

EMPLOYMENT DISCRIMINATION AGAINST ABUSED WOMEN

Were you fired, demoted, suspended, or forced to quit your job after your employer learned you were in an abusive relationship or a victim of a sexual assault or stalking? Are you being sexually harassed at work by the abuser? Have you been sexually assaulted at work?

*Sometimes when an employer learns that an employee is a survivor of domestic or sexual violence, the employer reacts by discriminating against the survivor. This guide explains your rights if you have been sexually harassed or assaulted at work or have been fired, forced to quit, demoted, or harassed by your employer after your employer learned you were in an abusive relationship or the victim of sexual violence. Two kinds of laws that may apply are the laws concerning **sex discrimination** and **wrongful discharge**. These are discussed in this fact sheet.*

*There are also state and local laws that specifically make it illegal for employers to discriminate against victims of domestic or sexual violence. Legal Momentum's state law guide, *Employment Discrimination*, available at <http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml>, provides information on these laws.*

1. What should I know about sex discrimination laws?

Sex discrimination laws require that employers treat male and female employees the same. Additionally, sexual harassment at work is a form of sex discrimination. Your employer may be violating sex discrimination laws if it permits domestic violence, sexual assault, or sexual harassment to occur in the workplace or if it treats abused women differently from male employees. Your employer may have a sex discrimination or sexual harassment policy that you can use to make an internal complaint about discrimination or harassment. You may also be able to file an administrative claim or lawsuit against your employer.

2. How can I tell if I was disciplined, fired, demoted, or forced to quit because of sex discrimination?

Employers must treat male and female employees the same. It may be sex discrimination if your employer treats you differently from people of the opposite sex because you are a survivor of domestic or sexual violence.

Examples of employer actions that may be sex discrimination:

- Your abusive partner works with you, and your employer fires you or writes you up because of the abuser's actions but does nothing to the abuser.
- Your employer refuses to discipline the abuser or perpetrator for violence he committed at work.

- Your employer fires you or penalizes you for taking time off to go to court in connection with the violence, but gives a male employee time off to go to court for similar matters, such as a child support hearing or a traffic ticket.
- Your employer makes derogatory comments about women who have been abused or about your being a woman who has been abused.
- Your employer fires you because you got a protective order.

Remember that for each of these claims you must show that your employer discriminated against you based on your sex.

3. What is sexual harassment?

Sexual harassment is a kind of sex discrimination. The law prohibits two kinds of sexual harassment: (1) *quid pro quo* and (2) hostile environment.

Quid pro quo (Latin for “this for that”) sexual harassment is when your boss or supervisor asks for a sexual favor in return for a benefit at your job.

Hostile environment sexual harassment is when the harassment is so severe or pervasive that it creates a sexually intimidating or abusive work environment. Hostile environment sexual harassment must be:

- based on sex (sexual conduct, sexual comments, or nonsexual conduct that is based on your gender);
- unwelcome (you must show that you do not enjoy the harasser’s attention and that you are not encouraging it); and either
- severe (one or more serious incidents that affect your job) or pervasive (a pattern or series of smaller incidents that are so widespread that you have trouble doing your job as a result).

4. When is workplace harassment sexual harassment?

If the abuser or perpetrator harasses you or is violent toward you at work *and* your employer knows about it and fails to take quick action to remedy the situation, you may have a legal claim for sexual harassment. Your employer could be liable for sexual harassment if the abuser or perpetrator is your supervisor, your coworker, or even if the abuser or perpetrator works elsewhere.

Examples of conduct by an abuser, stalker, or perpetrator that may be sexual harassment:

- Making so many sexual comments to you at work that it interferes with your ability to do your job.
- Sexually assaulting you at work.
- Repeatedly putting you down in front of other workers and making derogatory comments like “women are dumb” or “women can’t do this job.”

5. What can I do if I have been discriminated against or sexually harassed or assaulted at work?

1. Use your employer's complaint procedure for sexual harassment or discrimination.

Your workplace should have a complaint or grievance procedure for sex discrimination and harassment. First, find out whether your employer has a complaint procedure. If so, file a complaint. If your workplace does not have a formal policy, tell a supervisor or someone with authority to change the situation about the discrimination or the harassment. Resolving the problem internally will save you the time and effort of filing an administrative complaint or lawsuit. Also, even if you end up filing an administrative complaint or a law suit, you often must show that you filed an internal complaint before doing so. If you believe your complaint has not been handled satisfactorily by your employer, you may want to file an administrative complaint or lawsuit.

2. File an administrative complaint.

You can file an administrative complaint with the federal Equal Employment Opportunities Commission (EEOC) or with the government agency in your state or city that enforces state or city laws against discrimination. These governmental agencies generally have strict deadlines for filing a complaint. There is no charge for filing a claim with an administrative agency. Generally, you must file an administrative complaint before you file a lawsuit. To contact the EEOC, call (800) 669-4000, TTY (800) 669-6820 to be connected to the nearest EEOC District office.

3. File a lawsuit.

If you are not satisfied with the outcome of your workplace's complaint procedure or your administrative claim, or if you would like to file a lawsuit, you have the right to do so. Be aware that lawsuits take many years and are expensive and time consuming. It is not easy to find a lawyer who will take your case for free or for a low fee. There are strict deadlines for filing lawsuits and you may have to file an administrative claim first. There may also be specific requirements to prove your claim, such as showing that your employer was aware of the harassment and that you gave your employer the opportunity to resolve the claim.

*There are many ways in which to deal with sex discrimination and sexual harassment. Your first priority should be to protect your personal safety. You should not file a complaint if you feel that doing so will put you into danger. If you would like to discuss your situation with an advocate, contact **Legal Momentum** (see below for information).*

6. Do I have any other legal claims if I have been fired or forced to quit because of domestic or sexual violence?

You may have a claim for **wrongful discharge**. Most employees are employees at will. This means they can be fired for any reason or no reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason (see discussion of sex discrimination above).

Another exception is that in most states, an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state. For example, in some states an employer cannot fire someone because she attended jury duty or because she filed a claim for workers compensation. If an employer fires someone for a reason that violates public policy, the employee may have a claim for money damages, which is called a wrongful discharge or wrongful termination claim.

Many advocates believe that it is against public policy to fire an employee because she is a survivor of domestic or sexual violence. Lawyers are beginning to bring wrongful discharge claims for survivors of domestic or sexual violence who have been fired. Since the law in this area is changing and varies from state to state, it is important that you consult with a lawyer to discuss bringing this type of claim. If you believe you have been wrongfully discharged because of domestic or sexual violence, contact Legal Momentum.

If you were fired because you missed time from work to get a protective order, testify in a court proceeding related to the domestic or sexual violence, move to a safe location, or take other steps to address the violence, you may have additional claims. (See the **Employment and Housing Rights for Survivors of Abuse** guide entitled, “*Time Off To Participate in Criminal Proceedings*” and the state law guide “*Time Off From Work*.”) Additionally, there are federal, state and local laws that allow time off to heal from injuries. There are also laws that may apply if you have a disability or if you are a lesbian, gay, bisexual, or transgendered victim of violence, as well as laws that may protect victims from being discriminated against because of a prior arrest or conviction. Finally, if an injury occurs at work, you may be eligible for workers’ compensation. In most states, if you are eligible for workers’ compensation for a particular injury, you will not be able to bring a lawsuit against your employer for the same injury. Legal Momentum has “Know Your Rights” fact sheets and state law guides on all of these topics, available on our website at www.legalmomentum.org.

7. Consult the appropriate agency or an attorney about your rights.

This guide is intended to provide accurate, general information regarding legal rights relating to employment. Yet, because laws and legal procedures are subject to frequent change and differing interpretations, Legal Momentum cannot ensure the information in this guide is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your particular situation. If you need assistance in finding a lawyer, contact Legal Momentum, the bar association in your state, or your local legal services office, domestic violence coalition, sexual assault coalition, or service provider.

For more information or assistance, please contact 212-925-6635 or ehrsa@legalmomentum.org.

This guide is available for downloading at www.legalmomentum.org.

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