’s] ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency”—is often present in abusive relationships as a tactic of power and control.<sup>14</sup> Economic abuse includes not just interfering with survivors’ employment, but also impeding attempts to gain job skills and education, limiting access to financial resources, stealing money, generating costs by damaging property, or generating debt to harm survivors’ credit.<sup>15</sup> Unsurprisingly, economic abuse is correlated with economic hardship during and after the relationship.<sup>16</sup>

The economic insecurity that survivors face makes it harder to leave a relationship. According to research, a primary reason that domestic violence survivors are unable to leave an abusive relationship is a lack of economic resources to support themselves and their children.<sup>17</sup> When leaving their abusers, victims can incur significant costs, most commonly those associated with relocating somewhere safe, replacing damaged or stolen property, court costs, and financial services.<sup>18</sup> In our work representing survivors, we regularly see that women lose their jobs after leaving an abusive situation because they lack adequate workplace supports and protections to work while addressing the abuse, including the ability to take time off. For this reason, it is of the utmost importance that survivors have access to financial resources.<sup>19</sup> Paid safe leave will keep

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<sup>12</sup> See Jennifer E. Swanberg & T.K. Logan, *Domestic Violence and Employment: A Qualitative Study*, 10 J. OCCUPATIONAL HEALTH PSYCH. 6-9 (2005) (finding that these tactics prevented 50% of women in the study from going to work regularly, and that 91% of women surveyed had either resigned or been terminated from work as a result of the abuse in the previous two years).

<sup>13</sup> *Id.* at 6.

<sup>14</sup> Adrienne E. Adams, et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564, 580 (2008); see also Judy L. Postmus, *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411 (2011) (finding that of 120 individuals in domestic violence programs, 94.2% had experienced economic abuse).

<sup>15</sup> Adams, *supra* note 14, at 565-67, 576; see also Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 954-55 (2012) (describing how coerced debt “ranges from abusers taking out credit cards in their partners’ names without their knowledge, to forcing victims to obtain loans for the abuser, to tricking victims into signing quitclaim deeds for the family home.”).

<sup>16</sup> Adams, *supra* note 14, at 580; Laura Johnson, *Examining the Impact of Economic Abuse on Survivors of Intimate Partner Violence: A Scoping Review*, 22 BMC PUB. HEALTH 1014 (2022), (“Most studies found that economic abuse was associated with negative financial impacts.”).

<sup>17</sup> 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).

<sup>18</sup> HESS & DEL ROSARIO, *supra* note 17, at 33–34.

<sup>19</sup> FREEFROM, SUPPORT EVERY SURVIVOR: HOW RACE, ETHNICITY, GENDER, SEXUALITY, AND DISABILITY SHAPE SURVIVORS’ EXPERIENCES AND NEEDS 86–88 (2023), <https://www.freefrom.org/wp->

survivors in the workforce and limit the economic harms of abuse by allowing survivors to take time off to meet their needs without sacrificing income.

### 3. *Paid Safe Leave Advances Equity.*

Some communities—including Black and Brown women, women with disabilities, and members of the LGBTQ community—experience disproportionate rates of gender-based violence. The National Intimate Partner and Sexual Violence Survey found that 63.8% of multiracial women, 57.7% of American Indian or Alaska Native women, and 53.6% of Black women, reported intimate partner violence in their lifetimes, compared with 48.4% of non-Hispanic white women.<sup>20</sup>

LGBTQ people also experience disproportionate rates of violence.<sup>21</sup> According to the CDC, there is a higher prevalence of lifetime experiences of intimate partner violence among bisexual and lesbian women than among heterosexual women.<sup>22</sup> A 2020 study found that compared with cisgender individuals, transgender individuals were 1.7 times more likely to experience intimate partner violence, 2.2 times more likely to experience physical intimate partner violence, and 2.5 times more likely to experience sexual intimate partner violence.<sup>23</sup> People with disabilities also face high rates of violence.<sup>24</sup> In 2010, 39% of women raped in the 12 months preceding the survey had a disability at the time of the rape.<sup>25</sup>

Finally, workers in low-wage jobs, including undocumented immigrants, women, and people of color—some of the same workers who face higher risks of experiencing violence and the greatest barriers to accessing help<sup>26</sup>—are less likely to have access to paid time away from work than

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[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).

<sup>20</sup> LEEMIS, *supra* note 2, at 7; *see also* André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, NAT'L INST. OF JUST. (June 1, 2016), <https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-and-men> (finding over 80% of American Indian and Alaska Native women and men have experienced violence in their lifetime).

<sup>21</sup> *Intimate Partner Violence and Sexual Abuse Among LGBT People*, WILLIAMS INST. (2015), <https://williamsinstitute.law.ucla.edu/publications/ipv-sex-abuse-lgbt-people/> (describing how most studies find a lifetime rates of intimate partner violence among LGBT people as high or higher than the population as a whole).

<sup>22</sup> JIERU CHEN, ET AL., *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON VICTIMIZATION BY SEXUAL IDENTITY 17* (2023), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualIdentity.pdf>.

<sup>23</sup> Sarah M. Peitzmeier, et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-Analysis of Prevalence and Correlates*, 9 AM. J. PUB. HEALTH 1 (2022).

<sup>24</sup> Mónica Miriam García-Cuéllar et al., *The Prevalence of Intimate Partner Violence against Women with Disabilities: A Systematic Review of the Literature*, 45 DISABILITY & REHAB. 1 (2023).

<sup>25</sup> Kathleen C. Basile, et al., *Disability and Risk of Recent Sexual Violence in the United States*, 106 AM. J. PUB. HEALTH 928 (2016).

<sup>26</sup> NANCY SMITH & CHARITY HOPE, *HELPING THOSE WHO HELP OTHERS: KEY FINDINGS FROM A COMPREHENSIVE NEEDS ASSESSMENT OF THE CRIME VICTIMS FIELD 20–24* (2020) [https://reachingvictims.org/wp-content/uploads/2020/06/ACCESS-2020\\_NRCRV\\_NEEDSREPORT\\_6\\_5\\_20.pdf](https://reachingvictims.org/wp-content/uploads/2020/06/ACCESS-2020_NRCRV_NEEDSREPORT_6_5_20.pdf) (discussing barriers to accessing assistance); *see also* *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, HUM. RTS. WATCH (May 15, 2012), <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrantfarmworkers-us-sexual-violence-and> (describing how farm worker women face high rates of on-the-job sexual harassment, abuse, and domestic violence).



higher-wage workers.<sup>27</sup> Disproportionate experiences of violence, especially without paid safe leave, beget further economic marginalization. Therefore, by supporting our economies' most vulnerable workers, paid safe leave will advance economic equity.

#### 4. *Paid Safe Leave Is Good for Business and the Economy.*

Ensuring that survivors of violence have access to safety and healing also benefits the economy as a whole. Violence creates barriers to successfully applying for work, keeping a job, or completing an education or training program, which leaves many qualified and hardworking survivors out of the workforce entirely. For employed survivors, every year an estimated eight million days of paid work are lost by survivors of intimate partners, approximately 32,114 full-time jobs.<sup>28</sup> This has consequences not only for survivors and their families but for our whole economy. A 2017 study estimated that rape alone cost the U.S. economy more than \$1.6 trillion in lost productivity.<sup>29</sup> By creating pathways to remain in the workforce and adequately support survivors of violence, the American economy will reduce lost productivity and retain talented and innovative workers.<sup>30</sup>

## II. State Laws Provide Lessons for a Federal Program.

In crafting a federal program, policymakers should turn to state programs for lessons. States across the country are increasingly recognizing the importance of paid *safe* leave, although protections remain inconsistent and often inadequate nationwide.<sup>31</sup> Fifteen states and the District of Columbia provide explicit paid safe leave protections under their state-paid sick time laws, although exact coverage varies.<sup>32</sup> These laws guarantee covered employees the right to earn and use paid time off for sick and safe leave, typically up to around 40 hours per year.<sup>33</sup> In addition,

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<sup>27</sup> CHANTEL BOYENS, ET AL., URBAN INST., ACCESS TO PAID LEAVE IS LOWEST AMONG WORKERS WITH THE GREATEST NEEDS 2 (July 14, 2022), <https://www.urban.org/research/publication/access-paid-leave-lowest-among-workers-greatest-needs> (“Workers without access to paid leave are more likely than workers with paid leave to experience financial and material hardships.”).

<sup>28</sup> NAT’L CTR. FOR INJ. PREVENTION & CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 19 (2003), <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>.

<sup>29</sup> Cora Peterson, et al., *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 AM. J. PREVENTIVE MEDICINE 691, 691 (2017).

<sup>30</sup> Andrea Borchers et al., *Employment Maintenance and Intimate Partner Violence*, 64 WORKPLACE HEALTH & SAFETY 469 (2016) (describing how work and intimate partner violence are tangled and how supportive workplaces can help untangle the abuse from work and allow survivors to continue employment).

<sup>31</sup> Many Americans do not have access to any paid time off, let alone paid safe time, to escape abuse or recover from violence. As of March 2023, 78% of all private sector workers had access to paid sick leave—in other words, more than one in five workers are excluded. *Table 6. Selected Paid Leave Benefits: Access*, BUREAU OF LAB. STATS., <https://www.bls.gov/news.release/ebs2.t06.htm> (last visited Jan. 16, 2024). Among part-time workers, half had no paid sick leave. *Id.* Among the lowest paid 10% of private sector workers, more than 60% had no paid sick leave. *Id.*

<sup>32</sup> Those states are Arizona, California, Colorado, Connecticut, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington State. *Interactive Overview of Paid Sick Time Laws in the United States*, A BETTER BALANCE, <https://www.abetterbalance.org/paid-sick-time-laws/>, (last visited Jan. 16, 2024). Cities like Chicago, Los Angeles, and Philadelphia also have paid sick leave laws that include safe leave. *Id.*

<sup>33</sup> *See id.*; e.g., CAL. LAB. CODE §§ 245–249.

Maine, Nevada, and Illinois have passed laws allowing covered employees to earn and use limited paid time off for any purpose, which can include safe leave needs.<sup>34</sup>

For more extensive needs, six states provide, or will provide in the coming years, paid safe leave protections for some survivors through their state paid family and medical leave laws, which generally provide several weeks of benefits through social insurance systems.<sup>35</sup> These six states also have paid sick time or paid time off laws, such that workers in those states have additional important protections.<sup>36</sup> These states provide an example of how to include survivors of gender-based violence in a broader system of workplace protections.

In addition, some states have laws that guarantee the right to *unpaid* leave in connection with various forms of violence, especially domestic violence. These protections, while a first step, fail to recognize the critical need for survivors to maintain their income while escaping abuse. Unpaid leave is not a realistic option for most of the survivors we work with who are transitioning to a situation where they are suddenly the only source of income and support for themselves and their children.

Many of these laws also require burdensome “certifications” or proof of violence from law enforcement agencies, which ignore the reality that many survivors do not trust or want to seek assistance through the criminal justice system.<sup>37</sup> Reporting rates are especially low for sexual violence—nearly 8 in 10 sexual assaults are not reported to law enforcement.<sup>38</sup> Mandating burdensome documentation also creates barriers to survivors accessing benefits quickly, which is critical to ensuring their safety at a particularly vulnerable juncture. Most states also have laws guaranteeing some form of unpaid leave or job protection for crime victims or witnesses,<sup>39</sup> but these laws are often limited to very specific actions in criminal legal system, such as responding to a subpoena.<sup>40</sup> Finally, while crime victim’s compensation (CVC) is theoretically available to survivors of crimes in some cases to cover lost wages,<sup>41</sup> it is often inaccessible. Many survivors are ineligible because they do not report their crime or report too late to qualify,<sup>42</sup> and survivors

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<sup>34</sup> 820 ILL. COMP. STAT. § 192/1 – 192/99; 26 ME. REV. STAT. § 637; N.V. REV. STAT. § 608.0197.

<sup>35</sup> New Jersey, Connecticut, Colorado, and Oregon already provide paid family and medical leave benefits, including for safe time. NAT’L P’SHIPS FOR WOMEN & FAMS., STATE PAID FAMILY & MEDICAL LEAVE INSURANCE LAWS 3-5, (2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/state-paid-family-leave-laws.pdf>. Benefits will begin in 2026 in Minnesota. *Id.* at 2. Maine will provide safe leave for all survivors of violence through their new paid family leave law starting in 2026. 26 ME. REV. STAT. § 850-A.

<sup>36</sup> See LEGAL MOMENTUM & FUTURES WITHOUT VIOLENCE *supra* note 1, at 16–21, 46–47, 55–56, 69–72.

<sup>37</sup> See, e.g., N.Y. EXEC. LAW § 296(22)(c)(5) (requiring documentation of domestic violence in the form of a police report, court order of protection, other evidence from the court or prosecuting attorney, or documentation from a medical professional, domestic violence advocate, health care professional, or counselor).

<sup>38</sup> ALEXANDRA THOMPSON & SUSANNAH N. TAPP, BUREAU OF JUST. STAT., CRIMINAL VICTIMIZATION, 2022, at 6 (2023), <https://bjs.ojp.gov/document/cv22.pdf> (finding nearly 6 in 10 violent victimizations are not reported to law enforcement).

<sup>39</sup> See *supra* note 6 and accompanying text.

<sup>40</sup> E.g., DEL. CODE ANN. tit. 11, § 9409.

<sup>41</sup> OFF. OF THE INSPECTOR GEN., REVIEW OF THE OFFICE OF JUSTICE PROGRAMS’ EFFORTS TO ADDRESS CHALLENGES IN ADMINISTERING THE CRIME VICTIMS FUND PROGRAMS (2019), <https://oig.justice.gov/reports/2019/a1934.pdf>.

<sup>42</sup> Morgan Kay, *New Resource: Learn How Your State Scores for Survivor Financial Security*, FREEFROM (May 11, 2021) <https://www.freefrom.org/2021/05/11/2021-5-11-new-resource-learn-how-your-state-scores-for-survivor-financial-security/>.

who do report are often unaware of their eligibility for compensation or face difficulty navigating the bureaucratic claims process.<sup>43</sup>

The expansion of state protections demonstrates a growing recognition of the urgent need for paid safe leave for survivors. However, the lack of consistent and accessible protections makes clear the need for comprehensive federal paid safe leave.

### III. Recommendations for Paid Safe Leave for All Workers Who Need It.

For the reasons discussed above, access to paid safe leave is critical to ensure that survivors maintain economic stability. Based on our extensive experience working with survivors of domestic violence, and advocating for their employment rights, we make the following recommendations.

#### 1. *Paid Safe Leave Must Protect All Survivors of Domestic Violence, Sexual Assault, and Stalking.*

We urge that safe leave include survivors of domestic violence, sexual assault, and stalking in paid safe leave. While paid leave is critical for all workers, survivors of gender-based violence acutely need paid leave to ensure safety without job loss. Moreover, it is important that in legislation, the definitions of “domestic violence,” “sexual assault,” and “stalking” are not drawn directly from criminal law definitions in order to ensure that cooperation with the criminal justice system is not required to utilize this leave,<sup>44</sup> and to ensure that victims of forms of abuse that may not be adequately captured by criminal laws, like coercive control,<sup>45</sup> are protected.<sup>46</sup>

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<sup>43</sup> *Id.* ALL. FOR SAFETY & JUST., HEALING FROM HARM: EXPANDING ACCESS TO VICTIM COMPENSATION 2 <https://allianceforsafetyandjustice.org/wp-content/uploads/2023/03/ASJ-VICTCOMPADDEND23F2.pdf>.

<sup>44</sup> According to the Department of Justice, in 2022, 21.4% of rapes/sexual assaults were reported to the police. THOMPSON & TAPP, *supra* note **Error! Bookmark not defined.**, at 6. Additionally, 53.8% violent crimes characterized by domestic violence, and 51.5% violent crimes characterized intimate partner violence are reported to the police. *Id.* In 2019, 29% of stalking victims reported the stalking to the police. RACHEL E. MORGAN & JENNIFER L. TRUMAN, BUREAU OF JUST. STAT., STALKING VICTIMIZATION, 2019, at 4 (2019), <https://bjs.ojp.gov/content/pub/pdf/sv19.pdf>.

<sup>45</sup> Coercive control refers to behaviors that do not involve physical violence but are nonetheless meant to dominate, isolate, degrade, and control. Courtney K. Cross, *Coercive Control and the Limits of Criminal Law*, 56 U.C. DAVIS L. REV. 195, 197–98 (2022). Often, the tactics involved do not violate criminal law. *Id.* at 198.

<sup>46</sup> For example, for the purpose of victim services, the Violence Against Women Act defines domestic violence, in part, to include:

the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

- (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) shares a child in common with the victim; or
- (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



## 2. *Paid Safe Leave Must be Job-Protected and Subject to Anti-Retaliation Protections*

Additionally, safe leave must be expressly job-protected so that the employee has the right to return to the same or an equivalent job at the end of the leave<sup>47</sup> and workers who take safe leave should be protected from employer retaliation for taking time off.<sup>48</sup> These protections are especially important for survivors from communities that already face higher levels of discrimination in the workplace, like women of color.<sup>49</sup> Survivors should not be terminated or penalized for requesting or taking safe leave.

## 3. *Paid Safe Leave Should Be Available for a Broad List of Purposes Connected to the Abuse or Violence.*

Next, the list of permissible purposes for the use of safe leave should be broad. We recommended avoiding an enumerated list of possible uses for safe leave, in favor for broad language that permits the use of safe leave for any need connected to the domestic violence, sexual assault, or stalking. Alternatively, we recommend ensuring that the language is clear that any enumerated list of possible accommodations is non-exhaustive.<sup>50</sup> If a list is enumerated, it should include:

- Seeking or receiving medical and/or mental health care, including counseling, for injuries or disability caused to a victim or child;
- Participating in safety planning, including securing temporary or permanent relocation, or steps to secure an existing home (e.g., packing, moving, securing childcare, or enrolling a child in a new school);
- Seeking or receiving services from a victim services organization or advocate (e.g., domestic violence shelter or rape crisis center);
- Seeking assistance from an attorney or legal services provider, or attending, participating in, or preparing for administrative, civil, or criminal legal proceeding (e.g., meeting with law enforcement or prosecution, attending court to seek an order of protection);
- Filing a complaint with or cooperating with law enforcement;

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<sup>47</sup> For example, Colorado's Paid Family and Medical Leave Insurance Program provides that an eligible individual "shall be entitled, upon return from that leave, to be restored by the employer to the position held by the covered individual when the leave commenced, or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment." COLO. REV. STAT. § 8-13.3-509(1); *see also* 29 U.S.C. § 2614(a)(1) (providing that any eligible employee who takes FMLA is entitled, on return from leave "(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment," albeit with exceptions).

<sup>48</sup> For example, under the FMLA it is unlawful for an employer "to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under" the act or "to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by" the act. 29 U.S.C. § 2615; *see also* COLO. REV. STAT. § 8-13.3-509(3)-(4) (providing protection from interference with rights and "retaliatory personnel actions").

<sup>49</sup> Desta Fekedulegn, et al., *Prevalence of Workplace Discrimination and Mistreatment in a National Sample of Older U.S. Workers: The REGARDS Cohort Study*, 8 SSM POPULATION HEALTH 100444.

<sup>50</sup> *See, e.g.*, N.Y. EXEC. LAW § 196-b(4)(a)(iii) (enumerating seven reasons for which victims may take leave, including "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").

- Addressing needs arising from economic abuse or sabotage by their partner (e.g., meetings at banks); or
- Other steps necessary to protect or restore the survivor’s safety, physical, mental, emotional, and economic well-being, or the well-being of a child (i.e., a catchall category).

A federal paid leave program should encompass the broad range of reasons for which survivors need to access leave.

*5. Paid Safe Leave Should be Available to Survivors Without Onerous Certification Requirements and Should Ensure Confidentiality.*

We recommend avoiding onerous requirements that survivors verify the abuse. To the extent employers are authorized to request verification documentation, a survivor should be able to “self-certify” by attesting to the fact that she is a survivor<sup>51</sup> and/or submit a broad range of documentation, including:

- A police or court related record from any related proceeding (e.g., family, civil, or criminal courts);
- Certification from a healthcare provider, victim services organization or advocate, mental health provider, clergy/cultural or religious provider, law enforcement or prosecutor’s office, attorney, or similar service provider; or
- Other corroborating evidence.<sup>52</sup>

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<sup>51</sup> For instance, Colorado regulations allow self-certification of survivors in its Paid Family and Medical Leave Insurance Program, specifying that for Safe Leave:

- A. To determine whether an individual is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse, for purposes of determining eligibility for safe leave, an individual need not prove that a court has determined that the individual was the victim of domestic violence, stalking, sexual assault, or sexual abuse.
- B. Benefits may be awarded based on the victim's good-faith attestation that the circumstances giving rise to the safe leave satisfy the elements of the offense.
- C. If an individual is granted safe leave based on their good-faith attestations, and is later found by a court not to have been a victim of domestic violence, stalking, sexual assault, or sexual abuse, benefits paid for the leave will not be considered an overpayment unless a court's findings show that the attestations were not in good faith.

*See* 7 Colo. Code Regs. 1107-3.4(8). Likewise, the New York City Earned Safe and Sick Time Act allows an employee to provide her own notarized letter explaining the need for safe time and specifies that the employer shall not require the details of the domestic violence or other violence suffered. N.Y.C. Admin. Code § 20-914(b)(2).

<sup>52</sup> For example, New York City’s Human Rights Law, related to its protections for survivors of domestic violence, provides that:

A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence.

To protect the confidentiality of survivors, the program, if part of a social insurance program, should only collect the information necessary to assess eligibility. Relatedly, it is important that the law include robust confidentiality provisions to ensure that anyone who receives information regarding a survivor's status as a victim of domestic violence, sexual assault, or stalking, or their residence or location, maintains confidentiality of the records and with respect to the survivor's status.

6. *Employers and Employees Must be Educated on the Law Around Paid Safe Leave.*

In our work, we see that all too often employers are unaware of state laws around employment protections for survivors of domestic violence, sexual assault, and stalking. Even if an employer has some awareness of the law, the employer may violate the law by requiring documentation beyond what the law requires or only accepting certain documentation. We therefore recommend specific training for employers, including separate requirements for supervisors and human resources professionals. Employees are often unaware of their rights as survivors, so education for employees and the public is also important,<sup>53</sup> and this education should be in accessible language and multi-lingual.

7. *Paid Safe Leave Should be Incorporated into a Broader, Robust Paid Leave Framework.*

Incorporating paid safe leave into a broader paid leave framework will limit bureaucratic complexity of enacting such leave and ease the administrative burden. This broader program should also encompass a worker's own serious health conditions, parental bonding, caregiving for seriously ill loved ones, and needs in relation to military deployment.

For paid leave to truly work for survivors, as well as for workers caring for family members, bonding with a child, or recovering from a serious health condition, it must truly cover all workers, including employees and independent contractors, part-time and full-time workers, and public and private sector workers, regardless of industry or employer size, and including workers who are often excluded from federal labor protections, like domestic workers and farm workers.<sup>54</sup> It should also ensure a wage replacement rate that is high enough that workers—especially low-wage workers—can afford to use the benefit.<sup>55</sup>

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N.Y.C. ADMIN CODE § 8-107(27)(c).

<sup>53</sup> See e.g., S7996, 2023-2023 Leg. Sess. (N.Y. 2024), <https://www.nysenate.gov/legislation/bills/2023/S7996> (incorporating training on workplace protections for victims of domestic violence, sex offenses, and stalking into existing sexual harassment training requirements).

<sup>54</sup> If Congress were to adopt a Paid Leave program mimicking FMLA eligibility, only 60% of the workforce would be eligible for the program. KALI GRANT, ET AL., THE PAID FAMILY AND MEDICAL LEAVE OPPORTUNITY: WHAT RESEARCH TELLS US ABOUT DESIGNING A PAID LEAVE PROGRAM THAT WORKS FOR ALL 11 (2019), [https://www.georgetownpoverty.org/wp-content/uploads/2019/08/Georgetown\\_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf](https://www.georgetownpoverty.org/wp-content/uploads/2019/08/Georgetown_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf). Those excluded would be disproportionately low-wage workers, women, and people of color. *Id.*

<sup>55</sup> ABT ASSOCIATES, EMPLOYEE AND WORKSITE PERSPECTIVES OF THE FAMILY AND MEDICAL LEAVE ACT: RESULTS FROM THE 2018 SURVEY 45 (2020) [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHI\\_FMLA2018SurveyResults\\_FinalReport\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHI_FMLA2018SurveyResults_FinalReport_Aug2020.pdf) (finding that not being able to afford to take leave was the top reason workers did not utilize FMLA); GRANT,

Finally, a federal paid leave program should include an inclusive family definition,<sup>56</sup> allow intermittent and incremental leave, and guarantee at least twelve weeks of paid leave. Extensive research has shown that enacting this sort of paid leave program is good for health,<sup>57</sup> businesses,<sup>58</sup> and the economy.<sup>59</sup>

#### IV. Conclusion

Paid leave should be a universal program guaranteed to all working people, who deserve the peace of mind of knowing that paid leave will be there when they need it. For survivors of gender-based violence, it provides options: ways to find safety, time to maintain their economic security, and the chance to find healing. Survivors, who have already faced immense trauma, should not be forced to make a choice between personal and family well-being or financial stability.

Thank you for the opportunity to provide this response. If you have any questions, please contact Seher Khawaja at [skhawaja@legalmomentum.org](mailto:skhawaja@legalmomentum.org) and Maria McCabe at [mmccabe@legalmomentum.org](mailto:mmccabe@legalmomentum.org).

Respectfully submitted,

Legal Momentum, The Women's Legal Defense and Education Fund

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ET AL., *supra* note 54, at 26–27 (describing studies of states with Paid Family Leave where low wage-replacement rates led to low program take-up). One strategy for ensuring that low-wage workers can afford to take paid leave while keeping program costs down is to adopt progressive wage replacement, where lower-paid workers receive wage replacement at a higher percentage of their usual income than higher-paid workers. *Id.*

<sup>56</sup> An inclusive family definition will ensure that workers can care those they consider family, regardless of legal or biological relationship. For more information about inclusive family definitions, see A BETTER BALANCE & FAMILY VALUES @ WORK, FAMILY MATTERS: GUIDE TO DEFINING FAMILY INCLUSIVELY IN WORKPLACE LEAVE LAWS AND POLICIES (2020), <https://www.abetterbalance.org/resources/family-matters-guide-to-defining-family-inclusively-in-workplace-leave-laws-and-policies/>.

<sup>57</sup> *E.g.*, Natalie H. Brito, et al., *Paid Maternal Leave Is Associated with Infant Brain Function at 3 Months of Age*, 93 CHILD DEV. 1030 (2022) (suggesting an association between paid parental leave and more mature brain function in infants).

<sup>58</sup> *E.g.*, Benjamin Bennett, et al., *Paid Leave Pays Off: The Effects of Paid Family Leave on Firm Performance* 15–16 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27788, 2021), [https://www.nber.org/system/files/working\\_papers/w27788/w27788.pdf](https://www.nber.org/system/files/working_papers/w27788/w27788.pdf) (finding paid family leave improves business performance).

<sup>59</sup> *E.g.*, SARAH JANE GLYNN, U.S. DEP'T OF LAB., THE COST OF DOING NOTHING, 2023 UPDATE: THE PRICE WE STILL PAY WITHOUT POLICIES TO SUPPORT WORKING FAMILIES 2 (2023), <https://www.dol.gov/sites/dolgov/files/WB/paid-leave/CostofDoingNothing2023.pdf> (finding that if women's labor force participation were the same in the United States as it is in Germany and Canada, there would be more than \$775 billion in additional annual economic activity).