

ARTICLES

THE NEED FOR A UNIFORM FEDERAL RESPONSE TO THE WORKPLACE IMPACT OF INTERPERSONAL VIOLENCE

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I.	THE MAGNITUDE OF THE WORKPLACE IMPACT OF IPV NECESSITATES A UNIFORM FEDERAL RESPONSE.	596
A.	THE WORKPLACE IMPACT OF IPV	597
B.	EMPLOYERS CANNOT AFFORD TO IGNORE IPV.	599
II.	STATE APPROACHES ADDRESSING THE WORKPLACE IMPACT OF IPV VARY SIGNIFICANTLY AND HAVE DISPARATE EFFECTS ON SURVIVORS.	600
A.	ANTI-DISCRIMINATION PROTECTIONS KEEP THE WORKPLACES SAFE AND HELP SURVIVORS STAY EMPLOYED	602
1.	Survivors Lack Incentives to Share Relevant Information With Employers	602
2.	The Absence of Federal Legislation	604
3.	State Approaches Vary Significantly	605
B.	PROVIDING TEMPORARY LEAVE TO SURVIVORS ENABLES EMPLOYERS TO RETAIN EMPLOYEES FACING COLLATERAL EFFECTS OF VIOLENCE	607
1.	Survivors' Need for Leave.	607
2.	Existing Options Exclude Many.	608
3.	Current Federal Law is Inadequate.	609
C.	UNEMPLOYMENT INSURANCE BENEFITS ARE A CRUCIAL SAFETY NET FOR SURVIVORS WHO LOSE OR LEAVE A JOB DUE TO VIOLENCE	611
1.	The Unemployment Insurance System and IPV	612
2.	ARRA's Effect on State Unemployment Insurance Laws and Survivors	613
3.	Significant Gaps in Access Remain	614

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INTRODUCTION

In recent years, the nation has marvelled at the extent of social justice reforms achieved over the last four to five decades in such divergent areas as equal educational access, voting, and housing rights. Even as we have celebrated these milestones and have seen major overhauls by Congress and/or the federal courts in these areas of the law, in one crucial area, the workplace, law and policy have failed dismally to keep pace with a postindustrial society that is very different from the “men at work, women at home” paradigm of the post-World War II era. Today, half of America’s workers are female, and mothers are the primary breadwinners in 40% of American families.¹ Yet as the recently released *Shriver Report* points out,

Too many of our government policies . . . are still rooted in the fundamental assumption that families rely on a single breadwinner . . . [More recently] government policymakers focused on supporting women’s entry into a male-oriented workforce on par with men—a workplace where policies on hours, pay, benefits and leave time were designed around male breadwinners with presumably no family caregiving responsibilities.²

The significant implications of the failure of law and policy to adapt to and address the needs of men and women who are juggling work and family caregiving are extensively chronicled in *The Shriver Report*.³ But one aspect of this issue, the incidence of interpersonal violence (“IPV”)⁴ among U.S. workers and the implications of such violence for the workforce, has neither been sufficiently examined nor addressed. According to the Center for Disease Control, some 26.4% of women and 15.9% of men have experienced

1. Maria Shriver, *A Woman’s Nation*, THE SHRIVER REPORT 1, 6 (2009) [hereinafter THE SHRIVER REPORT]. In 2009, the Center for American Progress, a progressive think-tank, collaborated with Maria Shriver to release a compilation of scholarly articles, anecdotal essays, and a national poll all focused on “the emergence of working women as primary breadwinners for millions of families at the same time that their presence on American payrolls grew to comprise fully half the nation’s workforce.” John D. Podesta, *Preface*, THE SHRIVER REPORT 1, 1. The national poll was funded by the Rockefeller Foundation and conducted by *Time Magazine* and examined attitudes about gender roles in contemporary America. *Id.*

2. Ann O’Leary & Karen Kornbluh, *Workers and Caregivers Need Government Policies That Reflect Today’s Realities*, THE SHRIVER REPORT 75, 76–77.

3. *Id.*

4. Several of the studies cited in this article use the term “intimate partner violence” to connote sexual and domestic violence or stalking perpetrated by a current or former intimate partner. Because sexual assault and stalking can and do occur outside the context of intimate or family relationships, we generally use the broader term “interpersonal violence” to encompass all such crimes whether committed by an intimate partner or a stranger except where the definitions in the article being discussed make that inappropriate.

at least one incident of intimate partner violence during their lifetimes.⁵ And yet in the workplace, where survivors of intimate partner violence are likely to be overrepresented as a consequence of their need for economic security,⁶ policies to address their unique issues have evolved unevenly at best, as have those that recognize other work-life challenges that most families face, including caregiving and the need for flexible work arrangements.⁷

IPV survivors have gone from being relegated to the private realm and having little in the way of services or available supports, to being served by law enforcement and a judiciary that are well acquainted with the dynamics and consequences of their victimization.⁸ However, it is not surprising that the workplace, which has been slow to accommodate the different needs of women, has not developed a consistent approach to responding to the needs of IPV survivors either. The state-level response to the needs of survivors has been equally piecemeal, and largely began prior to the era we live in now where so many workers are employed by national or multi-national corporations. A state-centered approach no longer works as it yields uneven benefits and protections for workers with identical positions within a company whose only distinguishing characteristic is that they work on opposite sides of the country. A federal solution is desperately needed and long overdue.

This article makes the case that recognizing and addressing the needs of *all* survivors in the workplace is critical both as a business and economic imperative and as a means of strengthening the American workforce. We focus not only on the workplace experience of and response to survivors of domestic violence, but also that of sexual assault and stalking survivors.⁹ Until recently, to the extent federal law and resources considered the experience and needs of IPV survivors,

5. Ctr. for Disease Control and Prevention, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence*, MORBIDITY AND MORTALITY WEEKLY REPORT, Feb. 8, 2008, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm> [hereinafter CDC].

6. CAROL A. REEVES & ANNE M. O'LEARY-KELLY, U.S. DEP'T OF JUSTICE, *A STUDY OF EFFECTS OF INTIMATE PARTNER VIOLENCE IN THE WORKPLACE* 16 (2009) [hereinafter *EFFECTS OF INTIMATE PARTNER VIOLENCE*].

7. *Workplace Flexibility 2010*, LAWS AFFECTING FLEXIBILITY (2009), <http://www.law.georgetown.edu/workplaceflexibility2010/law/index.cfm>.

8. Deborah A. Widdis, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U.L. REV. 669, 674 (2008) [hereinafter Widdis, *Domestic Violence and the Workplace*].

9. Many of the workplace accommodations discussed here could also reasonably be extended to all crime victims, and that issue certainly deserves assessment as policy makers turn their attention to this issue. A number of states have enacted statutes that address crime victims insofar as court leave is concerned. See *Hearing on the Continued Importance of the Violence Against Women Act Before the S. Judiciary Comm.* at 7, 111th Cong. 1 (2009) (written testimony of Legal Momentum recognizing how a majority of states have "passed laws that permit crime victims time off to attend court proceedings and laws specifically addressing the needs of domestic and sexual violence victims"). This article, however, focuses on the appropriate response to IPV-related workplace issues. Most of the existing literature on workplace issues and survivors of IPV has focused only on survivors of domestic violence for several reasons: (1) there is more data and research to draw from because it was the first aspect of IPV to emerge from the shadows of the private realm; (2) state laws in this area are focused disproportionately on

they focused on domestic violence. However, over the last four years, and at the behest of sexual and domestic violence and stalking advocates, the U.S. Congress has shown an increasing recognition of the need to address similarly situated survivors within the same legislation, such as with the Violence Against Women Act (“VAWA”) and the Security and Financial Empowerment (“SAFE”) Act.¹⁰ Any effort to address the intersection of employment and IPV issues would be limited in its prospects for success if it failed to address the needs of similarly situated survivors.

In Part II, we discuss why a federal response to this issue is required, examining the issue from a business standpoint and arguing that it is not only necessary but also good business practice to address the needs of employee-survivors. Part III turns to an analysis of legal strategies employed by states to address the workplace effects of violence, including anti-discrimination provisions, leave, and unemployment insurance in the instance where an employee needs to relocate. In Part IV, we conclude with a discussion of pending federal legislation that attempts to address these issues in a uniform manner, and other approaches that may warrant further consideration.

I. THE MAGNITUDE OF THE WORKPLACE IMPACT OF IPV NECESSITATES A UNIFORM FEDERAL RESPONSE

As employers grapple with the implications of a workforce that is increasingly female (fully half of the U.S. workforce in 2009),¹¹ they must also recognize that like pregnancy and family caregiving, IPV has an increasing impact on the workforce.¹² According to the comprehensive study of intimate partner violence

domestic violence survivors; and (3) some authors are uncomfortable with discussions about sexual assault and or stalking, and may skip over these issues or inappropriately conflate the three.

10. *E.g.*, Violence Against Women Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2964 (codified as amended at scattered sections of 8 U.S.C., 18 U.S.C., and 42 U.S.C.) [hereinafter VAWA 2005]; Security and Financial Empowerment Act, H.R. Doc. No. 111-739, at 1 (2009); Healthy Families Act, H.R. Doc. No. 111-2460, at 1 (2009); Worker, Homeownership, and Business Assistance Act of 2009, H.R. Doc. No. 111-3548 (2009).

11. THE SHRIVER REPORT, *supra* note 1, at 6.

12. In attempting to quantify the impact of domestic and sexual violence on the workplace, researchers have reached results which are at once significant yet also inconsistent with each other. One study released in 2007 calculated that violence cost the United States \$70 billion annually, with \$64.4 billion in lost productivity and \$5.6 billion spent on medical care. Phaedra Corso, *Medical Costs and Productivity Losses Due to Interpersonal Violence and Self-Directed Violence*, 32 AM. J. PREVENTATIVE MED. 474, 474 (2007). That same study suggested that interpersonal violence costs the U.S. \$33 billion in lost productivity and \$4 billion for medical treatment. *Id.* A CDC study, however, has placed productivity losses and healthcare costs related to domestic violence for employers at approximately \$5.8 billion. CTR. FOR DISEASE CONTROL AND PREVENTION, NAT’L CTR. FOR INJURY PREVENTION & CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003), available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>. Additionally, the CDC estimates that medical and mental health services related to IPV total nearly \$4.1 billion per year. *Id.* However disparate these figures might be, they are certainly of sufficient magnitude to command employer attention, and presumably action to stem the tremendous projected productivity loss. There are suggestions, however, that the lack of consistency surrounding these estimates might correlate with

conducted by the Centers for Disease Control in 2008, 26.4% of women and 15.9% of men reported at least one lifetime episode of “intimate partner violence,” a category that groups the typically separate categories of domestic violence and sexual assault together.¹³ Women are also at higher risk of being stalked; in one recent study, women were almost three times more likely to be stalked than men.¹⁴ Unfortunately, recent news reports indicate that the incidence of all these forms of violence are increasing as the economy worsens.¹⁵

In this section, we examine the magnitude of the impact of IPV on the workplace, and the implications for the major actors: survivors, perpetrators, and employers. We then explain why employers—and federal policymakers—ignore this issue at their peril.

A. THE WORKPLACE IMPACT OF IPV

In one recent study, researchers combined current and lifetime victimization rates and found that a staggering 29% of male workers and 40% of female workers reported having been subjected to intimate partner violence at some point in their lives.¹⁶ In interpreting these numbers, they posited that the rates of victimization in the workplace were higher than those in the general population because survivors of violence were overrepresented in the workplace.¹⁷ Survivors who have decided to leave an abusive situation may have a greater need than others to earn their own income and support themselves and their families.¹⁸ Thus, it is reasonable to extrapolate that in a workforce that is 50% female with more than one in four of those women reporting at least one episode of intimate partner violence—and with nearly 16% of men reporting the same—that such violence would have repercussions and costs for the employers, whether they have survivors, abusers, or both on their payroll.

Other studies have tried to further parse the issue of workplace impact. One recent study suggests that recent survivors of intimate partner violence can have trouble concentrating at work, and that this can have adverse impacts on worker productivity.¹⁹ The same study found that 20% of the survey participants

insufficient employer attention to the issue. That is, only in the face of consistent and significant evidence will employers be persuaded to play a role in responding to IPV. Carol Reeves & Anne M. O’Leary-Kelly, *The Effects and Costs of Intimate Partner Violence for Work Organizations*, 22 J. INTERPERSONAL VIOLENCE 327 (2007) [hereinafter *Costs of Intimate Partner Violence*].

13. CDC, *supra* note 5.

14. KATRINA BAUM ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, STALKING VICTIMIZATION IN THE UNITED STATES 1 (2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svus.pdf> [hereinafter BJS].

15. See, e.g., Carrie Weil, *Domestic Violence Increase Tied to Economic Downturn* (WAVE 3 television broadcast Jun. 12, 2009); Mary R. Lauby & Sue Else, *Recession Can Be Deadly For Domestic Abuse Victims*, BOSTON GLOBE, Dec. 25, 2008.

16. EFFECTS OF INTIMATE PARTNER VIOLENCE, *supra* note 6, at 44.

17. *Id.* at 45.

18. *Id.* at 16–17, 45.

19. *Id.* at 6.

reported that some type of abuse had occurred at work, and half of the stalking survivors reported being stalked at work.²⁰ Another study found that 74% of employed battered women were harassed at work by their partner.²¹ Further, homicide has been found to be one of the top causes of death for women on the job.²²

An often-overlooked aspect of violence and its workplace effects is that of the IPV perpetrator as an employee, and the impact of the perpetrator's behavior on his or her employer's bottom line. Abusers often use their employer's property, including company cars, phones, computers, and sometimes fellow employees, to keep track of their victim's whereabouts. In one recent study, 78% of abusers reported that they had used their company's resources in connection with their abusive relationship.²³ Additionally, 48% of abusers reported having difficulty concentrating at work and 42% reported being late to work.²⁴ To focus only on the productivity of a survivor without considering the impact of IPV on an employed perpetrator is to fail to fully address the problem from either a security or productivity standpoint. It can also place the employer in a somewhat adversarial position vis-à-vis the survivor when, in fact, the abuser is the underlying cause of the problem.²⁵

Finally, there is the issue of job loss. Two recent studies of partner stalking of survivors found that between 15.2 and 27.6% of women reported that they lost a job due, at least in part, to domestic violence.²⁶ Similarly, almost 50% of sexual assault survivors lose their jobs or are forced to quit in the aftermath of the assaults.²⁷ A recent Department of Justice study reveals that more than half of the stalking survivors surveyed lost five or more days from work, and 130,000 survivors reported that they had been fired from or asked to leave their jobs because of the stalking.²⁸ Whether statistically or anecdotally, we can see that a

20. *Id.* at 48.

21. Family Violence Prevention Fund, *The Workplace Guide for Employers, Unions and Advocates* (1998).

22. Bureau of Labor Statistics, U.S. Dept. of Labor, *Census of Fatal Occupational Injuries: Table A-7 Fatal occupational injuries by worker characteristics and event or exposure* (2008).

23. ELLEN RIDLEY, MAINE DEP'T OF LABOR & FAMILY CRISIS SERVICES, *IMPACT OF DOMESTIC OFFENDERS ON OCCUPATIONAL SAFETY AND HEALTH: A PILOT STUDY 13-14* (2004), available at <http://www.cobar.org/Docs/MaineDVStudy-FullReport2004.pdf?ID=21106>.

24. *Id.* at 11-12.

25. Widiss, *Domestic Violence and the Workplace*, *supra* note 8, at 681.

26. TK Logan et. al., *Partner Stalking and Implications for Women's Employment*, 22 J. INTERPERSONAL VIOLENCE 268 (2007).

27. U.S. GEN. ACCT. OFFICE, *DOMESTIC VIOLENCE PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS* 19 (Nov. 1998); S. Rep. No. 138, 103rd Cong., 2d Sess. 54, n. 69 (citing E. Ellis, B. Atkeson & K. Calhoun, *An Assessment of the Long Term Reaction to Rape*, 50 J. ABNORMAL PSYCHOL. 264 (1981)).

28. BJS, *supra* note 14, at 7 (2009). It should be kept in mind that this figure of 130,000 is not the number of stalking victims nationwide fired due to a stalking, but rather the number of respondents in the study who experienced this result. This study also notes that "[o]f the 79% of stalking victims who had a job during the 12 months preceding the interview, about 1 in 8 lost time from work because of fear for their safety or to pursue activities such as obtaining a restraining order or testifying in court (appendix

significant number of survivors are losing their jobs when they are fired for reasons that stem from their victimization.²⁹ While termination may seem a viable solution to some employers, it brings with it substantial costs, including the payment of severance, unemployment insurance, lost productivity while a replacement is sought, hiring and training costs for that replacement, and bad publicity.³⁰

B. EMPLOYERS CANNOT AFFORD TO IGNORE IPV

Whether businesses address IPV as a security issue, a worker productivity issue, or something else, addressing it is good business practice. According to findings included by the House of Representatives in the currently pending SAFE Act, 94% of corporate security and safety directors at companies nationwide ranked domestic violence as a high security concern.³¹ Forty-nine percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity.³² Forty-seven percent said domestic violence negatively affects attendance, and 44% said domestic violence increases health care costs.³³ Seventy-eight percent of human resources professionals consider partner violence a workplace issue.³⁴ Yet this concern does not seem to translate consistently to implementing programs and policies to assist survivors of IPV in the workplace, or in some instances, publicizing the fact that employers already have such policies. More than 70% of U.S. workplaces have no formal programs or policies that address workplace violence, let alone domestic violence. In fact, only 4% of employers provided training on domestic violence.³⁵ Although a significant number of employers have for years demonstrated leadership in the implementation of workplace policies and programs related to domestic and sexual violence,³⁶ recent surveys of both CEOs and employees suggest that there are a number of barriers that have prevented other employers from engaging around the issues of IPV at least until now. In a recent survey, 43% of CEOs surveyed said that

table 8). Seven percent of victims lost time from work for activities such as changing a phone number, moving, or fixing or replacing damaged property. For 1 in 7 of these victims, a day or less was lost from work. More than half of victims lost 5 or more days from work." *Id.*

29. See, e.g., *Domestic Violence: Hearing on H.R. 3171 and S.R. 3185 Before the Senate Comm. on Health, Education, Labor and Pensions Subcomm. on Employment and Workplace Safety*, 110th Cong. 1-3 (2007) (statement of Kathy Rodgers, President, Legal Momentum describing how a survivor of interpersonal violence was fired after needing a day off to go to court).

30. See generally *Costs of Intimate Partner Violence*, *supra* note 12.

31. Security and Financial Empowerment Act, H.R. 739, 111th Cong. § 2.12 (2009).

32. *Id.* § 2.10.

33. *Id.*

34. *Id.* § 2.11.

35. *Id.*

36. Liz Claiborne, Bank One, Enterprise Rent-A-Car, Kaiser Permanente, Target Corporation, State Farm Insurance Companies, and Verizon Wireless are all partners in the Corporate Alliance to End Partner Violence. For a complete list of this group's members, see <http://caepv.org/about/members.php>.

domestic violence impacted the bottom line.³⁷ However, in that same survey, only 13% of employers felt that employers should play a major role in addressing domestic violence issues.³⁸ By contrast, 84% of surveyed employees felt that business should be part of the response to addressing domestic violence.³⁹ The seeming “disconnect” here can be explained by the fact that very few individuals in the workplace, whether corporate security officers, the co-worker of the IPV survivor, or the survivor him/herself, have the opportunity or the courage to raise this issue with the CEO. Thus, many CEOs may feel that IPV is a workplace problem, but do not see it as one that occurs in *their* workplace.

While peer-to-peer efforts are invaluable, it is unlikely that all employers will ever sign on, and this is not satisfactory as either an economic or public health matter.⁴⁰ But an increasingly female workforce, combined with the need to increase productivity given the economic downturn, might provide an opening for businesses to revisit their views on the issue of IPV and its workplace effects. And as employers attempt to create a comprehensive, pro-active response, they continue to be confronted by a variety of state laws addressing the workplace impact of IPV. Most employers may be unaware that the state(s) in which they conduct business specifically prohibit employment discrimination against survivors, or provide survivors with access to leave. As the following section demonstrates, a comprehensive federal solution would simplify matters for employers as they would not continue to be confronted by the disparate approaches of the various states in which they do business. Without a comprehensive federal approach, employers will continue to grapple with myriad state laws providing anti-discrimination protection, leave, and access to unemployment insurance; with serious implications for business operations and the bottom line should they fail to keep up with the disparate approach of each state.

II. STATE APPROACHES ADDRESSING THE WORKPLACE IMPACT OF IPV VARY SIGNIFICANTLY AND HAVE DISPARATE EFFECTS ON SURVIVORS

In the absence of a federal mandate, states have been left to their own devices as they grapple with the growing impact of IPV on the workplace. Some states have tried repeatedly to pass legislation to provide workplace protections for survivors but have failed.⁴¹ Any survey of states that do have laws addressing

37. CORPORATE ALLIANCE TO END PARTNER VIOLENCE, 2007 CEO AND EMPLOYEE SURVEY 7 (2007), available at <http://www.caepv.org/getinfo/docdetail.php?docID=549&catID=7>.

38. *Id.* at 10.

39. *Id.*

40. See generally CTR. FOR DISEASE CONTROL AND PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE FACT SHEET (2009) (asserting that intimate partner violence is a public health problem because “[t]he medical care, mental health services, and lost productivity (e.g., time away from work) cost of intimate partner violence was an estimated \$5.8 billion in 1995. Updated to 2003 dollars, that’s more than \$8.3 billion.”).

41. Examples include, *inter alia*, Illinois (H.B. 3428, 93d Gen. Assemb. (Ill. 2003)), Kentucky (H.C.R. 16 & B.R. 233, 2004 Reg. Sess. (Ky. 2004)), Massachusetts (S.B. 2338 (redrafted as S.B. 2684),

anti-discrimination provisions, leave, and unemployment insurance eligibility for IPV survivors reveals that no two states provide identical coverage.⁴² This situation has only been complicated by recent attempts at the federal level to convince states with existing protections to move voluntarily towards some uniform standard—with predictably awkward results.

As we demonstrate in Part III.A. (anti-discrimination laws), Part III.B. (employment leave), and Part III.C. (unemployment insurance benefits), this state-centric and incremental approach has yielded a crazy quilt of laws that frequently subjects virtually identically situated people working for the same employer whether in contiguous states, or opposite sides of the country, to wildly disparate outcomes. This is not because the needs of states or their citizens are so disparate, but rather because federal employment and labor policies have failed to keep pace with the increasingly national and seamless way in which modern businesses operate.⁴³ Such results are the antithesis of sound public policy making and bring with them inconsistent and often dangerous outcomes for victims.

The economic downturn has significantly complicated and exacerbated this situation, and brought with it an increase in calls to the national domestic violence hotline and an increased demand for IPV-related services. In light of these trends and the daily application of primarily state-based workplace protections and policies to individuals whose employers have operations nationwide,

184th Reg. Sess. (Mass. 2006)), New York (A.B. 2596, 227th Leg. Sess. (N.Y. 2005)), and Pennsylvania (190th Gen. Assem., Reg. Sess. (Pa. 2007)).

42. Widiss, *Domestic Violence and the Workplace*, *supra* note 8, at 671.

43. See, e.g., Abby Ellin, *Agony of Domestic Violence at the Office*, N.Y. TIMES, Mar. 1, 2000, at G1 (“Maine and Dade County in Florida enacted legislation last year to provide unpaid leave for domestic violence victims. Ten states, including California, Connecticut, New York and New Jersey, recently passed legislation making survivors eligible for unemployment insurance if they lose their jobs. Mark Green, New York City’s public advocate, says he plans to introduce a bill soon to broaden the rights of city employees in the event of domestic violence.”); Kathie Klarreich, *Targeting Domestic Abuse—At Work*, CHRISTIAN SCIENCE MONITOR, Oct. 24, 2003, at 11 (“[M]ore than 40 states and locales have enacted laws designed to create protections for victims of domestic violence. Maine pioneered the movement in 1991 by changing its unemployment codes to include domestic violence. California was the first state to allow employers to seek restraining orders against employees’ abusers in 1994, followed by Georgia, Arizona, Arkansas, Nevada, Rhode Island, Colorado, Indiana, and Tennessee. Recent legislation allows victims to collect unemployment benefits if they have to quit or are fired because of domestic violence. Other new laws allow employers to take out restraining orders to bar angry intruders from the workplace, prohibit employers from taking adverse actions against workers who need time off to deal with violence, and require employers to grant victims paid or unpaid leave. Many states prohibit insurers from discriminating against domestic violence victims.”); Edward H. Trent & Richard N. Margulies, *Employment Protections For Victims Of Domestic Violence And Sexual Assault*, METROPOLITAN CORPORATE COUNSEL, Nov. 2007, at 11 (“Currently ten states (California, Colorado, Florida, Hawaii, Illinois, Kansas, Maine, North Carolina, Oregon, Rhode Island) provide victims of domestic violence and sexual assault with protected leave to address the numerous issues that often face victims of such crimes. At the core of this legislation, leave is generally granted to victims of domestic violence or their families to obtain a restraining order or injunction against violence, meet with prosecuting attorneys, attend court hearings, find alternate housing, such as at a women’s shelter or at another location, seek medical care or mental health counseling, or other victim’s services.”).

federal policymakers must enact a comprehensive set of long-overdue updates to workplace policy regarding IPV.

A. ANTI-DISCRIMINATION PROTECTIONS KEEP THE WORKPLACES SAFE AND HELP SURVIVORS STAY EMPLOYED

One of the most important factors in successfully addressing the workplace impact of IPV is the creation of a culture where employees can reveal information about the IPV to co-workers or supervisors without the threat of being fired. Survivors cannot—and will not—seek time off to go to court, alert the employer about a potential safety threat or explain poor performance if they think they will lose their jobs as a consequence of disclosing the violence to their employer. Employers will remain ignorant about safety threats to the workplace, or will have to spend time and money finding a replacement for a formerly high-performing employee. Co-workers may become resentful of an employee who is late or absent with increasing frequency without understanding that the underlying reason is not laziness. However, employers and employees have no incentive to share this crucial information and avoid misunderstandings as long as IPV survivors must choose between staying employed or staying safe. In this section, we explain why federal legislation specifically prohibiting employment discrimination against IPV survivors is critical to creating a supportive workplace. We first examine the myths and stereotypes that keep survivors from disclosing violence to an employer, and that drive many employers to fire or penalize employees for the violence against them. We then discuss why existing federal anti-discrimination laws are an imperfect solution that inadequately addresses this problem, and finally, we examine varying state approaches to the issue.

1. Survivors Lack Incentives to Share Relevant Information With Employers

Survivors of IPV often fear that telling their employers about the violence will jeopardize their employment. Unfortunately, this concern is quite reasonable, as our clients know all too well. Take the case of Angela, a waitress and bartender at a local bar/café in a small town in Wisconsin. Angela applied for and obtained a temporary domestic abuse injunction against an ex-boyfriend who made threats against her while she was six months pregnant with their child. When Angela informed her employer that she would be seeking a permanent injunction, her employer told her to “drop” the matter or she would be fired, because the injunction would allegedly be detrimental to business. Angela nevertheless obtained the permanent injunction. Two days later, Angela was fired because she obtained the injunction.⁴⁴

Often, survivors trying to keep their jobs while dealing with domestic violence are penalized for an abuser’s actions. For example, Legal Momentum represented

44. *Thoma v. LJ’s Bad Penny Bar & Café*, ERD Case No. CR200600641 (Wisconsin Labor and Industry Review Commission).

Antoinette (“Toni”), a dishwasher at a restaurant in a small town in Iowa, who was dating and living with Donald, a busboy at the same restaurant. One evening during an argument at home, Donald kicked Toni in the leg. Toni called the police, who arrested Donald, and Toni was issued a protective order against Donald in short order, which included a stay away provision encompassing the workplace. When Toni went to her employer to discuss the protective order, she asked if she and Donald could be scheduled on different shifts. The employer said he would think about it. Two days later, Toni was fired. When pressed for an explanation, the employer stated that because of the protective order, he could only keep either Toni or Donald, and that he decided to keep Donald because he was the “better” employee.⁴⁵

Employment is crucial to a survivor being able to separate from an abusive situation. With a job and source of income separate from an abuser, a survivor can find a safe place to live and pay for alternative child care arrangements, new forms of transportation, medical costs, and legal bills. But in these days of economic uncertainty, many survivors are too afraid of losing desperately needed jobs to pursue legal remedies, seek medical treatment, or take other essential steps to secure their safety. As the experiences of Angela and Toni demonstrate, when an employee discloses the violence or asks for assistance in dealing with it, a common response from employers is to fire them.

In some cases, survivors of violence lose their jobs because of absences or related job performance problems. But survivors also lose their jobs because of stereotypes about or fear of survivors, because they need workplace accommodations or changes an employer deems costly, or because an abusive partner disrupts the workplace. Supervisors or human resources personnel may subscribe to common stereotypes regarding domestic violence survivors and abusers. For instance, survivors are often blamed for the violence against them, or for failing to control an abuser’s behavior, and suffer the consequences of discipline or termination. Employers may not realize that there are other steps that they can take against the abuser—such as reporting harassment to the police or, in states that authorize it, seeking a workplace restraining order⁴⁶—to address harassing or disruptive conduct, rather than firing the survivor of the violence. Likewise, employers may mistakenly believe that firing a survivor is the only way to ensure that the violence does not spill over into the workplace.

Some businesses have proactively developed programs addressing domestic violence, which demonstrate that other mechanisms—such as changing an employee’s work shift, registering a protective order, alerting security, or transferring an employee—are effective means of addressing any potential threat to

45. Complaint at 5-11, *Greer v. Beck’s Pub & Grille*, Civ. No. C03-2070LRR (N.D. Iowa Jan. 4, 2006).

46. For summaries of state laws that allow employers to obtain workplace restraining orders, see Legal Momentum, *State Law Guide: Workplace Restraining Orders*, available at <http://www.legalmomentum.org/assets/pdfs/workplace-restraining-orders.pdf>.

the workplace. But employers cannot take safety precautions if they do not know what is going on, either because employees are afraid of job implications if they come forward, or because they do not know how to disclose or to whom. It is in the employer's interest to have as much information as possible about a potentially disruptive situation, so that it can take steps to avoid such a situation, instead of having to respond to an actual incident. Moreover, many survivors do not work for such sympathetic or proactive employers. The stigma of IPV is still strong, and stereotypes about survivors persist. The most effective way to ensure that survivors feel comfortable telling their employers about their situation without fear of jeopardizing their employment is to enact legislation that makes clear that survivors cannot be fired simply because they are survivors, and that they will not be penalized for disclosing violence. In addition to maintaining employment and safety, such legislation has the added bonus of proscribing and penalizing actions based on persistent gender stereotypes. As other commentators have noted, employers have no incentive to desist from intentional or other types of gender discrimination unless they might be sanctioned for the discrimination.⁴⁷

2. The Absence of Federal Legislation

Federal legislation does not yet address the specific circumstance of employment discrimination against survivors of domestic violence, sexual assault, or stalking. In the absence of a specific federal response, some survivors have been able to successfully challenge discriminatory actions under federal and state civil rights laws, or tort-based claims that their termination was in violation of public policy. And while some jurisdictions around the country have enacted different forms of anti-discrimination legislation designed to help survivors obtain or maintain employment, many have not, leaving survivors without legal recourse. In the face of losing a job if she discloses the violence, a survivor may opt to remain with the abuser in order to ensure her family will continue to have shelter and food. This situation is costly to all and begins a cycle of job seeking and job loss anew. A federal response would stem this cycle and provide greater workforce stability while decreasing reliance on safety net programs.

In the absence of a specific federal prohibition on employment discrimination against IPV survivors, some survivors have sought relief by claiming they were subjected to sex discrimination, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), or state or local civil rights laws. These claims have been pursued under theories that evolved through traditional cases brought under Title VII, and given a twist for the IPV context.⁴⁸ For example, the Equal Employment Opportunity Commission recently brought suit under Title VII for

47. See Nina W. Tarr, *Employment and Economic Security For Victims of Domestic Abuse*, 16 S. CAL. REV. L. & SOC. JUST. 371 (2007).

48. For a detailed discussion of the application of Title VII to the context of the workplace and domestic violence, see Wendy R. Weiser & Deborah A. Widiss, *Employment Protection for Domestic Violence Victims*, CLEARINGHOUSE REV. J. POVERTY L. & POL'Y (2004).

sexual harassment against an employer who fired a female employee because she obtained an order of protection against her abusive ex-boyfriend, who was also her co-worker.⁴⁹

However, these theories have met with varying degrees of success, depending on the judge's willingness to accept the novel twist on traditional sex discrimination theories of liability, the ability of the plaintiff to present persuasive and authoritative expert testimony that deconstructs stereotypes about survivors and abusers, and the ability to present national and local statistics about the extent of domestic violence and the population that obtains orders of protection. Other survivors have challenged discriminatory employment actions as violations of public policy, and this approach has been more successful.⁵⁰

3. State Approaches Vary Significantly

Due to the imperfect protections afforded by existing law, in the last several years many jurisdictions around the country have realized that a more effective means of promoting the employment security of survivors is to specifically prohibit employment discrimination against them. New York City was the first jurisdiction to address the issue in 2001 by adding actual or perceived survivors of domestic violence, sexual assault, and stalking to the list of protected classes in its human rights law, and prohibits employers from taking action against survivor-employees because of the acts of the perpetrator—a significant effort to protect survivors from being punished for the harassing or threatening acts of their abusers.⁵¹ Only three states have enacted anti-discrimination protections: Illinois in 2003,⁵² and New York⁵³ and Oregon⁵⁴ in 2009. Two states, Rhode Island and Connecticut,⁵⁵ specifically prohibit firing survivors because they have obtained protective orders. And as discussed in Part III.B., several states have protected survivors from being fired for taking time off from work to address the violence against them.

49. *EEOC v. Cascade Foods, Inc.*, No.CV-09-1157-AC (D. Ore. filed Oct. 5, 2009).

50. *See, e.g., Apessos v. Memorial Press Group*, No. 01-1474-A, 2002 Mass. Super. LEXIS 404 (Mass. Super. Ct. Sept. 30, 2002); *Imes v. City of Asheville*, 606 S.E.2d 117 (N.C. 2004); *Greer v. Beck's Pub & Grille, et al.*, Civ. No. C03-2070LRR (N.D. Iowa Jan. 4, 2006).

51. N.Y., N.Y., ADMIN. CODE § 8-107.1 (2009). Westchester County, New York followed suit with a virtually identical law soon after. WESTCHESTER CTY., N.Y., CODE §§ 700.02 & 700.03 (2009).

52. The Victims' Economic Security and Safety Act, 820 Ill. Comp. Stat. 180 (2010), among other things, includes anti-discrimination protections for actual and perceived survivors of violence or employees with immediate family members who are survivors, and protects survivors from employment discrimination based on acts of their abusers.

53. New York added survivors of domestic violence (not sexual assault or stalking) to the list of protected classes in its human rights law. N.Y. EXEC. L. § 296(1)(a) (2009).

54. Oregon's law prohibits employment discrimination against survivors of domestic violence, sexual assault or stalking because of the employee's status as a survivor, and prohibits an employer from refusing to make reasonable safety accommodations requested by such an employee. OR. REV. STAT. § 659A.885 (2010). Laws requiring employers to make reasonable accommodations, including granting leave, are discussed in section IV.

55. CONN. GEN. STAT. § 54-85b (2008); R.I. GEN. LAWS § 12-28-10 (2010).

The existence of this handful of anti-discrimination protections has no doubt assisted many survivors in keeping their jobs, which is crucial to being able to establish financial independence from an abuser. However, the relative paucity of these statutes, along with wide variations in the groups protected, the size of the employer covered, the documentation requirements, and the different enforcement mechanisms, create the unfortunate situation where a survivor's protections depend upon where she happens to live or work. For example, a survivor who works for a large drugstore chain in New York City is entitled to far more protections than a survivor working for the same company a few train stops away in Long Island in New York State. The employee in Long Island is only entitled to anti-discrimination protection if she is an actual survivor of domestic violence. If she is instead a survivor of sexual assault or stalking, or her abuser is harassing her at the workplace and her employer is concerned, she is out of luck. And when survivors do try to use existing laws to challenge discriminatory employment practices, they are subject to widely varying enforcement procedures and available relief.⁵⁶

The need for federal anti-discrimination protection for IPV survivors has never been greater. The handful of jurisdictions that have enacted protections vary in the extent and conditions of coverage. The economic downturn has forced employers to reduce the number of employees on payroll, creating a situation where employers who must lay off or terminate employees may target survivors of violence, especially those experiencing harassment or unwanted visits in the workplace. Although privacy laws and good employment practices make clear that survivors should never be required to disclose personal experiences such as domestic violence or sexual assault, survivors who wish to disclose—or whose abuse is made obvious by physical markers such as bruises or by harassment—should be able to make such disclosures secure in the knowledge that criminal acts against them will not cost them their employment. Anti-discrimination protections are necessary to ensure that survivors can talk about their situation with employers without jeopardizing their jobs. Like other anti-discrimination protections, such provisions would not limit the ability of employers to terminate survivors for legitimate performance problems. What they would do is ensure that employers and survivors can work together to jointly assess any security risk and take appropriate precautions—and ensure that survivors are not forced to choose between keeping a job and keeping safe.⁵⁷

56. In New York State, New York City, and Westchester County, a plaintiff can either file an administrative complaint or file a lawsuit in state court, but the statutes of limitations vary between the state and local entities. In Illinois, a survivor must file an administrative complaint within three years to challenge a discriminatory act, 820 ILL. COMP. STAT. 180/35 (2010), while in Oregon, a survivor can file an administrative complaint within one year of the act, or has the right to bring suit against the employer within one year of the act for reinstatement, back pay, and damages. *See* OR. REV. STAT. §§ 659A.870, .875, .885 (2009).

57. A recent study conducted by Liz Claiborne, the Corporate Alliance to End Partner Violence, and Safe Horizon found that many surveyed CEOs said that they would increase their commitment to

B. PROVIDING TEMPORARY LEAVE TO SURVIVORS ENABLES EMPLOYERS TO RETAIN EMPLOYEES FACING COLLATERAL EFFECTS OF VIOLENCE

“I would not have been there that day, had I had the option of taking leave,” Yvette Cade told us as we worked on her testimony before a Senate Health Education and Labor Subcommittee a year and a half after her husband walked into her workplace, doused her with gasoline, and set her on fire.⁵⁸ While at the extreme end of the continuum, Cade’s experience highlights the choice that survivors of IPV make every day when they lack access to job-protected leave. Although she had made her employers aware of her situation, Cade did not feel like they took the matter seriously. So faced with a need to go to court to get her protection order reinstated, but no leave, she went to work. Her tragedy highlights the need for job-protected leave for survivors, which we examine below. We then demonstrate why existing state and federal laws providing employment leave—to be used for varied though limited purposes—are inadequate to address the specific needs of IPV survivors.

1. Survivors’ Need for Leave

Survivors need job-protected leave in order to address the violence in their lives. This not only prevents them from having to choose between their safety and their jobs, but also provides employers with a higher degree of predictability as it affords workers greater ability to schedule time off to attend to such needs. Survivors lacking leave take unexcused absences from work, and some have productivity problems.⁵⁹ Presumably some lose their jobs for these reasons. As with unemployment insurance and anti-discrimination protections, the availability of job-protected leave—including when the need for leave is court-related—is uneven at best.⁶⁰ Even in the thirty-two states that provide crime victims time off to attend court proceedings, some laws are only triggered if the survivor is subpoenaed or involved in a criminal proceeding.⁶¹ In general,

domestic violence related programs in the workplace if their employees indicated to them that such programs were necessary. CORPORATE ALLIANCE TO END PARTNER VIOLENCE, 2007 CEO AND EMPLOYMENT SURVEY (2007), available at <http://www.caepv.org/getinfo/docdetail.php?docID=549&catID=7>. It is clear, however, that in order for employees to feel comfortable providing information to their employers about their abusive relationships, employees would need to feel secure that such disclosures would be protected.

58. See generally *Hearing: Too Much, Too Long? Domestic Violence in the Workplace Before the Subcomm. on Employment and Workplace Safety of the S. Comm. on Health, Education, Labor, and Pensions*, 109th Cong. (2007) (statement of Yvette Cade) (noting that “to the extent that victims need a small amount of time off to work with an advocate to ensure their safety, to change their locks, and/or get a protection order, they should be able to take that needed time, and to know that their jobs are secure and will be waiting for them”).

59. See Jennifer Swanberg & TK Logan, *Domestic Violence and Employment: A Qualitative Study*, 10 J. OCCUPATIONAL HEALTH PSYCHOL. 3, 9, 11 (2005).

60. See *Domestic Violence: Hearing on H.R. 3171 and S.R. 3185*, *supra* note 29.

61. See Legal Momentum, *State Law Guide: Employment Rights for Victims of Domestic or Sexual Violence*, available at <http://www.legalmomentum.org/assets/pdfs/employment-rights.pdf>.

crime victim leave laws overlook significant reasons for which a survivor might need leave, including safety planning, securing housing, or seeking a protection order, usually issued by a civil rather than a criminal court. Also unaddressed are the needs of survivors in the remaining eighteen states, and in general the significant number of workers who lack adequate leave options.

2. Existing Options Exclude Many

Thirty-nine percent of the private industry workforce lacks paid sick leave.⁶² Generally, the percentage of workers lacking paid leave rises as wages decrease; thus low wage workers, who have the least resources to help them separate from an abusive situation, and who may statistically be at greater risk of IPV, are least likely to have access to such leave.⁶³ Even workers fortunate enough to have paid sick leave are not always allowed to use it for the purposes outlined above. Without access to leave that specifically addresses their needs, survivors will be forced to jeopardize their employment by missing work to obtain protection orders, or they will choose to forego these protections for fear of losing their jobs.

Currently, eleven states and the District of Columbia provide survivors of domestic violence (some states also include sexual assault survivors) access to unpaid leave to attend to IPV-related needs, including attending court and seeking medical treatment.⁶⁴ Generally, the laws permit a survivor who has paid leave to use that in lieu of the unpaid leave specified by the statute. The District of Columbia's paid leave law allows IPV survivors or their immediate family

62. Brian Tumulty, *Swine Flu Highlights Paid Sick Leave Issue*, GANNETT, Oct. 8, 2009, available at <http://www.wgrz.com/news/health/story.aspx?storyid=70878&catid=8>.

63. See *Domestic Violence: Hearing on H.R. 3171 and S.R. 3185*, supra note 29, at note 30; *Hearing on the Continued Importance of the Violence Against Women Act*, supra note 9, at note 17; U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release (2009), available at <http://www.bls.gov/news.release/osh2.t06.htm>.

64. California: CAL. LAB. CODE §§ 230 & 230.1 (West 2009) (applies to an employee who is the victim of domestic violence or sexual assault); Colorado: COLO. REV. STAT. § 24-34-402.7 (2009) (applies to employees who have been the victim of domestic violence, stalking, or sexual assault); Florida: FLA. STAT. § 741.31 (2010) (applies to employees who have been the victim of domestic violence or sexual assault); Hawaii: HAW. REV. STAT. § 378-72 (2009) (applies to an employee or the employee's minor child who is the victim of domestic violence or sexual assault); Illinois: 820 ILL. COMP. STAT. 180/29(a), (f) (2009) (applies to employee or member of employee's family who has been the victim of domestic violence or sexual assault); Kansas: KAN. STAT. ANN. §§ 44-1131 & -1132 (2008) (applies to an employee who has been the victim of domestic violence or sexual assault); Maine: ME. REV. STAT. ANN. tit. 26 § 850 (2009) (applies to employee or member of employee's family who has been the victim of domestic violence, stalking, or sexual assault); New Mexico: N.M. STAT. ANN. § 50-4A-2 & -3 (West 2009) (applies to an employee who is the victim of domestic violence); North Carolina: N.C. GEN. STAT. § 50B-5.5 & § 95-270(a) (2009) (applies to an employee who is the victim of domestic violence); Oregon: OR. REV. STAT. 659A.270-.285 (2009) (applies to an employee or dependent of the employee who is the victim of domestic violence, stalking, or sexual assault); Washington: WASH. REV. CODE § 49.76.030 (2009) (applies to employee or member of employee's family who has been the victim of domestic violence, stalking, or sexual abuse); District of Columbia: D.C. CODE §§ 32-131.01 (2009), 32-131.02 (2009) (applies to employee or member of employee's family who has been the victim of domestic violence, stalking, or sexual abuse). Note: some states place restrictions on applicability based on the size of the business or the length of time that the employee has been working for the employer.

members to take leave to address similar needs.⁶⁵ Finally, New York and North Carolina allow survivors time off to obtain civil protection orders but not for other purposes.⁶⁶ All of these laws were drafted to ensure that employers are provided with appropriate documentation to substantiate the need for the leave. Additionally, given that most survivors will be using unpaid leave, the likelihood for abuse is low given their need to maintain their economic independence.

3. Current Federal Law is Inadequate

A comprehensive federal approach is needed to ensure the safety of all survivors. Although some survivors may experience violence of such magnitude that their healthcare needs trigger the Family and Medical Leave Act (“FMLA”), that statute applies only to employers of fifty or more and employees with “serious health conditions,” and thus leaves a significant number of IPV survivors without recourse to its protections.⁶⁷ Survivors who work for employers of forty-nine or less do not qualify for FMLA leave, nor do those whose conditions, while significant enough to necessitate time off (*e.g.* a black eye or bruised ribs), are not serious enough within the meaning of the FMLA. The FMLA also fails to address survivors’ need for leave to attend to many non-medical imperatives, including obtaining a protective order, attending court or securing new housing. Finally, leave under the FMLA is unpaid,⁶⁸ a luxury few workers can afford.

Currently pending before the U.S. Congress are no less than ten different bills relating to various types of leave.⁶⁹ Among these are three bills that focus

65. D.C. CODE §§ 32-131.01, 32-131.02 (2009).

66. N.Y. PENAL LAW § 215.14 (McKinney 2009); N.C. GEN. STAT. § 50B-5.5 (2009).

67. See Robin Runge, *Double Jeopardy: Victims of Domestic Violence Face Twice the Abuse*, <http://www.abanet.org/irr/hr/spring98/sp98runge.html> (last visited Mar. 22, 2010) (noting how “the FMLA does not address the needs of many domestic violence victims who are trying to keep their jobs. The FMLA does not provide for job-protected leave to attend a civil protection order hearing or to make other arrangements to leave a batterer. It does not prohibit an employer from firing a victim of domestic violence because of her status as a victim.”).

68. See Deborah J. Anthony, *The Hidden Harms of the Family and Medical Leave Act: Gender-Neutral Versus Gender-Equal*, 16 AM. U.J. GENDER SOC. POL’Y & L. 459, 475 (2008) (explaining that “FMLA leave is unpaid. Only 34% of all those taking leave received any pay. Of those who were entitled to take leave but did not, the top reason stated was the unpaid nature of the leave; about 60% of those not taking leave stated that they could not afford to be unpaid for that length of time. Naomi Gerstel and Katherine McGonagle place the number of respondents citing financial reasons at 64%, while the National Partnership of Women and Families states that it is 78%.”).

69. Federal Employees Paid Parental Leave Act of 2009, H.R. 626, 111th Cong. (2009), S. 354, 111th Cong. (2009); Security and Financial Empowerment Act, H.R. 739, 111th Cong. (2009), S. 1740, 111th Cong. (2009) [hereinafter “SAFE Act”]; Family and Medical Leave Enhancement Act of 2009, H.R. 824, 111th Cong. (2009); Family Leave Insurance Act of 2009, H.R. 1723, 111th Cong. (2009); Domestic Violence Leave Act, H.R. 2515, 111th Cong. (2009), Paid Vacation Act of 2009, H.R. 2564, 111th Cong. (2009); Military Family Leave Act of 2009, H.R. 3257, 111th Cong. (2009), S. 1441, 111th Cong. (2009); Troops’ Soft Landing, Employment, and Rural Transportation Act, H.R. 3358, 111th Cong. (2009); National Guard and Reserve Soft Landing Reintegration Act, S. 1426, 111th Cong. (2009); Emergency Influenza Containment Act, H.R. 3991, 111th Cong. (2009). Including leave for survivors was also considered in the most recent reauthorization of the Violence Against Women Act in 2005, but was not included in the bill that finally passed. Proposed Violence Against Women Reauthorization Act of 2005,

exclusively or in part on the needs of survivors. The first of these, the Domestic Violence Leave Act, H.R. 2515, would amend the FMLA to address the additional needs described above, including leave for IPV survivors who need to seek counseling, and would allow survivors who possess paid leave to use it in lieu of the unpaid leave provided by the FMLA.⁷⁰ While these improvements would be welcome, a significant number of survivors would remain unaddressed—for instance, those who work for smaller employers, fail to meet the length of service requirement, or might not be able to afford unpaid leave, yet do not have other types of paid leave to rely on.

Under the second proposal, The Healthy Families Act, H.R. 2460 (“HFA”), employers of fifteen or more employees would be required to provide employees with a maximum of seven paid sick days on an annual basis; survivors would be able to use the leave for various IPV-related purposes.⁷¹ Employers would also be barred from discriminating against employees who used the leave. The HFA represents a significant improvement over the FMLA both because it covers significantly more employees, provides paid leave, and protects those who need to use the leave from being sanctioned. However, while survivors could not be discriminated against for using leave, the HFA would not bar an employer from firing them on the basis of their survivor status, a significant drawback.

Finally, the SAFE Act applies to employers with fifteen or more employees and would provide up to thirty days of unpaid leave to survivors needing time off to attend court, deal with injuries, or engage in safety planning for themselves or affected immediate family members.⁷² While it provides more days of leave to survivors, the leave is unpaid. This drawback makes it less likely, perhaps, that employees would use it under any but the most exigent circumstances, which, conversely, could make employers slightly less wary of SAFE. SAFE also bars discrimination against survivors, provides for access to unemployment insurance should an employee need to leave a job because of violence, and prohibits insurance discrimination against survivors. Thus, although SAFE has gaps and problems, it is undoubtedly the most comprehensive of the federal proposals addressing the needs of survivors.⁷³

H.R. 2876, 109th Cong. §§ 41701-05 (2005). *But cf.* VAWA 2005, *supra* note 10. It should also be noted that during 2009, several laws were enacted that expanded the leave provided by the FMLA. *See, e.g.*, Airline Flight Crew Technical Corrections Act, 29 U.S.C. §§ 2611(2), 2612(a) (2010) (expanding the scope of the FMLA to include airline flight crews); National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190 (2009) (enabling a service member to take military caregiver leave under FMLA).

70. *See* Domestic Violence Leave Act, H.R. 2515, 111th Cong. (2009).

71. *See* Healthy Families Act, H.R. 2460, 111th Cong. (2009).

72. Security and Financial Empowerment Act, S. 1749, 111th Cong. (2009); Security and Financial Empowerment Act, H.R. 739, 111th Cong. (2009).

73. For a more detailed discussion about the need for employment leave for IPV survivors, *see* Widiss, *Domestic Violence and the Workplace*, *supra* note 8, at 699-705 (providing thorough background on the issue of leave); Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work: Creating a Societal Response by Making Businesses a Part of the Solution*, 74 BROOK. L. REV. 377, 392-93

C. UNEMPLOYMENT INSURANCE BENEFITS ARE A CRUCIAL SAFETY NET FOR SURVIVORS WHO LOSE OR LEAVE A JOB DUE TO VIOLENCE

Sometimes employees make the difficult decision to leave their jobs to protect themselves or family members that are being abused, or to avoid on-the-job harassment and stalking. Other times, survivors are fired or constructively discharged from employment because of issues related to the violence, such as absenteeism, the need for time off, performance problems, or on-the-job harassment or stalking. For such survivors, another source of financial support is crucial to supporting efforts to separate from a violent situation.

One of the most common sources of replacement income for those losing jobs is the unemployment insurance system. Unfortunately for IPV survivors, the reasons they often lose or leave jobs sometimes bar them from receiving unemployment insurance benefits. As we discuss below, many states have made efforts over the years to address these obstacles and extend access to unemployment insurance benefits to victims of domestic violence, sexual assault, and/or stalking. Recently, the American Recovery and Reinvestment Act (“ARRA”)⁷⁴ effected a rapid and massive change in state unemployment insurance laws, in part by providing federal incentive funding to states in exchange for providing access to unemployment insurance benefits to individuals who left a job because of domestic violence against themselves or an immediate family member.⁷⁵ We

(2009) (exploring the ineffectiveness of leave as a means of combating the cause of domestic violence and as a solution to its problems in the workplace); Sandra S. Park, *Working Towards Freedom From Abuse: Recognizing A “Public Policy” Exception To Employment-At-Will for Domestic Violence Victims*, 59 N.Y.U. ANN. SURV. AM. L. 121, 124-29 (2003) (recognizing leave as a possible resource for employee survivors but also a potential cause of termination); Jessie Bode Brown, *The Costs of Domestic Violence in the Employment Arena: A Call For Legal Reform And Community-Based Education Initiatives*, 16 VA. J. SOC. POL’Y & L. 1, 36-37 (2008) (discussing the status of paid and unpaid leave in the United States); Ralph Henry, *Twentieth Anniversary Celebration: Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 WIS. WOMEN’S L.J. 67, 83-99 (2005) (discussing leave in the context of economic security for survivors of domestic violence); Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer’s Responsibility*, 16 LAW & INEQ. 633, 656-60 (1998) (analyzing the benefits of leave to both domestic violence survivors and their employers); Sarah M. Buel, *Family Violence and the Health Care System: Recommendations for More Effective Interventions*, 35 HOUS. L. REV. 109, 132-34 (1998) (recommending the model of leave adopted by Polaroid).

74. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) [hereinafter ARRA 2009].

75. See generally Matt Kelley, *§3.1B Set Aside for Jobless Not Used; Some States Say Costs Outweigh Benefits*, USA TODAY, Aug. 31, 2009, at 1A (explaining how “[s]tates can get a third of the money by relaxing their rules on the length of employment needed to qualify for jobless benefits. They can get the rest by providing two of four kinds of unemployment benefits: Extra money for the worker’s dependents, for part-time workers, for those in training programs or for those who quit because of ‘compelling family circumstances’—such as fleeing domestic violence or caring for a sick relative.”). See, e.g., Eleanor Sobel & Tony Hill, *Florida Needs to Get Its Unemployment Compensation Benefits Right!*, SUN-SENTINEL, May 1, 2009, http://weblogs.sun-sentinel.com/news/opinion/thelant/blog/2009/05/florida_needs_to_get_its_unemp.html (urging state politicians to “tap into” the ARRA in order to “expand Florida’s unemployment eligibility by criteria to provide for people who leave work due to domestic violence, illness or disability. If Florida makes these changes, the Federal government will provide an additional \$444 million to Florida’s unemployment compensation trust fund.”); Kevin Diaz, *Feds Giving \$130 Million to Aid State’s Unemployed*, STAR TRIB. May 7, 2009, at 5B (describing how “[t]he money,

examine the changes wrought by ARRA on state legislation providing survivors with access to unemployment insurance benefits. Although some states enacted laws newly providing survivors access to benefits, ARRA also had the unintended consequence of causing states to change existing protections, instituting new language and procedures that have created obstacles to obtaining benefits for some survivors.

1. The Unemployment Insurance System and IPV

The unemployment insurance system was created more than seventy years ago to provide temporary financial assistance to people who become unemployed through no fault of their own. Unemployment insurance is both a federal and state system, with federal law creating a number of standards for administration, policy, and coverage, and each state establishing standards for eligibility and calculation of benefits, among other issues. Funding for a state's system includes payroll taxes paid by employers to the state fund based on the wages paid to their employees, and is now supplemented by badly needed federal funding: many state unemployment insurance funds were depleted as a result of the high number of unemployment insurance claims that began to rise with the economic downturn in 2007. Since the start of the recession in December 2007, the number of unemployed persons has risen by 8.2 million, and the unemployment rate has grown by 5.3 percentage points, to 10.2%.⁷⁶

In most states, the general rule is that individuals are ineligible for unemployment benefits if they leave work voluntarily without "good cause" or if they are discharged for "misconduct." These provisions can bar survivors who left or lost their jobs because of the violence from receiving benefits. In fact, in some states, individuals who voluntarily quit a job to relocate with a spouse can receive benefits, but those who are forced to flee an abusive spouse cannot. For this reason, in recent years there has been a dramatic growth in state laws that explicitly allow survivors to be eligible for benefits if they left or were fired from their jobs for reasons relating to domestic violence (and in some cases, sexual assault and stalking as well).

This important safety net for IPV survivors was expanded as a result of the federal stimulus legislation. ARRA⁷⁷ included several unemployment insurance modernization provisions that grant states additional unemployment insurance funding if they extend eligibility for benefits to workers who were not previously covered by state laws, such as those who leave their jobs for "compelling family reasons," including domestic violence. ARRA provided a timely incentive for

which is available immediately, will help the state meet unemployment insurance obligations estimated at more than \$1.5 billion this year, state officials said. Minnesota and six other states, including South Dakota, have qualified for the additional federal aid under a program that requires states to help unemployed workers who entered the workforce recently, work part time, or have lost their jobs due to 'compelling family reasons;' such as domestic violence.'").

76. U.S. Department of Labor, Bureau of Labor Statistics, *The Employment Situation— October 2009* (Nov. 6, 2009), <http://www.bls.gov/news.release/pdf/empisit.pdf>.

77. ARRA 2009, *supra* note 74.

states to make changes to their unemployment insurance systems, in the form of necessary infusions of federal funding, because many state unemployment insurance funds were depleted as a result of the high number of unemployment insurance claims that began to rise with the economic downturn in 2008.

2. ARRA's Effect on State Unemployment Insurance Laws and Survivors

The incentive provisions in ARRA to extend eligibility for benefits to survivors of domestic violence were an important and necessary step to enhancing the economic security of vulnerable women and children. States receive funding if they adopt the following language, in form or substance:

An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term "compelling family reason" means the following:

Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).⁷⁸

Initially, ARRA only provided incentives for extending eligibility to survivors of domestic violence, but not sexual assault or stalking. However, subsequent federal legislation enacted in November 2009 extended incentives for states to provide access to survivors of sexual assault.⁷⁹ Prior to ARRA's enactment, twenty-nine states and the District of Columbia had laws extending access to unemployment insurance benefits to survivors. As of October 2009, thirteen states that already had laws providing eligibility to survivors amended their laws to varying degrees to conform to ARRA's language.⁸⁰ Three states—Arkansas,

78. ARRA 2009, *supra* note 74. The federal Department of Labor subsequently issued a program letter to state workforce agencies regarding implementation of the unemployment insurance provisions of ARRA. The Department of Labor advised that the term "immediate family" must, at a minimum, include spouses, parents and minor children under the age of eighteen. U.S. Department of Labor, Employment and Training Administration Advisory System, Unemployment Insurance Program Letter No. 14-09, Attachment III, at III-12 (Feb. 26, 2009) [hereinafter DOL Program Letter], *available at* <http://wdr.doleta.gov/directives/attach/UIPL/UIPL14-09.pdf>.

79. In November 2009, the president signed the Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, 123 Stat. 2984 (2009), which provides funding incentives to states that extend access to unemployment insurance to victims of sexual assault.

80. Colorado: S.B. 09-247, 1st Reg. Sess. (Colo. 2009) amending COLO. REV. STAT. ANN. § 8-73-108(4)(r) (West 2009); Connecticut: H. B. 6175, Conn. Gen. Assemb. Jan. Sess. (Conn. 2009), amending CONN. GEN. STAT. § 31-236(a)(2)(A)(iv) (West 2010); Delaware: H.B. 170, 145th Gen. Assemb. 1st Reg. Sess. (Del. 2009), amending 19 DEL. CODE § 3314(1) (West 2010); Illinois: S.B. 1350, 96th Gen. Assemb., 1st Reg. Sess. (Ill. 2009), amending 820 ILL. COMP. STAT. 405/601 (West 2010); Maine:

Hawaii, and Missouri—enacted entirely new provisions as a result of ARRA.⁸¹ Now thirty-three jurisdictions have laws extending access to unemployment insurance benefits to survivors.⁸² Twenty-four of the thirty-three jurisdictions now extend access to unemployment insurance to survivors of domestic violence only.⁸³ Hawaii extends eligibility to survivors of domestic and sexual violence.⁸⁴ Two states (Texas and Washington) extend eligibility to survivors of stalking in addition to survivors of domestic violence.⁸⁵ Six states (Indiana, Montana, New Mexico, North Carolina, Oregon, and Vermont) extend eligibility to survivors of sexual violence and stalking in addition to survivors of domestic violence.⁸⁶

3. Significant Gaps in Access Remain

Although the extension of eligibility for benefits is a victory for survivors and their dependent families, many survivors are unable to avail themselves of this

S. Prop. 541, 124th Leg., 1st Reg. Sess. (Ma. 2009), amending 26 ME. REV. STAT. ANN. §§ 1193(1)(A)(4), 1043(23)(B)(3) (West 2010); Massachusetts: S.B. 2061, 2009 Mass. Legis. Serv., 1st Ann. Sess. (Mass. 2009), amending MASS. GEN. LAWS ANN. ch. 151A, §§ 1, 14, 25, 30 (West 2010); Minnesota: S.F. 1197, 87th Leg., 1st Reg. Sess. (Minn. 2009), amending MINN. STAT. §§ 268.095(1)(9), (6)(c) (West 2010); New Hampshire: S.B. 144, 161st Leg., 1st Sess. Gen. Ct. (N.H. 2009), amending N.H. REV. STAT. ANN. § 282-A:32(I)(a)(3) (2009); New York: A.B. 8273, 232nd Leg. Sess. (N. Y. 2009), amending N.Y. LAB. LAW § 593(1)(a) (McKinney 2010); North Carolina: H.B. 877, 2009 Gen. Assemb., Reg. Sess. (N.C. 2009), amending N.C. GEN. STAT. § 96-14(1f) (2009); Oregon: H.B. 2203, 75th Leg. Assemb. (Or. 2009), amending OR. REV. STAT. § 657.176(12) (2007); Washington: S.B. 5963, 61st Leg., Reg. Sess. (Wash. 2009), amending WASH. REV. CODE §§ 50.20.050, 50.20.100, 50.20.240, 50.29.020 (2010); Wisconsin: A.B. 255, 99th Leg., Reg. Sess. (Wis. 2009), amending WIS. STAT. § 108.04(7)(s) (West 2009).

81. 2009 Ark. Laws Acts 802 (West) (codified at ARK. CODE ANN. § 11-10-513(b) (West 2010)); 2009 Haw. Laws Act 171 (codified at HAW. REV. STAT. § 383 (2009)); 2009 Mo. Legis. Serv. H.B. 1075 (West) (codified at MO. ANN. STAT. § 288.501(2)(c) (West 2010)).

82. See Legal Momentum, *State Law Guide: Unemployment Insurance Benefits* (Sept. 2009), available at <http://www.legalmomentum.org/assets/pdfs/unemployment-insurance.pdf>.

83. Arkansas (2009 Ark. Laws Acts 802 (West) (codified at ARK. CODE ANN. § 11-10-513(b) (West 2010)); Arizona (ARIZ. REV. STAT. ANN. § 23-771 (2010)); California (CAL. UNEMP. INS. CODE §§ 1030, 1032, 1256 (West 2010)); Colorado (COLO. REV. STAT. ANN. § 8-73-108(4)(r)(I) (West 2010)); Connecticut (CONN. GEN. STAT. ANN. § 31-236(a)(2)(A)(iv) (West 2010)); Delaware (DEL. CODE ANN. tit. 19, § 3314(1) (West 2010)); District of Columbia (D.C. CODE §§ 51-131 to -136 (2010)); Illinois (820 ILL. COMP. STAT. ANN. 405/601 (West 2010)); Kansas (KAN. STAT. ANN. § 44-706(a)(12) (2010)); Louisiana (LA. REV. STAT. ANN. § 23:1770-1775 (2010)); Maine (ME. REV. STAT. ANN. tit. 26, §§ 1193(1)(A)(4), 1043(23)(B)(3) (2010)); Massachusetts (MASS. GEN. LAWS ANN. ch. 151A, §§ 1, 14, 25, 30 (West 2010)); Minnesota (MINN. STAT. §§ 268.095(1)(9), 268.095(6)(c) (West 2010)); Missouri (2009 Mo. Legis. Serv. H.B. 1075 (West) (codified at MO. ANN. STAT. § 288.501(2)(c) (West 2010)); Nebraska (NEB. REV. STAT. ANN. § 48-628.01(1) (West 2010)); New Hampshire (N.H. REV. STAT. ANN. § 282-A:32(I)(a)(3) (2009)); New Jersey (N.J. STAT. ANN. § 43:21-5(j) (West 2010)); New York (N.Y. LAB. LAW § 593(1) (McKinney 2010)); Oklahoma (OKLA. STAT. tit. 40, § 2-210 (2010)); Rhode Island (R.I. GEN. LAWS § 28-44-17.1 (West 2009)); South Carolina (S.C. CODE ANN. §§ 41-35-125, -130 (2009)); South Dakota (S.D. CODIFIED LAWS § 61-6-13.1(6) (2009)); Wisconsin (WIS. STAT. ANN. § 108.04(7)(s) (West 2010)); Wyoming (WYO. STAT. ANN. § 27-3-311 (West 2010)).

84. 2009 Haw. Laws Act 171 (codified at HAW. REV. STAT. § 383 (2009)).

85. TEX. LAB. CODE §§ 204.022(a)(11), 207.046(a)(2) (Vernon 2009); WASH. REV. CODE §§ 50.20.050, 50.20.100, 50.20.240, 50.29.020 (West 2010).

86. IND. CODE ANN. §§ 5-26.5-2-2, 22-4-15-1(c)(8), -1(1)(e), -2(e) (West 2010); MONT. CODE ANN. § 39-51-2111 (2009); N.M. STAT. ANN. § 51-1-7(A)(1)(b) (West 2010); N.C. GEN. STAT. ANN. § 96-14(1f) (West 2010); OR. REV. STAT. § 657.176(12) (West 2010); VT. STAT. ANN. tit. 21, §§ 1251 (West 2009).

important source of income. For instance, many survivors live or work in a state that fails explicitly to provide access to survivors. Eighteen states⁸⁷ still have no provision making survivors of domestic violence eligible for unemployment insurance benefits if they leave a job, a huge gap in a crucial safety net that can have cruel disparate effects. For example, a survivor who lives and works in Pennsylvania for a large national bank and who leaves a job because she is being harassed at work by her abuser may be denied unemployment insurance benefits because Pennsylvania has no special provisions for survivors. But a survivor a few miles away in New York who works for the same bank would be eligible for unemployment insurance benefits if she left a job for the same reason.

Even where states do explicitly provide access to benefits, laws vary as to whether the claimant or their family member must have been subject to or feared domestic violence, sexual assault, or stalking. As discussed above, only six states provide eligibility for benefits to survivors who separate from employment for domestic violence, sexual assault, or stalking; the vast majority of states only address domestic violence. Moreover, ARRA did not supplant state eligibility requirements for unemployment insurance benefits. Those states that adopted ARRA's language wholesale have different meanings of "reasonable and confidential documentation,"⁸⁸ and while some state laws explicitly describe the forms of acceptable documentation, others do not.⁸⁹ This creates significant obstacles to survivors filing claims for and obtaining unemployment insurance.

87. Alabama, Alaska, Florida, Georgia, Idaho, Iowa, Kentucky, Maryland, Michigan, Mississippi, Nevada, North Dakota, Ohio, Pennsylvania, Tennessee, Utah, Virginia, and West Virginia.

88. The DOL Program Letter advises that one instance of documentation that adequately verifies the claimant's belief is sufficient, and that to require multiple forms of documentation would defeat the purpose of the provision in ARRA. Forms of acceptable documentation include: an active or recently issued protective or other order; a police record documenting recent domestic violence; a statement concerning recent domestic violence from a qualified professional from whom the survivor has sought assistance such as a counselor, shelter workers, member of the clergy, attorney, or health worker. See DOL Program Letter, *supra* note 78, at III-11.

89. For instance, Colorado, which amended an existing domestic violence provision in its unemployment insurance law to conform to ARRA, explicitly lists acceptable forms of documentation of the violence to include an active or recently issued protective order or other order documenting the violence; a police record; or a statement from a professional from whom the survivor sought assistance, such as a counselor, shelter workers, clergymember, attorney, or health worker. COLO. REV. STAT. ANN. § 8-73-108(4)(r)(I) (West 2010). Hawaii, which enacted a new law in light of ARRA, requires documentation in the form of a notarized written statement of the survivor attesting to the violence and how continued employment creates an unreasonable risk of further violence; a signed written statement from a survivor services organization, attorney, advocate, medical or other professional; or a police or court record. 2009 Haw. Laws Act 171 (2009) (codified at HAW. REV. STAT. § 383 (2009)). Texas, which did not amend its previously existing unemployment insurance law regarding domestic violence and stalking, requires documentation in the form of an active or recently issued protective order; a police record; or a physician's statement or other medical documentation that describes the violence against the employee, that identifies the employee as the patient, and that relates to the history, diagnosis, treatment, or prognosis of the employee. TEX. LAB. CODE ANN. § 207.046(a)(2) (Vernon 2009). New York, in contrast, had an unemployment insurance law regarding domestic violence prior to ARRA, changed the language of its law to conform to ARRA, but does not specify the forms of acceptable documentation in its statute. N.Y. LAB. L. § 593(1) (McKinney 2010).

Furthermore, in many of the states that amended or replaced prior domestic violence-unemployment insurance provisions with language that conforms to ARRA, problems have arisen related to awareness of eligibility among survivors and advocates; implementation within state agencies; and agencies' processing of claims of survivors of domestic or sexual violence or stalking.

While federal attempts to extend eligibility to domestic violence survivors such as ARRA should be applauded, incentive funding provides an incomplete solution to an issue affecting workers in all fifty states. For this reason, a comprehensive federal solution to this issue is necessary. Proposed legislation offers the possibility of such a solution. The SAFE Act would extend eligibility for unemployment insurance benefits to all survivors of domestic violence, sexual assault, or stalking who leave a job because of the violence directed against them or an immediate family member.⁹⁰ This would be a crucial improvement because survivors would be eligible for benefits regardless of where they live or work, and the likelihood of a survivor having to remain with an abusive partner and be unable to relocate would be significantly lessened.

CONCLUSIONS AND RECOMMENDATIONS

In 2004, the National Institute of Occupational Safety and Health succinctly articulated the issue of responding to the workplace needs of IPV survivors: "A company should strive to create a culture of support for victims . . . [including]: assurances [that] no penalties exist for coming forward, [and that] safety and security protocols will be implemented."⁹¹ Many employers could and have voluntarily coalesced around this basic and sound approach, but the challenge is how to meet this goal more uniformly and comprehensively. With the recent passage of the Troubled Asset Relief Program and ARRA, Congress has demonstrated that it is appropriate to respond to the exigent circumstances wrought by the economic downturn—and not only to the needs of banks and auto giants, but to the needs of IPV survivors as well.⁹²

The next stage of federal response should include a comprehensive set of improvements to federal labor policy, taking into account not only the need to jumpstart the economy, but also the changed landscape of the labor force over the last several decades. Among the many issues to be addressed are productivity and workplace flexibility (including work/family balance) for all workers, but with special attention to the needs of a particularly vulnerable group of workers: IPV survivors. The Obama Administration's recent announcement of support for "the Healthy Families Act and other proposals that advance workplace flexibility and

90. Security and Financial Empowerment Act, S. 1740, 111th Cong. (2009); Security and Financial Empowerment Act, H.R. 739, 111th Cong. (2009).

91. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, WORKPLACE VIOLENCE PREVENTION STRATEGIES AND RESEARCH NEEDS 18 (2004), <http://www.cdc.gov/niosh/docs/2006-144/pdfs/2006-144.pdf>.

92. See ARRA 2009, *supra* note 74.

protect the income and security of workers”⁹³ signals an openness to moving in this direction.

However, Congress must tread carefully as it considers the survivor-related components of any such proposals. In order for legislative proposals concerning employment discrimination protection, leave, and access to unemployment insurance to be effective and far-reaching, they should be enacted together. Employment leave is of limited value without the job protection afforded by the anti-discrimination provisions, and unemployment insurance should be available to survivors regardless of where they work or reside.⁹⁴ Moreover, employers should be engaged in the discussion, both by other employers who have experience in implementing the kinds of policies required by the SAFE legislation, and by policymakers to determine if pending legislation should accommodate existing good practices.⁹⁵ For instance, policymakers may find that employers would be more amenable to anti-discrimination, leave, or unemployment protections for survivors if, in return, employers had the ability to obtain a workplace order of protection to keep an abusive partner or stalker away from the workplace.⁹⁶ Whether these protections for IPV survivors are enacted as part of the SAFE Act, a larger proposal such as the reauthorization of VAWA, or a labor policy modernization effort, is a contextual question and may vary significantly depending on a host of relevant factors including but not limited to the state of the economy and the movement and timing of compatible pieces of legislation.

The time is ripe for comprehensive federal action to recognize the changing nature and needs of America’s twenty-first century workforce. The country’s worst economic recession since the Great Depression has presented Congress with a timely opportunity to ensure the economic security of all workers, especially some of our most vulnerable citizens.

93. *The Cost of Being Sick: H1N1 and Paid Sick Days: Hearing Before the S. Subcomm. on Children and Families Comm. on Health, Education, Labor and Pensions*, 111th Cong. (2009) (testimony of Seth Harris, Deputy Sec’y of Labor).

94. Recognizing this reality, Illinois has enacted all three provisions. See *Victims’ Economic Security and Safety Act*, *supra* note 52.

95. See, e.g., *Healthy Families Act*, *supra* note 71, at §§ 11–12 (noting that the Act does not infringe upon any prior employer obligations vis-à-vis paid leave and encouraging the adoption and retention of more generous leave policies).

96. Some states already afford employers the ability to seek these orders of protection. See, e.g., Legal Momentum, *State Law Guide: Workplace Restraining Orders* (Dec. 2009), <http://www.legalmomentum.org/assets/pdfs/workplace-restraining-orders.pdf>. See also Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work: Creating a Societal Response by Making Businesses a Part of the Solution*, 74 *BROOK. L. REV.* 377, 392–93 (2009).