

Ensure that Domestic Violence Survivors Access Benefits



What is it?

Domestic violence follows its victims to work and can have an enormous impact on their ability to retain a job. Survivors of domestic violence who must leave their jobs because of the violence in their lives may be disqualified from receiving unemployment benefits if domestic violence is not considered good cause for leaving a job. Responding to this situation, some twenty-eight states and the District of Columbia have enacted specific provisions in their UI laws in the past decade that provide benefits to those who must leave a job due to domestic violence or stalking.



Key arguments in favor

Nearly all employed domestic violence survivors experience work-related problems as a result of their abuse. Ninety-six percent report some type of work-related problem due to the violence they suffer in their personal relationships. For example, a perpetrator may stalk a victim at her workplace—making harassing phone calls, waiting outside, or coming into the workplace and verbally or physically assaulting her. According to a series of studies, between 24 and 52 percent of domestic violence victims report that they lost a job due, at least in part, to domestic violence.

Unemployment insurance (UI) is needed to help domestic violence survivors maintain safety from their abusers. State UI laws can help battered women find and maintain safety for themselves and their children by requiring that job search requirements accommodate the safety concerns of domestic violence survivors.



Key arguments against and responses to them

Opponents say: Providing UI to domestic violence or stalking victims is costly. **Response:** There is considerable evidence demonstrating that the cost of providing unemployment insurance to victims of domestic violence has been insignificant (and much lower than opponents have frequently claimed). UI benefits are only available if domestic violence is the reason the victim had to leave a job. In Minnesota, for the twelve months from March 1, 2003 through February 19, 2004, there were 31 cases covered by its domestic violence unemployment law for a total cost of \$77,000. In New Hampshire in 2002, there were 13 domestic violence claimants who received about \$20,000 in UI benefits. North Carolina had 63 claims in 2002 (as of June, 2002), for a yearly cost of \$101,088. South Dakota just enacted its law in 2003. From July to December of that year, South Dakota paid four claims, totaling \$5400. In most states, benefits are not charged to an individual employer's account, but spread out among all of the employers in the state.

State Choices

29 States Provide UI to DV Victims

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 Carolina
South Dakota
Texas
Vermont
Washington
Wisconsin
Wyoming



Opponents say: It is inappropriate to use the UI fund for this purpose.
Response: The unemployment compensation system was designed in 1935 for workers who are attached to the labor force and who are unemployed through no fault of their own. Domestic violence victims who must leave work due to the violence fall within this purpose. Increased participation of women in the workforce as well as society's increased awareness and responsiveness to domestic violence requires that states update their good cause provisions to ensure that the purpose of UI can be fulfilled for domestic violence victims.

Which states do it?

Twenty-eight states and the District of Columbia explicitly provide UI benefits to women who lose their jobs as a result of domestic violence. The strongest provisions include stalking and sex offenses, provide flexible means by which individuals can prove violence, and "suitable work" rules that accommodate the specific needs of domestic violence victims. Washington State and Massachusetts provide good model laws for states to consider.



Model legislation

(A) DEFINITIONS — In this section:

1. "Domestic violence" means abuse committed against an employee or an employee's dependent child by:
 - a. A current or former spouse of the employee.
 - b. A person with whom the employee shares parentage of a child in common.
 - c. A person who is cohabitating with, or has cohabitated with, the employee.
 - d. A person who is related by blood or marriage.
 - e. A person with whom the employee has or had a dating or engagement relationship.

2. "Abuse" means:

- a. Causing, or attempting to cause, physical harm.
- b. Placing another person in fear of imminent serious physical harm.
- c. Causing another person to engage involuntarily in sexual relations by force, threat or duress, or threatening to do so.
- d. Engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror.
- e. Depriving another person of medical care, housing, food or other necessities of life.
- f. Restraining the liberty of another.

(B) ELIGIBILITY FOR UNEMPLOYMENT INSURANCE

1. An individual shall not be disqualified from receiving unemployment insurance benefits if the individual establishes to the satisfaction of the [director] that the reason the individual left work was

due to domestic violence, including stalking or a sex offense:

- a. The individual's reasonable fear of future violence at or en route to or from the individual's place of employment.
- b. The individual's need to relocate to another geographic area in order to avoid future violence.
- c. The individual's need to address the physical, psychological and legal impacts of violence.
- d. The individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of violence.
- e. Any other situation in which violence causes the individual to reasonably believe that termination of employment is necessary for the future safety of the individual or the individual's family.

2. An individual may demonstrate the existence of domestic violence, stalking or other sex offense by providing one of the following:

- a. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
- b. A police record documenting the abuse;
- c. Documentation that the abuser has been convicted of one or more of the offenses enumerated in [cite appropriate criminal law section];
- d. Medical documentation of the abuse;
- e. A statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted the individual in addressing the effects of the abuse on the individual or the individual's family; or
- f. A sworn statement from the individual attesting to the abuse.

3. No evidence of violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the [State agency] unless consent for disclosure is given by the individual.

(C) WORK SEARCH

Except for individuals who qualify for unemployment compensation benefits under [cite to section on violence victims and "good cause"], who shall register for work but who otherwise will not be required to actively seek work on a weekly basis.

For individuals who qualify for unemployment compensation benefits under [cite to section on violence victims and "good cause"] "suitable work" must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic violence, stalking or other sex offense.

Based on Massachusetts and Washington State laws.

References

U.S. GENERAL ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998).
Richard W. McHugh, Robin R. Runge, Rebecca Smith, Employment Law Center & Legal Aid Society, UNEMPLOYMENT INSURANCE AND DOMESTIC VIOLENCE: LEARNING FROM OUR EXPERIENCES, NATIONAL EMPLOYMENT LAW PROJECT (2002).

Violence against Women State Law Fact Sheet – Unemployment Insurance, LEGAL MOMENTUM, available at <http://www.legalmomentum.org/issues/vio/laws-ui.shtml>.