

Unemployment Insurance for Survivors of Domestic Violence

NELP

Fact Sheet for Advocates

Advocating for the working poor and the unemployed

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May 2002

UNEMPLOYMENT INSURANCE FOR SURVIVORS OF DOMESTIC VIOLENCE

Expanding Unemployment Insurance for Women,

Low-Wage & Part-Time Workers

By National Employment Law Project

Many victims and survivors of domestic violence, sexual assault, and stalking must leave work in order to protect themselves, their families, and their coworkers. A growing group of local and national advocates has encouraged making victims eligible for unemployment insurance (UI) benefits when they are forced to leave their jobs because of their fear for their safety and that of their families. These initiatives are part of a larger effort in states across the country to reform the unemployment insurance system to better meet the changing needs of today's workers.

Some facts about domestic violence, sexual assault, stalking, and

employment: One out of every four American women suffers physical abuse by an intimate partner at some point in her life. Ninety six percent of employed domestic violence (DV) victims in one survey stated that the domestic violence in their lives interfered with her ability to work. A woman may be harassed by threatening phone calls at work or may need to miss days of work because of injuries or attempts to seek legal remedies for the abuse. In the worst cases, a victim may be attacked by the perpetrator at work.

Rape, sexual assault, and stalking are aspects of domestic violence that may prevent a victim from maintaining employment. A perpetrator may stalk a victim at her workplace because it may be the only place he knows to find her. Stalking may include up to 20 phone calls a day, waiting outside her workplace in his car, or coming into the workplace and verbally or physically assaulting her. These experiences may also cause a victim to be forced to leave her employment to seek safety.

A survey of survivors of domestic violence found that abusive husbands and partners harassed 74% of employed battered women at work. Domestic violence caused 56% of them to be late for work at least five times a month, 28% to leave early at least five days a month, and 54% to miss at least three full days of work a month. One-quarter of battered women say they had to quit work at least partly due to domestic violence. One-half of women who survive sexual assaults say they had to quit work due to the assault.

What are the hurdles that survivors of violence face when they must leave work and apply for unemployment insurance? Workers are generally not able to qualify for unemployment insurance when they leave work “voluntarily,” unless they have “good cause” related to work. In many states, personal reasons cannot constitute “good cause” for leaving a job, so survivors of domestic violence and assault who must leave work to flee violence or protect themselves from violence and stalking may not qualify for unemployment insurance.

Even where domestic violence is “good cause” to leave work, women may not qualify for unemployment compensation benefits because they are not “able and available” to work as required by state unemployment laws; that is, they are moving, caring for small children, healing from injuries, residing in a safe house, in medical facilities or treatment, and unable to engage in an intensive search for work. In still others, survivors may need to refuse an offer of work because it interferes with achieving safety.

Which states permit survivors of domestic violence to quit work and receive unemployment insurance? Eighteen states have passed new laws that explicitly allow survivors of domestic violence to leave their jobs due to the violence. These are California, Colorado, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Washington, Wisconsin and Wyoming. In the 2001 and 2002 legislative sessions, bills have been introduced in Arizona, Georgia, Hawaii, Iowa, Maryland, New Mexico, North Dakota, Tennessee, Vermont, and West Virginia.

In three additional states, domestic violence is not a specific reason to justify leaving a job, but court decisions, rules, or agency policies allow DV survivors to receive unemployment insurance. These are Arkansas, Florida, and Pennsylvania. States that do not explicitly protect domestic violence survivors, but do permit personal reasons as valid reasons to leave work include Alaska, Arizona, Hawaii, Nevada, Ohio, South Carolina, Utah, and Virginia. In these states, court rulings or administrative policy changes could allow DV survivors to receive unemployment insurance. Even in those remaining states that still require some fault on the part of the employer for a worker to qualify for unemployment benefits, there is a strong case to be made that benefits should not be denied when the employer has failed to adopt adequate policies that address domestic violence and the workplace.

No state explicitly allows victims of sexual assault to receive benefits, though some states' definitions of “domestic violence” may be construed to include sexual assault and/or stalking.

What if the “work search” requirement interferes with a woman’s ability to protect herself? In some states, women may initially qualify for unemployment, but later not be considered eligible because they are not able to actively search for work. State laws often include burdensome work search requirements that may interfere with a survivor’s ability to get medical or legal help or find a safe place to live.

Two states, Massachusetts and Washington, have enacted legislation that helps a woman continue to receive compensation while she is seeking safety. In a letter to NELP in fall of 2000, the U.S. Department of Labor agreed that states can, consistent with federal law, change to their laws to liberalize their work-search requirements for survivors of domestic violence. Like Massachusetts and Washington, other states can simply require survivors of domestic violence to register for work, without engaging in extensive work search, and claimants may refuse job offers that interfere with their ability to get safe. In the 2002 legislative session, measures in Maryland and Hawaii offer similar protections.

Which states provide the best models for domestic violence unemployment insurance legislation?

The best models require a realistic level of proof of violence, cover both voluntary quits and discharges, and include victims of domestic violence, sexual assault and stalking, their children and their co-workers.

In Rhode Island, an individual is eligible for unemployment if she voluntarily leaves work due to circumstances directly resulting from domestic abuse and she 1) reasonably fears future domestic abuse at or en route to or from her workplace; 2) wishes to relocate to avoid future domestic abuse against her or her family; or 3) reasonably believes that leaving work is necessary for the safety of herself or her family. While documentation of abuse is required, the state is directed to keep that documentation confidential. R.I. Gen. Laws § 28-44-17.1 In New Jersey, a person is allowed unemployment both if she left work or if she is discharged from work under circumstances resulting from domestic violence. 1999 N.J. Laws 869. In Connecticut, an individual qualifies if she leaves work to protect herself from becoming a victim, as well as to flee actual violence. Conn. Gen. Stat. §31-236

The Massachusetts and Washington statutes provide model domestic violence legislation. The Massachusetts bill, passed in 2001, broadly covers victims in the situations covered by the Rhode Island and other laws, and includes training for agency personnel and provisions that accommodate a victim's need to find safety while she searches for work. The Washington statute is the only statute that explicitly covers victims of stalking as well as victims of domestic violence.

What is the cost of providing unemployment insurance to DV survivors? Most states that cover DV victims under their unemployment insurance laws have found that there are only a handful of claims each year. Connecticut is the only state to formally track DVUI claims. Between October 1, 1999 and April 1, 2001, Connecticut granted benefits to 47 domestic violence victims, with an average weekly benefit of \$397.00 and an approximate total cost of \$169,850.

To increase access to these benefits, states should consider training of claims adjudicators, such as that proposed in the attached model, so that victims of domestic violence are reliably identified. Advocates should also review their state law on confidentiality, so that claimants can be assured that information they provide to the unemployment agency will not be used to harm them later.

Who pays the cost? In nearly every state that has provided unemployment benefits to domestic violence survivors, the costs are borne equally by all employers. By contrast, an individual employer's account is normally charged when a former employee receives unemployment compensation.

Who can we call to help? The National Employment Law Project provides advice and support for policy makers and advocates relating to unemployment insurance. Contact Maurice Emsellem at (212) 285-3025, ext. 106 or e-mail at emsellem@nelp.org, Rick McHugh at rmchugh@nelp.org, or Becki Smith at (360) 534-9160, e-mail rsmith@nelp.org.

MODEL LANGUAGE ON DOMESTIC VIOLENCE AND UNEMPLOYMENT INSURANCE

(Model language is in regular type and explanations are in italics.)

1. Language on “good cause”

An individual shall be eligible for waiting period credit or benefits notwithstanding [cite to state law on voluntary quit and on discharge] if that individual voluntarily leaves work or is discharged due to circumstances directly resulting from domestic abuse, as defined in [cite to state law defining domestic abuse, sexual assault or stalking, if favorable], and the individual: (i) reasonably fears future domestic abuse at or on route to or from the individual’s place of employment; (ii) wishes to relocate to another geographic area in order to avoid future abuse against the individual, the individual’s family, or co-workers; (iii) reasonably believes that leaving work is necessary for the future safety of the individual, the individual’s family, or co-workers; (iv) is required to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence and sexual assault, or (v) reasonably believes for any reason related to domestic violence that termination of employment is necessary for the future safety of the individual, the individual’s family, or co-workers.

Adapted from Rhode Island, Connecticut, and Delaware laws.

2. “Able and Available”

Review state law on “able and available.” If requirements are more stringent than the federal requirements; i.e. than that the unemployment person register for work and certify that she is able and available to work on her weekly claim forms, then include language in the statute that says:

Except for individuals who qualify for unemployment compensation benefits under [cite to section on domestic 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.

3. Suitable work

For individuals who qualify for unemployment compensation benefits under [cite to section on domestic 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.

4. Training of unemployment agency personnel

The [state agency] shall establish and implement a training curriculum within the division of employment and training on or before [date], for the training of all employees of the division who interact with a claimant for the purpose of determining whether the individual’s unemployment claim is valid, including but not limited to service representatives, claims adjudicators, and review examiners, and the employees of one-stop career centers established pursuant to section 121(d) of the workforce development act of 1998, in the nature and dynamics of domestic violence, so that employment separations stemming from domestic violence are reliably screened, identified, and adjudicated and victims of domestic violence are able to take advantage of the full range of job services provided by the division and the one stop career centers,

including job training and extended benefits under *[cite to appropriate section of the law]*. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to domestic violence, including utilizing the staff of shelters for battered women in the presentation of the training.

The course of instruction shall be at least eight hours in length and shall stress the following topics:

- (1) the nature, extent and dynamics of domestic violence;
- (2) the ways in which domestic violence can interfere with an employee's ability to work or with an individual's ability to participate in job training;
- (3) the consequences of domestic violence in an employee's life;
- (4) steps employees may need to take to escape domestic violence;
- (5) effects on children as victims and witnesses of domestic violence;
- (6) methods for identifying victims and creating a climate conducive to disclosure;
- (7) legal rights and remedies available to victims of domestic violence; and
- (8) facilities available to victims of abuse, including victim compensation programs, emergency shelters, and legal advocacy programs.

The *[state agency]* shall take any such actions as may be necessary to determine the number of individuals each year who receive unemployment compensation benefits, including extended benefits under section 30 of this chapter, who qualified for benefits because they were either discharged, or left their employment, due to circumstances resulting from domestic violence, and shall submit a report of this information annually to *[a legislative committee]*.

5. Language on confidentiality

Federal law with respect to confidentiality of information submitted in connection with unemployment compensation claims is quite stringent. Claimants generally need not fear that a batterer would be able to get information about them directly from the agency. However, employers who might contest an unemployment compensation claim might have access to personal information in the context of the administrative hearing. Advocates should review their state law on confidentiality and compare it with the model language outlined below:

Confidentiality. Domestic violence and sexual assault raise critical needs for safety and privacy regarding information furnished to *[state agency]* by the claimant. While claims information is routinely classified as confidential, employers typically gain access to files for their employees in contested cases. For this reason, any information furnished by the claimant or her agents to the UI agency for the purposes of verifying a claim of domestic violence or sexual assault shall be kept confidential in accordance with

federal law. In addition, this information shall be kept confidential from the employ, unless the employer can establish that it has a legitimate need to question the veracity of the information, that the employer's need to see the information outweighs the claimant's personal privacy interests, and that the information is not available through other means. Disclosure shall be subject to the following additional restrictions;

- a) The claimant must be notified prior to any release of information,
- b) Any disclosure is subject to redaction of unnecessary identifying information such as the claimant's address;
- c) Further dissemination of any information disclosed to the employer is prohibited;
- d) Any further restrictions upon the employer's access, copying, as determined by *[state agency]* or the administrative law judge to whom the request for access is directed.