

Are you afraid that an abuser, stalker, or perpetrator of sexual assault may harm you or your children while you are at work? Are you being stalked, harassed, or threatened while you are at work? Are you considering quitting your job because you fear for your safety and that of your children?

If you are currently struggling to keep your job because of domestic or sexual violence, you may want to talk to your employer about your situation. For example, you can request changes to your job that will enable you to keep working, such as transfer to another work site or an escort to your car when you leave work each day. However, you may still feel too unsafe to stay at your job or you may lose your job. This guide describes the unemployment compensation system and how you may be able to obtain benefits.

1. What are unemployment insurance benefits?

Unemployment insurance is a program that provides temporary, partial wage replacement to formerly employed people who lose their jobs through no fault of their own. In general, to qualify for benefits you must be actively seeking work and must be available to work, but unable to find work. The requirement that you be “available to work” means that you must be physically and mentally able to work. In most states, if you are injured because of domestic or sexual violence and cannot work, if you are in hiding and/or staying at a shelter that prohibits you from working, or if you must care for your children full-time because they are too young or you do not have child care, you are not “available to work” and you may not be eligible for benefits. However, some states have exemptions to certain requirements for victims of domestic or sexual violence (see section 2 below, and contact a local attorney or **Legal Momentum** for more information).

Each state has its own rules to determine who is eligible, how much unemployment insurance compensation an applicant receives, and how long she can receive benefits. These rules generally consider such factors as the length of time you worked, how many hours you worked, how much money you made in your last job, and why you lost your job.

2. If my domestic or sexual violence situation makes it dangerous for me to continue working and I quit my job, can I collect unemployment benefits?

Eligibility for benefits—“good cause” requirement: Most states will pay benefits only to an employee who quits her job for “good cause.” What is considered “good cause” varies from state to state. Generally “good cause” is something that affects your ability to perform your job. In California, for example, “good cause” is defined as “a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.” Examples of “good cause” include an employee’s fear for her health and safety or an

employee’s need to accompany her spouse when he receives a new job in a different part of the state or country. If an employee quits her job without “good cause” she will be denied benefits on the basis that she “voluntarily quit” her job.

Domestic or sexual violence as “good cause”: Many states now recognize that an employee who is a victim of domestic violence has “good cause” to quit her job when she does so to protect herself, her family, or her co-workers. A few of these state laws also explicitly apply to sexual assault or stalking victims; some other states laws have definitions of “domestic violence” that are broad enough to cover sexual assault or stalking. As of January 2005, the following states have passed laws that expressly make victims of domestic violence who have quit their jobs due to domestic violence eligible for unemployment compensation in certain circumstances:

• Arizona	• California	• Colorado	• Connecticut
• Delaware	• District of Columbia	• Illinois	• Indiana
• Kansas	• Maine	• Massachusetts	• Minnesota
• Montana	• Nebraska	• New Hampshire	• New Jersey
• New Mexico	• New York	• North Carolina	• Oklahoma
• Oregon	• Rhode Island	• South Dakota	• Texas
• Washington	• Wisconsin	• Wyoming	

For more information on the laws in these states (and to determine whether additional states may have passed relevant laws), see Legal Momentum’s state law guide “Unemployment Insurance Benefits,” which is available at <http://www.legalmomentum.org/html/issues/vio/LEGALMOMENTUM-UI.pdf> and is frequently updated.

In states that do not explicitly list domestic violence, sexual assault, or stalking as a reason an employee would have “good cause” to leave her job, a domestic or sexual violence victim may still be eligible for benefits by proving that she quit her job for “good cause.”

Health and safety concerns as “good cause”: An employee who is forced to quit her job because of her fear for her health and safety at the workplace may be found to have “good cause” for quitting and may be eligible for benefits. Most states recognize that quitting your job because the work endangers your health, safety, or comfort is good cause for quitting. Examples of dangerous workplaces are those where an employee is required to work on a dangerous machine or in a work environment made stressful by sexual harassment, when the harassment continues in spite of complaints to supervisors. An employee who experiences physical or mental injuries due to workplace dangers may be found to have “good cause” for quitting her job and may collect unemployment benefits. So, for example, if the abuser is your coworker and he harasses you at work, and your supervisor ignores your complaints about the harassment, you may be eligible for benefits if you leave because you are afraid for your safety.

Court decisions in several states have addressed abused women's eligibility for unemployment benefits with mixed results. Please contact **Legal Momentum** if you are denied benefits.

3. Can I qualify for benefits if I am fired from my job?

In general, you are eligible for unemployment insurance if you are fired from your job for a reason *unrelated* to your work performance. For example, if you are fired because you are a victim of domestic violence, you are presumed eligible for unemployment insurance benefits in a few states, including Maine and New Jersey.

However, in most states you will probably be ineligible for unemployment benefits if you are fired for an act of “misconduct” as that term is defined in your state's unemployment insurance law. For example, if you are fired because you missed several days of work without an excuse or if you have failed to complete your job requirements, even if it is because of domestic or sexual violence, you may not qualify for benefits because of your “misconduct.”

On the other hand, if you are completing your job responsibilities and you have only missed days of work that were covered in a sick leave policy or you obtained permission to miss work according to a work policy, you may be eligible for benefits.

Again, each state has different laws, so it is important to contact the unemployment agency in your state to determine eligibility requirements.

4. How do I apply for unemployment insurance benefits?

To apply for unemployment insurance benefits, you must contact the agency in your state that administers the unemployment insurance program and ask to apply for benefits.

A representative from the agency will set up a time for you to come to their office for an interview or to conduct a phone interview. It is important to cooperate with the state agency and to provide them with detailed information about your job loss. For example, if you left your job because an abuser repeatedly threatened to come to your workplace and hurt you and your employer refused to help you, you should tell the state representative all of these details. It may seem that your domestic or sexual violence situation is irrelevant and you may decide you don't want to tell the state representative. However, this is very important information that can determine whether you will receive benefits. Be honest and carefully describe the details of your situation. Before the end of your interview, be sure to ask the state representative about any work training funds or relocation assistance that may be available to you.

5. What if I am denied unemployment insurance benefits?

If you apply for unemployment insurance benefits and you are initially denied benefits, you should appeal the decision. An appeal gives you another opportunity to present your argument for why you should receive benefits. If you receive a notice that you have been denied benefits, call the state department or agency that mailed you the notification and ask them about how to appeal the decision. It is important to do this immediately, because in most states, the time in which you may appeal the decision is limited.

6. What is the difference between unemployment and welfare benefits?

Unemployment, as described on the first page of this guide, is a program that provides temporary, partial wage replacement to formerly employed people who lose their jobs through no fault of their own. Welfare is a state-administered federal benefits program through which people may receive benefits for no more than five years in their lifetime in exchange for participating in programs such as welfare-to-work.

A survivor of domestic or sexual violence who has left or lost her job may be eligible for both welfare benefits and unemployment benefits, but she may not collect both at the same time. Each program has different eligibility requirements and limitations that must be considered before determining which benefits to collect.

Importantly, domestic or sexual violence survivors who have appealed a denial of unemployment insurance benefits and are awaiting a decision may be able to collect welfare benefits until the appeal is decided.

7. Consult the appropriate agency or 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.

Employment and Housing Rights for Survivors of Abuse is a project of Legal Momentum. This project was supported by Grant No. 98-WL-VX-0007 awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

This guide was originally developed in conjunction with Legal Aid Society of San Francisco/Employment Law Center.

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