

# *Inside OSHA*

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## **Murray Bill Calls for DOL to Stem Domestic Violence, Excludes OSHA**

Senate workforce protection panel chair Patty Murray (D-WA) is pushing legislation that would give the Labor Department's wage and hour shop a role in addressing domestic violence affecting the workplace, but leaves OSHA out of the measure. GOP lawmakers are skeptical of Murray's proposal to get DOL involved in domestic violence, and an industry employment attorney argues there could be a statutory conflict if OSHA is not involved.

Industry lawyer Sue Willman said the reasonable accommodation title in the bill clearly deals with workplace safety and should be the responsibility of OSHA, echoing earlier testimony she gave before Murray's Senate Health, Education, Labor and Pension workforce protection subcommittee. The bill, the Survivors' Empowerment and Economic Security Act, introduced by Murray April 17 would require employers to give employees who are victims of domestic violence time off from work to appear in court, provide unemployment benefits, prevent employers and insurance providers from making hiring or coverage decisions based on a victim's abuse history, and ensure victims fleeing jobs to avoid danger are not prohibited from receiving welfare.

Murray introduced a different version of the bill in previous Congresses, including the Security and Financial Empowerment Act, which was introduced in the 109th Congress.

Willman, an employment attorney for the law firm Spencer, Fane, Britt and Browne, said that by forbidding employers from firing employees who are being or could be threatened at work from an abuser poses concerns about an employer's ability to keep their workplace safe. Willman, who has brought up this and other criticisms in earlier iterations of the bill, said abusers could pose threats to workers other than the abused.

Willman did not receive Murray's bill prior to the hearing, but delivered prepared testimony for the subcommittee based on the earlier Security and Financial Empowerment Act. Willman testified that there could be situations when an abuser may threaten to hurt or kill other employees for not sharing information about the whereabouts of the victim. The safety of these workers is compromised, Willman said, and employers should have the legal right to fire the victim for the sake of protecting the other employees.

Willman said such workplace safety issues regarding both victims and their surrounding employees should at least partly fall under OSHA's jurisdiction, and said there could be

a statutory conflict if OSHA is not involved. Despite her criticisms of previous versions of the bill, a source from Murray's office confirmed the current bill does not fall under OSHA jurisdiction.

In prepared opening remarks, Murray said the bill addresses economic factors that contribute to abuse.

“When domestic violence follows victims into the workplace, it reveals a key connection between safety and economic independence. For many victims of domestic violence, a steady paycheck is the only thing that keeps them from relying on an abuser. In fact, economic security and independence is the most accurate indicator of whether a victim will be able to stay away from an abuser,” Murray said. “[T]oo often, abusers try to undermine a victim's ability to work, harass their victims in the workplace, or worse.”

According to Murray, domestic violence leads to about 8 million missed work days every year nationwide, and up to 50 percent of victims lose their jobs every year.

Less than 30 percent of U.S. workplaces have formal policies or programs in place to address workplace violence including domestic violence, Murray said, with 4 percent of employers providing domestic violence training. Some companies, Murray said, fire workers dealing with domestic violence.

But Willman, herself a survivor of domestic violence, said many employers are leaders in the fight against domestic violence, and that legislation would push a “one size fits all” requirement that would put undue burden on businesses who may otherwise be willing to accommodate domestic violence victims on their own terms. Many employers are willing to provide time off for victims to attend domestic violence hearings, Willman said, adding that she has not seen evidence of employers refusing to assist victims in this regard.

“A legislative mandate is not warranted,” Willman said.

Johnny Isakson (R-GA), ranking GOP member of the subcommittee, said he wanted workplace rights for domestic violence victims, but said he did not want employers to suffer legal action merely on the basis of allegations of discrimination made by domestic violence victims. Isakson further stated that, in his experiences, employers are taking action on their own to protect victims of domestic violence.

A Republican source close to the issue said Isakson and other Republicans will oppose the bill as it is currently drafted because it allows for unlimited compensatory damages against employers from workers who file suits claiming they were terminated for domestic violence issues. Such language could dissuade employers from hiring domestic abuse victims, the Republican source said.

“Why would you bring them on if there was a potential for a huge federal penalty?” the Republican source asked.

If the bill's language is changed to limit such damages, it could gain Republican support, the Republican source said, arguing that tax credits and other incentives should be used to encourage employers to develop domestic violence instead of laws.

Sen. Wayne Allard (R-CO) agreed with Isakson that businesses need protection from frivolous lawsuits.

Kathy Rodgers, president of Legal Momentum, a women's advocacy group, said in her prepared testimony that abuse victims often are not afforded time away from work to tend to legal matters related to their domestic violence cases, and that domestic violence typically follows victims to the workplace – 70 percent of victims report being harassed at work by telephone or in person by the abuser.

“The combination of necessary absences related to the violence and harassment or discrimination at work means many victims lose their jobs,” Rodgers said.

A 1998 U.S. General Accounting Office report found that between 25 and 50 percent of domestic violence victims lost a job in part due to domestic violence, Rodgers said.

Domestic violence is prevalent in workplaces as well, Rodgers said – 36,500 individuals were raped or sexually assaulted at work between 1993 and 1999. And 78 percent of abusers use their company's resources to carry out their abuse, such as using company cars to stalk their victims, Rodgers said.

Twenty eight states and the District of Columbia have laws that provide unemployment insurance to domestic violence victims, while 32 states have statutes that provide for victims to receive time off of work to attend court proceedings. But Rodgers said federal legislation is necessary to ensure all workers in the United States receive protections.

Rodgers said many businesses adopt domestic violence victim protection policies on their own, but that a legal mandate to do so would “set a reasonable floor of protections to ensure that victims can take necessary time off from work and can safely tell their employers about their situation without jeopardizing their jobs will spur further business leadership in addressing domestic and sexual violence and their effects on the workplace.”

Laura Fortman, commissioner of Maine's Department of Labor, testified at the hearing about Maine's success with its domestic violence in the workplace program. Fortman said businesses have been supportive of the state's protective measures, despite initial concerns. The State Chamber of Commerce voiced its support in 2002 for expanding the 1999 Victim Leave Law, saying no businesses complained about its implementation. But the Republican source said the lack of complaints could be because businesses were already following the law's requirements before it went into effect.

A key organized labor source had not yet reviewed the bill when contacted by Inside OSHA.

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