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Employment Rights of Domestic Violence Victims

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How New York State Provides

Domestic violence is a critical workplace issue. According to New York City-based Safe Horizon, the largest provider of services to victims of domestic violence in the country, one in five employed adults is a victim of domestic violence. See <http://www.safehorizon.org/safework/>. Nearly 64% of employees who are victims of domestic violence have indicated that their ability to work is affected by the violence. *Id.* Employers are said to incur nearly \$6 billion annually in health care expenses and lost productivity as a result of domestic violence. *Id.*

Economic Factors

As the New York State legislature has recently recognized, a domestic violence victim's capacity to escape an abusive relationship is often dependent on economic factors such as finding and keeping a job and gaining financial security and independence. See N.Y.A. A00755A, 2009-2010 Sess. (2009), available at <http://assembly.state.ny.us/leg/?bn=A00755>. Frequently, victims of domestic violence will need time away from work to meet with attorneys

or counselors, attend court hearings, arrange for alternative housing or recover from injuries. *Id.* However, out of embarrassment or fear of losing their jobs, domestic violence victims will often fail to inform their employers of the circumstances. *Id.* Accordingly, "it is not unusual for a victim of domestic violence to be terminated from his or her job or demoted because he or she needs time off [f] or flexible hours as a protective measure." *Id.*

Amending the NY Human Rights Law

On July 7, 2009, New York State responded to the issue of domestic violence in the workplace by amending its Human Rights Law to include "domestic violence victims" in the category of those persons protected from employment discrimination. See N.Y. Exec. Law § 292 and § 296 (hereinafter, the "DV Amendment"). According to New York's Division of Human Rights, the DV Amendment "further[s] the public policy of New York State by protecting victims of domestic violence from discrimination in employment so they may have the ability to deal with the unique circumstances of their lives

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and achieve financial independence from their abuser." See http://www.dhr.state.ny.us/pdf/trifold-domestic_violence.pdf.

As shown below, the DV Amendment significantly impacts the manner in which employers and employee victims will deal with the repercussions of domestic violence in the future.

The DV Amendment

New York's Human Rights Law already prohibits employers from discriminating against employees on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, genetic predisposition or carrier status, or marital status. See N.Y. Exec. Law § 296. The DV Amendment extends such protections to victims of domestic violence. *Id.* at (a)(1).

The DV Amendment defines a "domestic violence victim" as "an individual who is a victim of an act which would constitute a family offence pursuant to [N.Y. Family Ct. Act § 812]." See N.Y. Exec. Law § 292(34). A "family offence" includes an act of disorderly conduct, harassment, stalking, criminal mischief, menacing, reckless endangerment, or assault and attempted assault (as those terms are defined under the N.Y. Penal Law) that is committed between members of the same family or household. See N.Y. Family Ct. Act § 812.

Other States' Employment Rights for Domestic Violence Victims

Several states have enacted laws to protect the employment rights of domestic violence victims. See, e.g., Cal. Lab. Code §§ 230 & 230.1; Colo. Rev. Stat. § 24-34-402.7; Conn. Gen. Stat. § 54-85b; Fla. Stat. § 741.313; Haw. Rev. Stat. § 378-72; 820 Ill. Comp. Stat. 180/1-180/45; K.S.A. §§ 44-1131 & 44-1132; 26 Me. Rev. Stat. § 850; N.C. Gen. Stat. § 50B-5.5 & § 95-270(a); Or.

Rev. Stat. 659A. 270-.285; R.I. Gen. Laws § 12-28-10; and Rev. Code. Wash. § 49.76.030. However, the requirements of each state's laws vary significantly. For instance, North Carolina and Rhode Island protect employee victims only in connection with their efforts to obtain orders of protection. See N.C. Gen. Stat. § 50B-5.5 & §95-270(a), R.I. Gen. Laws § 12-28-10. By comparison, other states such as California, Hawaii, and Kansas include seeking support services, medical relief and provision of safe housing among the activities for which covered employees are protected. See Cal. Lab. Code §§ 230 & 230.1; Haw. Rev. Stat. § 378-72; and K.S.A. §§ 44-1131 & 44-1132. In addition, most states only protect employee victims from discrimination arising from having made a request for leave. See, e.g., Cal. Lab. Code §§ 230 & 230.1; Colo. Rev. Stat. § 24-34-402.7; Haw. Rev. Stat. § 378-72; and R.I. Gen. Laws § 12-28-10. However, Illinois includes a general employment anti-discrimination provision in addition to its section protecting leave requests by covered employees. See 820 Ill. Comp. Stat. 180/1-180/45.

While the laws above are intended to prohibit discrimination against employee domestic violence victims, many are limited to requests for leave. By contrast, the DV Amendment in New York protects employee victims from all forms of employment discrimination. Accordingly, the New York law imposes significantly greater requirements on employers in order to protect the employment rights of employee victims.

Implications for Employers with Operations in New York

The DV Amendment addresses the unique circumstances of domestic violence victims by making it unlawful for an employer to discriminate against victims of domestic violence in hiring, compensation, requests for use of leave, job advancement, or other employment

practices. See http://www.dhr.state.ny.us/pdf/trifold-domestic_violence.pdf. Employers are now prohibited from treating an employee who is a domestic violence victim differently from any other employee because of that employee's status as a domestic violence victim. *Id.* For example, if the employer's policies provide employees with time off for personal needs or family emergencies (e.g., paid time off, sick leave or medical leave), the employer may not deny a domestic violence victim the opportunity to use those same policies to take time off, for such things as meeting with lawyers or counselors, attending court appearances, finding new housing, attending doctors' appointments, or seeking other kinds of domestic violence assistance. *Id.*

The DV Amendment also prohibits employers from terminating an employee simply because the employee is a victim of domestic violence. *Id.* Thus, for example, an employer may not terminate an employee because the employee's abuser shows up at the workplace, the employee has obtained an order of protection, or the employee's abuser violates the order of protection or becomes abusive toward the employee in the workplace. *Id.* Instead, "the police should be called as with any other person who engages in misconduct in the workplace." *Id.* As is always the case under the Executive Law, employers are prohibited from taking retaliatory action against domestic violence victims for filing a complaint of discrimination. *Id.*

New York employers should also be aware that failing to comply with the requirements of the DV Amendment — or any aspect of New York's Human Rights Law — may result in civil penalties of up to \$50,000 or up to \$100,000 if the conduct was willful, wanton, or malicious. See N.Y. Exec. Law §297(4)(c)(vi).

Recommendations for Compliance

Employers with operations in New York State should immediately implement new workplace policies and procedures in order to ensure compliance with the DV Amendment. At a minimum, employers should consider taking the following measures:

1. Update all H.R. policies and procedures and employee handbooks to include victims of domestic violence as a category of persons protected from employment discrimination. As part of this process, review and revise, where appropriate, any procedures which may impact domestic violence victims. Examples may include procedures for requesting time off, anti-harassment and anti-discrimination procedures, or procedures for medical or family assistance. All revised policies should be explained and distributed to employees upon completion.
2. Familiarize yourself with the unique needs of domestic violence victims. Review the New York Division of Human Rights' guidelines for the "Employment Rights for Victims of Domestic Violence," available at <http://www.dhr.state.ny.us/>. Consider posting information related to services for domestic violence victims, including hotline numbers and contact information for organizations such as the New York State Office for the Prevention of Domestic Violence and the New York State Coalition Against Domestic Violence.
3. Train supervisors and managers on how to interact with domestic violence victims, how to recognize and respond to a domestic violence situation, and how to respond to a request for accommodation. Employers should also ensure that individuals involved in the recruitment process receive training regarding the requirements of the DV Amendment.
4. As domestic violence situations may present added safety concerns for the workplace, ensure that all safety

procedures and workplace violence policies are up-to-date and address domestic violence issues. Depending upon the specific circumstances in the workplace, employers may also wish to consider increasing safety measures such as by hiring additional security personnel or revising security procedures.

5. If your company operates in New York, be mindful that both federal and New York law offer workplace protections for domestic violence victims independent of the requirements imposed by the DV Amendment. Some examples of these protections include:

Time Off for Medical Care: Depending on the particular circumstances of the employer and the employee, domestic violence victims who require time off for medical or mental health care may have rights under the federal Family and Medical Leave Act and the disability and reasonable accommodation provisions of New York's Human Rights Law

"Other" Time Off Provisions: Pursuant to N.Y. Penal Law § 215.14, employers are prohibited from taking an adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, consult with a district attorney, or to obtain an order of protection.

Unemployment Insurance: Domestic violence victims may be entitled to receive unemployment insurance benefits pursuant to N.Y. Labor Law § 593, which defines as "good cause" a "voluntary separation" due to domestic violence. In addition, New York's Division of Human Rights has noted that "job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar [unemployment insurance] benefits."

Conclusion

In sum, the DV Amendment will significantly impact the way employee victims and employers respond to the repercussions of domestic violence. For employee victims, the DV Amendment provides legal protections to support their efforts to repair their lives and begin to achieve financial independence from their abusers. For employers with operations in New York, however, the DV Amendment requires careful attention to the special needs of employees who are victims of domestic violence and increased attention to safety issues in the workplace as a whole.

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