

From the editors of



Domestic violence & the coronavirus crisis: Employer best practices to assist victims

The coronavirus pandemic has produced an increase in calls to domestic-abuse hotlines, according to many women's advocates. They theorize that the close quarters of stay-at-home orders plus joblessness and lack of income adds up to a perfect storm of abuse potential, with victims trapped and alone with abusers.

Employers may soon discover that some of their employees have been abused. You can help them.

The impact of domestic violence at work

It might feel uncomfortable—maybe a none-of-our-business invasion of privacy—to try to help an employee who might be harmed by domestic violence. But you could save lives if you encourage supervisors and co-workers to do so.

Less than 30% of U.S. businesses have programs to address domestic violence among their workers, and just 4% teach employees about the impact domestic violence has on the workplace, according to a Bureau of Labor Statistics survey.

Although physical attacks between partners are rare at work, domestic violence spills into businesses in other ways:

- Health care costs associated with domestic violence run to hundreds of millions of dollars a year, and much of that is paid by employers.
- Unscheduled leave and reduced productivity spurred by domestic violence costs employers up to \$5 billion annually.

- Co-workers of employees who suffer domestic violence—even when they do not witness the incident—can be distracted and worried about their colleagues.
- 96% of domestic-violence victims report it causes problems for them at work.

Best practices to assist victims

As you look for ways to help employees who may be victims of domestic violence, consider these best practices, tested in companies across the nation:

1. **Teach all employees how to recognize signs** of domestic violence and what to do if they or their colleagues are victims.
2. **Include domestic violence in your policy** banning workplace violence and publish it in your employee handbook. Be specific: Say you will not tolerate violence that spills into the workplace from home or interpersonal relationships. Make it a zero-tolerance policy.
3. **Make information accessible.** Hang posters and place informative brochures around the workplace.
4. **Consider everyone involved.** Employees who are victims of domestic violence need your assistance. Employees accused of being abusers need referrals to organizations that counsel batterers.
5. **Make the workplace safe.** Install adequate lighting in parking lots and keep doors locked so only employees have access to the workplace.
6. **Train reception and security staff** to be alert for abusers who might come to the workplace to contact, intimidate or harm one of your employees. Instruct them to call the police and get word to co-workers who can help the employee.

Existing benefits can help staff who are victims

Many of the benefits your organization already offers can be especially helpful to an employee caught up in a domestic-violence situation. Examples:

- Insist that your **employee assistance program** stands ready to provide immediate referrals to medical treatment, temporary housing, counseling and other support for victims of domestic violence. This kind of help should be available 24/7, with a live connection by phone (or in person) with a trained counselor.
- Be generous with **flextime** when someone needs leave to see a doctor, file for a protective order or search for new housing. Make sure managers know this is a priority.
- Help victims determine if they qualify for job-protected FMLA leave if they suffer from injuries or stress related to domestic violence.

Note: Many states that require employers to offer paid sick leave have carved out leave entitlements intended specifically for victims of domestic or sexual abuse. Paid leave is available for seeking medical care, legal assistance, counseling and to make new living arrangements. [Check the law in states where you operate.](#)

The legal side: Domestic violence victims may be protected from job discrimination

No federal employment law specifically prohibits job discrimination against domestic violence victims. But the EEOC has published a Q&A fact sheet clarifying that Title VII and the Americans with Disabilities Act (ADA) “may apply to employment situations involving applicants and employees who experience domestic or dating violence, sexual assault, or stalking.”

As a result, make sure your anti-discrimination training reflects the examples listed in that guidance and make your managers aware of circumstances under which such individuals might be the targets of discrimination under those federal statutes.

There are many proactive steps employers can take in response to domestic violence cases (training, EAP referrals, safety planning), but firing the victimized employee or refusing to hire applicants with a history of domestic violence shouldn't be one of them.

Employers can add the issues raised in the EEOC's guidance to the anti-harassment and non-discrimination training that is provided by the company, in order to avoid inadvertent violation of Title VII or the ADA. Fortunately, the EEOC's Q&A format provides clear examples that can be incorporated in such training. Here is the EEOC Q&A (also found at www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm):



Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on race, color, sex, religion, or national origin, and the

Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability. _ Because these federal EEO laws do not prohibit discrimination against applicants or employees who experience domestic or dating violence, sexual assault, or stalking as such, potential employment discrimination and retaliation against these individuals may be overlooked. The examples provided in this publication illustrate how Title VII and the ADA may apply to employment situations involving applicants and employees who experience domestic or dating violence, sexual assault, or stalking. However, whether discrimination has actually occurred in a particular instance must be determined through an investigation of the facts alleged. Information on how to file an employment discrimination claim may be found at the end of this document.

Q: What are some examples of employment decisions that may violate Title VII and involve applicants or employees who experience domestic or dating violence, sexual assault, or stalking?

A: Title VII prohibits disparate treatment based on sex, which may include treatment based on sex-based stereotypes. For example:

- An employer terminates an employee after learning she has been subjected to domestic violence, saying he fears the potential “drama battered women bring to the workplace.”
- A hiring manager, believing that only women can be true victims of domestic violence because men should be able to protect themselves, does not select a male applicant when he learns that the applicant obtained a restraining order against a male domestic partner.
- An employer allows a male employee to use unpaid leave for a court appearance in the criminal prosecution of an assault, but does not allow a similarly situated female employee to use equivalent leave to testify in the criminal prosecution of domestic violence she experienced. The employer says that the assault by a stranger is a “real crime,” whereas domestic violence is “just a marital problem” and “women think everything is domestic violence.”

Title VII prohibits sexual or sex-based harassment. Harassment may violate Title VII if it is sufficiently frequent or severe to create a hostile work environment, or if it results in a “tangible employment action,” such as refusal to hire or promote, firing, or demotion. For example:

- An employee’s co-worker sits uncomfortably close to her in meetings, and has made suggestive comments. He waits for her in the dark outside the women’s bathroom and in the parking lot outside of work, and blocks her passage in the hallway in a threatening manner. He also repeatedly telephones her after

hours, sends personal e-mails, and shows up outside her apartment building at night. She reports these incidents to management and complains that she feels unsafe and afraid working nearby him. In response, management transfers him to another area of the building, but he continues to subject her to sexual advances and stalking. She notifies management but no further action is taken.

- A seasonal farmworker's supervisor learns that she has recently been subject to domestic abuse, and is now living in a shelter. Viewing her as vulnerable, he makes sexual advances, and when she refuses he terminates her.

Title VII prohibits retaliation for protected activity. Protected activity can include actions such as filing a charge of discrimination, complaining to one's employer about job discrimination, requesting accommodation under the EEO laws, participating in an EEO investigation, or otherwise opposing discrimination. For example:

- An employee files a complaint with her employer's human resources department alleging that she was raped by a prominent company manager while on a business trip. In response, other company managers reassign her to less favorable projects, stop including her in meetings, and tell co-workers not to speak with her.

Q: What are some examples of employment decisions that may violate the Americans with Disabilities Act and involve applicants or employees who experience domestic or dating violence, sexual assault or stalking?

A: The ADA prohibits different treatment or harassment at work based on an actual or perceived impairment, which could include impairments resulting from domestic or dating violence, sexual assault or stalking. For example:

- An employer searches an applicant's name online and learns that she was a complaining witness in a rape prosecution and received counseling for depression. The employer decides not to hire her based on a concern that she may require future time off for continuing symptoms or further treatment of depression.
- An employee has facial scarring from skin grafts, which were necessary after she was badly burned in an attack by a former domestic partner. When she returns to work after a lengthy hospitalization, co-workers subject her to frequent abusive comments about the skin graft scars, and her manager fails to take any action to stop the harassment.

The ADA may require employers to provide reasonable accommodation requested for an actual disability or a "record of" a disability. An actual disability is a physical or mental impairment that substantially limits one or more major life activities (which include major bodily functions). A "record of" a disability is a past history of

a substantially limiting impairment. An impairment does not need to result in a high degree of functional limitation in order to be “substantially limiting.” A reasonable accommodation is a change in the workplace or in the way things are usually done that an individual needs because of a disability and may include time off for treatment, modified work schedules, and reassignment to a vacant position. For example:

- An employee who has no accrued sick leave and whose employer is not covered by the FMLA requests a schedule change or unpaid leave to get treatment for depression and anxiety following a sexual assault by an intruder in her home. The employer denies the request because it “applies leave and attendance policies the same way to all employees.”
- In the aftermath of stalking by an ex-boyfriend who works in the same building, an employee develops major depression that her doctor states is exacerbated by continuing to work in the same location as the ex-boyfriend. As a reasonable accommodation for her disability, the employee requests reassignment to an available vacant position for which she is qualified at a different location operated by the employer. The employer denies the request, citing its “no transfer” policy.

The ADA prohibits disclosure of confidential medical information.

- An employee who is being treated for post-traumatic stress disorder (PTSD) resulting from incest requests reasonable accommodation. Her supervisor then tells the employee’s co-workers about her medical condition.

The ADA prohibits retaliation or interference with an employee’s exercise of his or her rights under the statute.

- In the prior example, the employee tells the supervisor she intends to complain to human resources about his unlawful disclosure of confidential medical information. The supervisor warns that if she complains, he will deny her the pay raise she is due to receive later that year.