

# Understanding Your Rights as an Employee and Survivor of Domestic Violence, Sexual Assault or Stalking in New York

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Being a victim of domestic violence, sexual assault or stalking can impact every facet of someone's life—that can often include their job, at a time when financial stability is critically important. New York State and localities within the state have important protections for survivors aimed at ensuring they are not unfairly pushed out of their jobs and to ensure they have access to time away from work or job accommodations so they can address issues related to the abuse and maintain their safety while at work. Below are answers to some common questions about the rights of survivor-employees in New York and information about how to take action or get further assistance to assert those rights.

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**I am a survivor of domestic violence, sexual assault or stalking in New York. I'm afraid that if my employer finds out I will be treated differently or I won't be hired at a new job. What are my rights?**

Under **New York State law**, an employer cannot discriminate against an employee or prospective employee because they are a victim of domestic violence. Specifically, this means that an employee cannot refuse to hire or employ someone or fire an employee and cannot discriminate in compensation or in the terms, conditions or privileges of employment against a victim of domestic violence. For these protections to apply, the employer needs to have been informed of the employee's status as a victim of domestic violence.

Counties or localities within New York State may have greater protections than state law. For example, under **New York City law**, the same protections exist but are extended to actual or perceived victims of domestic violence, sexual assault or stalking.

**What if I need to take time off work or make changes to my job so I can keep my job and stay safe?**

Under **New York State law**, an employer must allow an employee reasonable time off as an accommodation for domestic violence if it is to be used 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.

Counties or localities within New York State may have greater protections than state law. For example, under **New York City law**, an employer must provide what is called a reasonable accommodation based on an employee's status as a victim of domestic violence, sexual assault or stalking. If an employee requests an accommodation the employer is required to engage in a cooperative dialogue as part of the process of considering the request. An employer can deny a requested reasonable accommodation only if it would cause the employer an undue hardship. An accommodation can be anything that does not place an undue hardship on the employer and addresses the employee's concerns relevant to domestic violence, sexual assault or stalking so the employee can satisfy the essential requisites of their job. This might be, for example, a shift or job location change, removing identifying information from an employer's public-facing website, changing work email/phone number, time off to address issues related to the domestic violence, sexual assault or stalking.

### Would I need to provide documentation to my employer if I need a reasonable accommodation?

Under both **New York State law** (and **New York City**) law an employer can request documentation attesting to the employee's status as a victim of domestic violence (or additionally, in New York City, as a victim of sexual assault or stalking). This can be a police report; a protective order; evidence from a court or prosecutor indicating the employee appeared in court; or documentation from a medical professional, victim advocate, health care provider, or counselor indicating that the employee or their child was undergoing counseling or treatment for physical or mental injuries related to the abuse. (Additionally, in New York City this certification can also come from an attorney or member of the clergy.)

### What other time off might I be eligible to take off from work to address needs related to domestic violence, sexual assault or stalking?

**Sick Leave:** **Under New York State law** and **New York City law**, employees are entitled to sick leave to be accrued at a rate of 1 hour for every 30 hours worked. Whether the sick leave is paid or unpaid and the total amount of sick time an employer must provide depends on the type of employer.

- An employer with less than five employees and a net income \$1 million or less must provide 40 hours of *unpaid* sick leave per year
- An employer with less than five employees and a net income over \$1 million must provide 40 hours of *paid* sick leave per year
- An employer with 5 to 99 employees must provide 40 hours of *paid* sick leave per year
- An employer with more than 100 employees must provide 56 hours of *paid* sick leave per year
- Additionally, in New York City, employers with one or more domestic workers (e.g., house cleaner, childcare provider) must provide up to 40 hours of *paid* leave each calendar year and employers with 100 or more domestic workers must provide up to 56 hours of *paid* leave each calendar year.

**Sick leave can be used for:** mental illness, injury, diagnosis, care and preventative medical care for

the employee or a covered family member or for absences related to domestic violence, sexual assault, stalking or human trafficking.

**Crime Victim Leave:** Under **New York State law**, it is a crime for an employer to penalize or fire an employee who is a victim of a crime (someone named as a victim of a charged criminal offense or who receives a subpoena to appear at a criminal proceeding as a witness) if they take time off to appear in court as a witness, to consult with the prosecutor's office, or to obtain an order of protection. The employee must notify their employer prior to the day they must be absent. Also, **New York State law** entitles a crime victim to assistance from law enforcement or prosecutors' offices in informing their employer that they are cooperating with a criminal prosecution and need leave from work to do so. The crime victim must request this assistance from a law enforcement agency or prosecutor's office.

**Employer leave policies:** You may also be eligible to take time off under your employer's own policy which may afford vacation time, sick time, personal days, etc.

**Disability leave laws:** If you are under the care of a medical provider for injuries sustained as the result of domestic or sexual violence you might qualify for wage replacement for time away from work under disability laws.

**Family and Medical Leave Act (FMLA):** The FMLA, which affords job-protected unpaid leave for a severe medical condition, may be applicable in individual circumstances.

### How do I talk to my employer about needing time off or an accommodation to stay safe?

Many times employers are not fully aware of your rights as a victim of domestic violence, sexual assault or stalking. It is not your responsibility to ensure your employer understands their obligations but it can be helpful to be prepared to share basic information when making your request. Some things you may consider before and during conversations with your employer:

- Check any employee handbooks or policies to see if there is a particular person who handles such requests or if your employer has a specific policy related to employees who are victims of domestic violence, sexual assault or stalking.
- The information in this guide can be a helpful starting point if your supervisor/employer does not immediately acknowledge understanding the rights you have as outlined in the above protections.
- Be prepared with the specific leave or accommodation request you are making. If your employer does not grant the request they must have a conversation with you during which you can explore together other available options that would keep you safe.
- Follow up any verbal conversation in writing.
- Keep copies of all documentation that you provide.
- Inquire about who will have access to information you provide about your status as a victim of domestic violence, sexual assault or stalking and how your employer will keep the information confidential.

### What if I need to leave my job due to domestic violence? Can I collect unemployment insurance?

- Generally, unemployment insurance is not available to employees who voluntarily leave or resign from their employment. However, in New York State, if an employee leaves their job because of circumstances directly resulting from domestic violence they can still qualify for unemployment benefits by showing “good cause” for quitting. Documentation of domestic violence may be required in order to show “good cause.” 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>.

### Where can I seek support to assert my rights?

- **Contact Legal Momentum or a Legal Advocate:** The Syms Legal Momentum Gender Equality Helpline is available to provide information and assistance, and limited legal representation, for those who have experienced discrimination on the basis of their status as a survivor of domestic violence, sexual assault or stalking. Contact our Syms Legal Momentum Helpline at **1-800-649-0297**, [Help@LMHelpline.org](mailto:Help@LMHelpline.org), or <https://www.legalmomentum.org/get-help-form>.
- **File an Administrative Complaint:** You can do this on your own or with the help of a lawyer. The following agencies have authority to investigate and enforce the laws described above:
  - **New York State Division of Human Rights:** You can choose to report discrimination by filing a complaint: <https://dhr.ny.gov/complaint>
  - **Local equal employment enforcement agency:** see your city or county’s local enforcement agency. Within New York City, you can choose to report discrimination to the New York City Commission on Human Rights: <https://www.nyc.gov/site/cchr/enforcement/enforcement.page>
- **File a lawsuit:** Consult an attorney to discuss your options for filing a lawsuit. Note that there are strict timelines and deadlines for lawsuits. Additionally, lawsuits can be complicated, costly and time-consuming.
- **Contact the Office of the NYS Attorney General:** The New York State Office of the Attorney General investigates complaints, including pay equity complaints, and prosecutes cases alleging a pattern or policy of illegal behavior that affects many people. If you believe that you or other employees are experiencing rights violations by the same employer, you can contact the AG’s office by filing a complaint with the Taskforce for Workers’ Equality: **(212) 416-8700**, [TaskForceforWorkersEquality@ag.ny.gov](mailto:TaskForceforWorkersEquality@ag.ny.gov), or [ag.ny.gov/labor-complaint](https://ag.ny.gov/labor-complaint).