

Domestic Violence, Sexual Assault & Employment:

7 Important Facts About Your Workplace Rights

YOUR LEGAL RIGHTS

Keeping your job is an important part of safety planning as a domestic violence or sexual assault survivor. This fact sheet describes some of your rights to time off from work, reasonable accommodations in the workplace, a discrimination and harassment-free work environment, and unemployment insurance benefits if you leave your job. These rights can help you keep your job while caring for yourself and your family.

1. A termination that is unfair is not necessarily illegal.

Generally employers can terminate employees “at will,” meaning at any time for any reason. This fact sheet describes exceptions to the “at will” rule. Also, it is illegal for your employer to terminate, retaliate or discriminate against you:

- because of your race, sex, color, national origin, religion, gender, sexual orientation, gender identity, age, disability, pregnancy, medical condition, language (or accent), or marital status;
- in violation of a real or “implied” (you have a reasonable expectation of continued employment) contract;
- in retaliation for enforcing your own legal rights (such as filing a claim for unpaid wages); or
- because you have reported your employer to a government agency or to the police.

2. You are entitled to job-protected time off from work to go to court.

You are entitled to take job-protected but unpaid time off from work to comply with a subpoena, testify in a case, or go to court to obtain a temporary restraining order, restraining order, or any other type of judicial relief to protect yourself or your family from domestic violence abuse or sexual assault. Your employer cannot fire, retaliate or discriminate against you for taking this time off. Generally you are required to provide your employer with advance notice of your need to take time off. If you cannot provide advance notice, however, you are still protected for taking this time off if you provide proof to your employer that you are a domestic violence or sexual assault survivor.

3. You may be entitled to job-protected time off from work to obtain domestic violence or sexual assault services.

If you work for an employer with 25 or more employees you are entitled to take up to 12 weeks of job-protected but unpaid time off from work to obtain medical services, services from a domestic violence or sexual assault/rape crisis center, counseling or to participate in safety planning, including staying in a shelter or moving. Your employer cannot fire, retaliate or discriminate against you for taking this time off. Generally you are required to provide your employer with advance notice of your need to take time off. If you cannot provide advance notice, however, you are still protected for taking this time off if you provide proof to your employer that you are a domestic violence or sexual assault survivor.

4. You may be eligible for disability law protections and accommodations in the workplace.

If you have physical or mental health disabilities that were caused or exacerbated by domestic violence or sexual assault, you may be entitled to a workplace free of disability-based discrimination and harassment and may be eligible for workplace reasonable accommodations for your disability, including a reduced work schedule, a leave of absence from work, or a transfer to a vacant position. The California Fair Employment and Housing Act’s reasonable accommodation

and anti-discrimination provisions apply to employers with 5 or more employees, while the harassment provisions apply to employers with 1 or more employees.

5. Many workers can get 12 weeks of job-protected unpaid medical leave, with the right to return to work.

Under family/medical leave laws, you may be entitled to 12 weeks of job-protected but unpaid time off from work to care for a child, parent, spouse or registered domestic partner with a “serious health condition,” or to care for your own “serious health condition,” such as a condition that was caused or exacerbated by domestic violence abuse or sexual assault (or to “bond” with a newly born, adopted or foster child). Your employer must maintain your health benefits if you have them and must reinstate you to the same or an equivalent position when you return. To qualify:

- Your employer must have 50 employees within a 75-mile radius of your worksite;
- You must have worked at your job for at least one year; and
- You must have worked at least 1,250 hours during the previous 12 months.

Regardless of whether they meet the above employer-size or employment-length rules, workers who participate in the State Disability Insurance (SDI) Program are entitled to a maximum of six weeks of partial pay each year while taking time off from work to care for a seriously ill parent, child, spouse or registered domestic partner (or to bond with a new child). Additionally, California employees are entitled to use up to one-half of their annual sick leave time **to attend to the illness of a family member.**

6. You may be eligible for unemployment insurance if you quit because of domestic violence.

Generally, if you quit you are not eligible for unemployment insurance unless you quit with “good cause.” If you quit to protect yourself or your family from domestic violence abuse, you may have “good cause” to receive benefits. To avoid being disqualified, you must make all reasonable attempts to solve the problem before you quit. Notify your employer of your situation and ask for a transfer, leave of absence or accommodation. If your employer refuses or if these changes do not address your safety concerns (i.e., you must flee immediately), you may feel your only option is to quit.

7. Where can I get additional help or learn more about my rights?

Contact the **Domestic Violence and Employment Project** of the Legal Aid Society – Employment Law Center **toll-free at (888) 864-8335.**

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet 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 rights in your particular situation.

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For further information about your employment rights, call:

SURVIVE Project

Toll-free in California: (888) 864-8335 Outside California: (415) 593-0033

The SURVIVE is a Project of the Legal Aid Society – Employment Law Center (LAS-ELC). The LAS-ELC is a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

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