

Broadening Employee Protections in the US and EU



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This paper examines the growing movement on domestic violence leave and how policymakers and advocacy organizations have played an important role in developing these protections. In addition, this paper will provide a few examples of city and county governments that have passed protections at the local level. Finally, this paper will provide an overview of policy developments in the European Union.

Introduction

Over the past quarter century, the confluence of several social movements have increased public understanding of domestic violence and the need to protect victims.

Enacted in 1994, the Violence Against Women Act (VAWA) was the product of a decade-long effort by grassroots advocates to ensure greater protection for victims of domestic and sexual violence. The law provides funding for investigation of violent crimes and increased penalties for offenders, and has served as a baseline of protections. VAWA was reauthorized by Congress in 2000, 2005, and 2013. Currently, the authorization for the law has lapsed due to partisan disagreements over proposed expansions.

In addition to heightened awareness of domestic violence, there has been a movement at the state and local level to expand employer-provided leave benefits to employees. The first state to mandate sick leave was Connecticut in 2011. Currently, 11 states and D.C. have mandated paid sick leave. Six states and D.C. have mandated paid family and medical leave, although these jurisdictions are in different stages of implementation.

More recently, the Me Too movement has further increased public awareness of the prevalence of sexual assault and harassment and the need to provide additional benefits to victims.

What is Domestic Violence Leave?

Domestic violence leave is a state-level legal protection. Domestic violence leave provides that an employer must allow an employee to use time off if an employee is a victim of domestic abuse, sexual violence, assault, or stalking. An employee may use the time off to seek counseling or legal reparations as well as time off for treatment, legal assistance, or protection from the aggressor.

Domestic Violence Leave Protections at the State Level

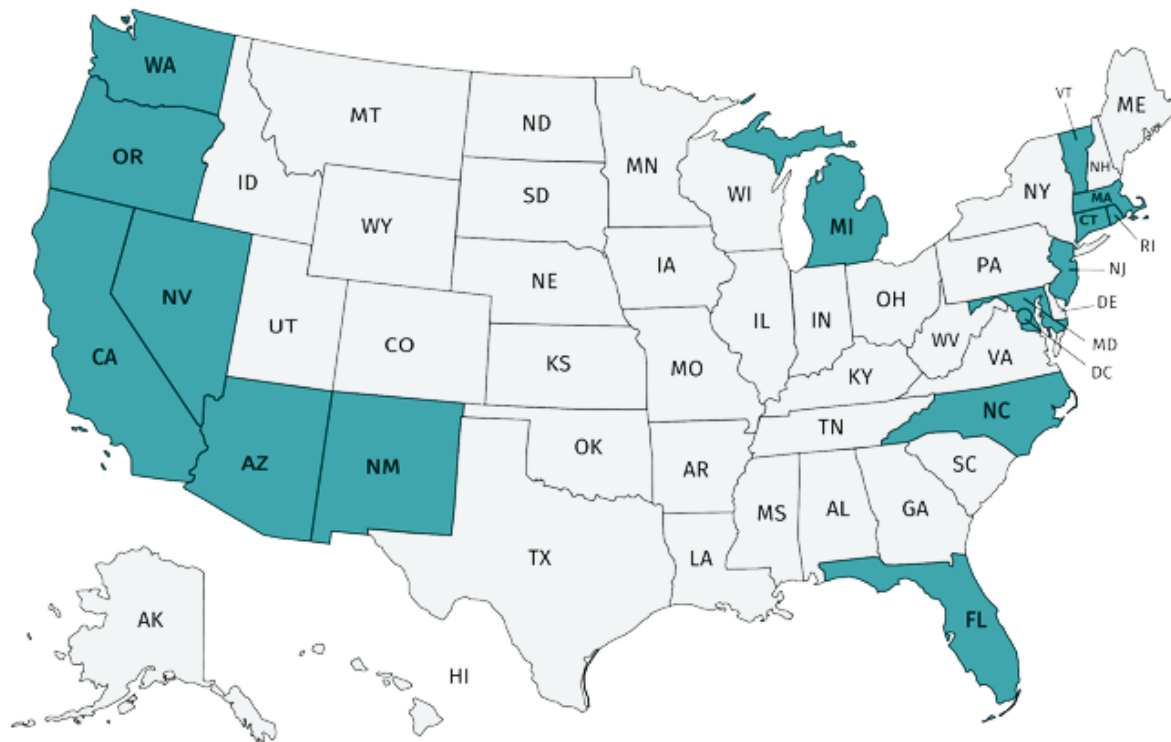
In the past seventeen years, states have steadily expanded the types of protections they require employers to provide their employees. For example, between 2002 and 2019, seventeen states and the District of Columbia (D.C.) enacted legislation requiring employers to provide their employees with domestic violence leave.¹

Colorado was the first state to enact domestic violence leave, providing that employers shall permit an employee to request or take up to three consecutive days off work in any twelve-month period, with or without pay, if the employee is the victim of domestic abuse, stalking, or sexual abuse.² States with domestic violence leave protections all provide similar protections to victims. For example, California, Rhode Island, and Maryland's legislation all require employers to provide paid or earned sick days for victims of domestic violence, sexual abuse, or stalking.

¹ AZ, CA, CO, CT, FL, MA, MD, MI, MN, NC, NJ, NM, NV, OR, RI, VT, WA, D.C.

² Colo. Rev. Stat. § 24-34-402.7.

States with Domestic Violence Leave Protections



Examples of a Patchwork of Domestic Violence Leave Protections

- Connecticut's sick leave policy allows a victim of family violence or sexual assault to use leave for medical care, relocation, or legal proceedings.³
- Massachusetts and Arizona require companies to allow an employee time off if the employee or a family member of the employee is a victim of domestic violence, sexual assault, or stalking.⁴
- Nevada is unique because it provides leave to victims of domestic abuse, sexual violence, and sexual harassment. In many cases, sexual harassment can be interpreted as a form of sexual abuse or assault under a state's definition of sexual abuse and/or assault, but Nevada explicitly uses the term "harassment".

Domestic violence leave is a state level issue, resulting in a piecemeal approach to adopting employee protections.

³Conn. Gen Stat. § 31-57t.

⁴Mass. Gen. Laws ch. 149 § 52E

Stakeholders Involved

Partisanship

Domestic violence leave is an issue that crosses party lines. Legislation providing protections for victims of domestic violence and sexual assault has been passed in states controlled by both Republicans and Democrats. Consequently, domestic violence leave is an issue that could likely be expanded across multiple states regardless of which party is in the majority for both the state legislatures.

Organizational Level

There is a prominent organizational presence surrounding domestic violence protections. Futures without Violence is a nationwide organization that has advocated on the VAWA since the early 1990s. They now join forces with partner coalitions across the U.S. to push for protections in the workplace.⁵ NO MORE is another example of how organizations drive awareness, inspire action, and help drive cultural change to help end domestic violence and sexual assault.⁶ They currently ally with 1,200 organizations and have 30 local city-wide, state-wide, and international NO MORE programs pushing to end sexual violence.

The National Partnership for Women & Families is another major organization pushing for inclusive leave legislation for employees at the state and federal level. For example, the National Partnership for Women & Families currently has campaigns pushing for wider employee protections in Alaska, Hawaii, Nevada, South Dakota, Nebraska, Minnesota, Illinois, Louisiana, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Pennsylvania, New York, and New Hampshire.⁷

Other organizations also support protections for victims through the legal process. For example, the American Bar Association Commission on Sexual Violence & Abuse (ABA) advocates on their model workplace policy on employer responses to domestic violence, sexual violence, dating violence, and stalking which outlines guidelines for workplace responses to survivors of

⁵"Check Your Workplace." Check Your Workplace. Accessed October 9, 2019. <https://checkyourworkplace.com/>.

⁶"Campaigns - NOMORE.org: Together We Can End Domestic Violence and Sexual Assault." NOMORE.org | Together we can end domestic violence and sexual assault. Accessed October 9, 2019. <https://nomore.org/campaigns/>.

⁷"Paid Sick Days Campaigns." National Partnership for Women & Families. Accessed September 5, 2019. <http://www.paidicksickdays.org/campaigns/#.XW-vZJNKi3U>.

assault and perpetrators of violence.⁸ The purpose of this policy is to institute a healthy and safe work climate. Not only does this policy address violence in the workplace but also covers heterosexual and same sex conduct. This policy is reflective of the movements present across the country pushing for equal rights for all employees.

National organizations engage advocates at the local and state level through outreach and grassroots activism which in turn sparks support for domestic violence and employee protections initiatives in the legislature.

Domestic Violence Leave Protections at the Local Level

At the local level, city and county governments have passed their own legislation regarding employee protections. For example, in California, in addition to the statewide Healthy Working Families Act, employers must comply with different local laws in Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco and Santa Monica.

Additionally, cities in states without domestic violence protections are taking the lead in passing ordinances expanding employee protections. For example, Westchester County, New York and Minneapolis, Minnesota have joined New York City in providing for domestic violence leave under the locality's sick leave code.

These examples are not intended to be a comprehensive list of localities with domestic violence leave protections.

⁸ "Commission on Domestic & Sexual Violence Section of Indiciual Rights & Responsibilities Report to the House of Delegates." American Bar Association. Accessed September 2019. https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Workplace/Updated_112a.pdf.

European Union

There is one directive in the European Union (EU) that addresses protections for victims of domestic violence and sexual assault. The EU's Victim's Rights Directive establishes minimum standards on the rights, support, and protection of victims of sexual abuse. The directive provides that victims should receive appropriate support to facilitate their recovery, should be provided sufficient access to justice, and shall not be subject to visual contact with their offender(s).

At the member-state level, employee protections vary widely when it comes to eligibility for leave, duration of leave, and replacement rates. Additionally, member states do not ensure the right to time off for victims of domestic violence and sexual abuse. The EU and its member states instead provide legal protections for victims of sexual violence, but not the time off work necessary to manage the personal impact of being a survivor or pursue effective legal action.

The conversation around providing more benefits to employees is increasing in the EU. For example, in 2017, the European Parliament adopted resolution P8_TA(2017)0417.⁹ The resolution

- *Insists on effective implementation of the existing legal framework addressing sexual harassment and abuse*
- *Calls on the Commission to assess, exchange and compare the existing best practices of combating sexual harassment in the workplace and to disseminate the results of this assessment as regards the effective measures that Member States*
- *Welcomes initiatives such as the #MeToo movement that aim to report cases of sexual harassment and violence against women*

⁹P8_TA(2017)0417.


Members of the EU Parliament are also taking action through a movement that asks members to sign a pledge to “actively combat” sexual harassment and implement mandatory anti-harassment training, among other measures.¹⁰ The conversation around employee protections and victims of domestic violence is increasing across the EU, signaling that future legislation may expand benefits for employees, specifically those who are victims of domestic violence.

Conclusion

The level of protections provided to employees, historically, is a controversial issue at the federal level. Inconsistent legal protections for domestic victims have led states and smaller localities to enact legislation providing for domestic violence leave for victims. The national prioritization of reducing domestic violence, sexual abuse, and harassment is supported by influential social organizations that advocate for protections and engage local populations in the conversation that ultimately drives legislative action.

Discussions about sexual abuse in the workplace and established new cultural norms about exposing workplace harassment and inequity are rising throughout the country. Thus, employers should look beyond policymakers, to social movements and even ordinary citizens as potential drivers of future legislation. With a United States Congress that is mired in partisan gridlock, citizens and employee advocates are turning to state legislation and ballot initiatives as an opportunity to increase employee protections. Thus, forward thinking employers should consider reviewing their own internal policies to make them as inclusive as possible, not just because the definition of sick leave is expanding through legislative mandates, but also because social movements and citizen demand have shown to be a noteworthy influence in passing legislation that increases employee protections.

¹⁰MeTooEP. “Our Pledge for the EU-Elections Is out! We Call on the Candidate MEPs to Sign and Commit to Actively Combat & Prevent Sexual Harassment in the @Europarl_EN for the Mandate 2019-2024 #MeTooEP #MeToo #TimesUp Pic.twitter.com/P5luDwycMk.” Twitter, February 6, 2019. https://twitter.com/MeTooEP/status/1093090264976183296?ref_src=twsrc^tfw|twcamp^tweetembed|twterm^1093090264976183296&ref_url=about:srcdoc



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