

How the Family and Medical Leave Act Can Offer Protection to Domestic Violence Victims in the Workplace

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Introduction

ALTHOUGH DOMESTIC VIOLENCE begins within the confines of one's own home, it often follows the victim to work, evolving into an issue of workplace violence that affects the victim, coworkers, and employers. The misconception that domestic violence affects only the home suggests that work is not the proper arena for protecting domestic violence victims. Often however, domestic violence does not stay at home when a woman leaves for work. The effects of domestic violence—such as a lowered self-esteem and physical manifestations of abuse—travel outside the home and evolve into a workplace issue that affects not only the victim, but also coworkers and employers.

Because of domestic violence's impact on the workplace, laws have recently been advanced to protect victims in their place of work; this legislation is generally described as domestic violence employment laws. Twenty states¹ have created laws that grant domestic violence victims the right to unpaid leave (similar to the leave available in the Family and Medical Leave Act²), protection from discrimination as a victim of domestic violence, the right to accommodations (similar to those available in the Americans with Disabilities Act³), increased unemployment insurance, and workplace restraining orders. These

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1. Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Maine, Nevada, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, and Washington have all employed at least one of these measures. *See infra* Part IV.

2. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2653 (2006).

3. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2006).

state laws also offer victims a support system in a situation where they often feel alone, and remove the fear of job loss and financial insecurity, allowing the victim to take steps toward leaving her abusive relationship.

These state laws, however, are insufficient in addressing the problems domestic violence poses in the workplace. An amendment to the Family and Medical Leave Act (“FMLA”) would create a comprehensive nationwide law, addressing the issue on a federal level, while at the same time limiting costs to employers and moving towards the resolution of a pressing social issue. Federal domestic violence legislation would promote equality for women at work, further break down barriers for women in the employment context, and ensure economic security, which offers victims the chance to leave their abusive relationship. Congress should amend the FMLA to offer protection and support to domestic violence victims.

Part I of this Comment examines recent social science research documenting the significant effect domestic violence has on the workplace. It identifies how employment law has begun to recognize domestic violence as a problem; not as one confined to the home, but as one requiring protection in the workplace. Part II introduces current federal law, specifically the FMLA, and the protection afforded by this Act. Part III discusses recently enacted state laws that offer employees protection through leave, antidiscrimination policies, accommodations, unemployment insurance, and workplace restraining orders. It also examines the problems inherent in solving this problem on a state-by-state basis. Part IV argues that systematic solutions must be undertaken at the federal level to rectify this social problem, and advances the idea of amending the FMLA to protect domestic violence victims as opposed to creating a new, freestanding federal law. Part V proposes an amendment to the FMLA and provides responses to potential problems and opposition that such an amendment may have.⁴

I. Domestic Violence and Its Effect on the Workplace

Domestic violence manifests itself in more than cuts and bruises. A victim’s entire world is affected. Specifically, domestic violence and the workplace are inextricably intertwined. A victim’s productivity suf-

4. See Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669 (2008) (currently, the most comprehensive writing on the issue of domestic violence and the workplace). This Comment adopts the same structure to introduce the scope and magnitude of the issue as well as the current problems with the state laws now in existence.

fers, absenteeism increases, and the threat of workplace violence surfaces for the entire workplace. Additionally, an employer faces multiple costs in addressing the needs of such employees. Because domestic violence impacts the workplace in such a way, federal employment law needs to play a larger role in regulating domestic violence issues.

A. The Scope of the Problem

Domestic violence initially erupts within the home. Unfortunately, the violence and effects of that violence are not confined to such a setting. Emerging social science research shows that domestic violence is wreaking havoc on the workplace for both the victim and the employer alike—creating not just a social problem but an employment problem as well. Of course, men or women can be domestic violence perpetrators and domestic violence can also affect same-sex relationships; however, eighty-five to ninety-five percent of abusive relationships involve a woman victim and her male partner.⁵ One in three women report being abused at some point in their life by their husband or boyfriend; and, as forty-six percent of the U.S. workforce is comprised of women, this problem is a pervasive one in our country's workplace.⁶

A woman in an abusive relationship is not able to escape from her problems simply by going to work. Domestic violence negatively affects productivity and increases employee absenteeism.⁷ Ninety-six percent of battered workers experience problems at work due to abuse.⁸ And abusers can be extremely creative in how they *attack* a woman at work. Seventy-four percent are harassed while at work, fifty-six percent are late to work, and twenty-eight percent leave work early.⁹ It is also common for the abuser to sabotage child-care arrangements or destroy and/or hide items the victim needs in order to attend things such as training programs or work.¹⁰

5. American Institute on Domestic Violence, Domestic Violence in the Workplace Statistics, <http://www.aidv-usa.com/statistics.htm> (last visited Mar. 19, 2010).

6. SafeWork, DV in the Workplace: Domestic Violence and Employees, http://www.safehorizon.org/safework/dv_andemployees.htm (last visited Mar. 19, 2010).

7. See American Institute on Domestic Violence, *supra* note 5.

8. *Id.*

9. *Id.*

10. See U.S. GEN. ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 7 (1998), available at <http://www.gao.gov/archive/1999/he99012.pdf>.

Employees in abusive relationships often need to miss entire days of work due to debilitating or incapacitating injuries such as a black eye or broken bone.¹¹ Domestic “violence victims lose nearly 8.0 million days of paid work each year—the equivalent of more than 32,000 full-time jobs and nearly 5.6 million days of household productivity.”¹² On average, an individual victim of domestic violence loses 137 work hours annually, which is roughly equivalent to four full-time weeks.¹³ This creates a risk that the victim will lose a significant portion of her income or even lose her job. For any American, job loss is frightening, but for a domestic violence victim it can be devastating. Economic insecurity creates a large obstacle when leaving an abusive partner.¹⁴ Women are more likely to return or stay with their abuser if they have no alternative income, thereby creating a perpetual cycle of abuse.¹⁵ If a victim is brave enough to leave her abuser without the financial security offered from a steady job, she runs the risk of eventually becoming homeless.¹⁶ Fifty-seven percent of homeless women recently reported leaving their home due to a violent situation.¹⁷

Domestic violence also takes a significant toll on the employer. The American Institute of Domestic Violence recently reported “[t]he health-related costs of rape, physical assault, stalking, and homicide by [domestic] partners exceed \$5.8 billion each year,”¹⁸ and \$4.1 billion is attributed to direct medical and mental health care services.¹⁹ Aside

11. Though medical treatment can be available twenty-four hours a day, follow up appointments and scheduled medical treatment are generally made during business hours. Further, the victim may miss work so that other coworkers and supervisors do not notice the injuries.

12. See American Institute on Domestic Violence, *supra* note 5.

13. See Widiss, *supra* note 4, at 677 (citing Richard Tolman & Hui-Chen Wang, *Domestic Violence and Women's Employment: Fixed Effects Models of Three Waves of Women's Employment Study Data*, 36 AM. J. COMM. PSYCH. 147, 153 (2005)).

14. See Susan R. Paisner, *State DV Coalition Spotlight: Seeking Economic Justice? Georgia's Coalition Makes Inroads*, NAT'L BULL. ON DOMESTIC VIOLENCE PREVENTION, Sept. 2009, available at http://www.gcadv.org/html/what/economic_justice.html.

15. *Id.*

16. See Widiss, *supra* note 4, at 678 (citing U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES, A 24-CITY SURVEY 64 (2005), available at <http://www.usmayors.org/hungersurvey/2005/HH2005FINAL.pdf>) (half of the cities surveyed in 2005 identified domestic violence as a primary reason for homelessness)).

17. See *id.* at 678 (citing HOMES FOR THE HOMELESS & INST. FOR CHILDREN & POVERTY, TEN CITIES, 1997–1998: A SNAPSHOT OF FAMILY HOMELESSNESS ACROSS AMERICA 13 (1998), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/00019b/80/16/fb/5d.pdf).

18. See American Institute on Domestic Violence, *supra* note 5.

19. *Id.*

from medical expenses, loss of productivity and earnings due to domestic violence account for \$1.8 billion each year.²⁰ The Institute focuses its costs on productivity.²¹ The numbers, however, may not reflect the costs employers face due to things such as tardiness, leaving early, and the use of office equipment for reasons beyond productivity. Furthermore, in a worst-case scenario, abusive relationships can turn into deadly incidents of workplace violence.²²

American businesses are beginning to take note of the effects domestic violence has on the workplace. More than two-thirds of human resource directors and sixty percent of senior executives surveyed identified domestic violence as a substantial employee problem that impacted the company's productivity.²³ In addition, nearly half of all employed adults reported having personally experienced the effects of domestic violence (either against themselves or a coworker) in their workplaces.²⁴ Domestic violence affects a significant amount of the U.S. workforce. The workplace is where employees spend on average eight hours of each weekday, which makes it an ideal place to offer help and support to victims. Employment law can save money and lives by addressing this challenge.²⁵

B. Federal Employment Law Should Take Action and Lead the Change Against Domestic Violence

Due to increasing research highlighting the effects domestic violence has on the workplace, employment law has taken the first of many steps necessary to protect domestic violence victims. By framing the problem as a workplace issue, domestic violence employment laws enable a victim to leave her abuser, create a support system that otherwise might not exist, and reduce the costs to both employee and employer. These protective laws have moved the conversation in the right

20. *Id.*

21. *Id.*

22. This extreme example of domestic violence affecting the workplace is not very common, but is a recognized risk. See NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, DEP'T OF HEALTH & HUMAN SERVS., WORKPLACE VIOLENCE PREVENTION STRATEGIES AND RESEARCH NEEDS 4-5 (2006).

23. American Institute on Domestic Violence, *supra* note 5.

24. CORPORATE ALLIANCE TO END PARTNER VIOLENCE, NATIONAL BENCHMARK TELEPHONE SURVEY ON DOMESTIC VIOLENCE IN THE WORKPLACE 1 (2005), *available at* <http://www.ncdsv.org/images/CAEPVSurvey.WorkPlace.pdf>.

25. MAG Regional Domestic Violence Council, Domestic Violence: A Workplace Issue, http://www.mag.maricopa.gov/archive/dv/about_dv/workplace/workplace.html (last visited Mar. 19, 2010).

direction, but a federal amendment would best serve the safety of the employees and the interests of employers.

Domestic violence inflicts more than physical injuries. Often the victim is isolated from her family and friends, put down, made to feel bad, or threatened.²⁶ She may be afraid to step forward and admit the problem she is facing—especially at the workplace where employees seek to ascend in the corporate hierarchy and impress superiors by promoting an aura of strength and confidence. Furthermore, a victim of domestic violence may be afraid to come forward in fear of retaliation. Among the main reasons employers fire victims of domestic violence are: (1) their status as a victim of domestic violence makes the employers uncomfortable; (2) the idea that the victim may bring violence to the workplace with them; or (3) the abuser's harassing conduct interferes with the efficient operation of the business.²⁷ This creates a problem where employees become afraid to come forward and seek help at work. This is problematic for the entire company and goes against public policy.

When domestic violence victims fear they may lose their jobs²⁸ for requesting time off to do things associated with leaving their abusive spouses, they become less likely to leave their relationships.²⁹ A victim may need to file a restraining order and/or civil suit, file for custody, secure new housing, and tend to medical conditions. Usually, these tasks must be done during regular business hours.³⁰ The abusive partner often knows the work schedule of the victim and may employ punishment tactics upon her for coming home later than usual. The fear of losing a job due to necessary absences creates a situation of economic instability and dependence preventing the victim from taking steps to leave her abuser.

Abusive partners often isolate their victims as part of a larger abusive scheme to achieve and maintain power and control over the victim.³¹ The most dangerous time for a woman who is being abused is when she tries to leave.³² Creating legal protection for victims at his/

26. DomesticViolence.org, What is Abuse? A Warning List, <http://www.domesticviolence.org/what-is-abuse> (last visited Mar. 19, 2010).

27. See Widiss, *supra* note 4, at 705–07.

28. Employment is often associated with medical insurance, dental insurance, and retirement funds. Therefore, fear of losing employment can be compounded by the fear of losing all things associated therewith, including extent of medical coverage.

29. See Paisner, *supra* note 14.

30. See *supra* note 11.

31. See DomesticViolence.org, *supra* note 26.

32. DomesticViolence.org, Common Myths and Why They Are Wrong, <http://www.domesticviolence.org/common-myths> (last visited Mar. 19, 2009).

her workplace could form a type of support system offering the victim strength and encouragement when the fear of job loss is removed. Furthermore, in terms of control, the abuser tends to have very little, if any, control in the workplace compared to more intimate environments such as the household.³³

Additionally, employees are increasingly looking to the workplace as a social network and personal community.³⁴ Therefore, supportive coworkers, supervisors, and workplace communities can be an extremely effective way to reach out to victims in need of our help. Raising awareness in the workplace, a place not usually regarded as being susceptible to domestic violence, can be the first step in raising awareness on a national and more complete level. Moreover, because domestic violence victims are mostly women, creating effective legislation regarding domestic violence may play a vital role in facilitating women's full and equal participation in the workplace.³⁵

State employment laws have reduced the costs of domestic violence in the workplace that both employees and employers bear. Currently, employers in states that have not enacted domestic violence employment laws are within their right to respond to issues of domestic violence by firing the victim employee. Firing a domestic violence victim employee cuts costs of absences, tardiness, and health care, but requires an employer to advertise for the job, hire someone new, and provide training. This loss does not include the decrease in employee morale that occurs from watching a coworker get fired simply due to her status as a domestic violence victim. Alternatively, handling the issues surrounding workplace domestic violence without a legal framework can adversely affect the employer's bottom line because the victim may not give reasonable notice of potential violence that increases the risk for workplace violence and possibly will result in higher healthcare costs for the employer. Furthermore, employers have an added economic interest in the health, wellbeing, and safety of their employees. This makes the workplace a logical locale in addressing domestic violence that extends outside the home.

Domestic violence affects the lives of countless working women every day. It also impacts the financial success and strength of the companies that employ the victims. It is imperative that domestic violence be regarded as a serious, recognizable, and preventable prob-

33. See Widiss, *supra* note 4, at 680–81.

34. *Id.* at 728 n.34 (citing ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* 40 (1997)).

35. *Id.* at 680.

lem that impacts a business' health and safety concerns, as well as its bottom line. Currently, the federal landscape of workplace protection offers very little to employees in abusive relationships.

II. Current Federal Law Could Provide Workplace Protection to Domestic Violence Victims

The federal Family and Medical Leave Act allows qualifying employees of qualifying employers to take unpaid time off work for certain, specific situations.³⁶ However, it is not appropriately set up to protect the specialized needs of domestic violence victims. To a similar extent, the Occupational Safety and Health Act fails to address the problem of domestic violence in the workplace.

A. The Family and Medical Leave Act

In 1993, President Bill Clinton signed into law the FMLA, which recognizes the growing need of balancing family and work.³⁷ The FMLA requires employers of fifty or more employees to provide up to twelve weeks of unpaid leave each year for an employee's serious health condition, to care for an immediate family member with a serious health condition, or for the birth of a child or placement of an adoptive or foster child.³⁸ Under the FMLA, a serious health condition is "an illness, injury, impairment, or physical or mental condition that involves—(A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a healthcare provider."³⁹ To qualify for unpaid leave, the employee must have been employed for at least twelve months, and must have worked at least 1250 hours of service for the employer during the previous twelve-month period.⁴⁰

The FMLA was enacted as a first step toward offering balance to working family members. However, its scope of protection is limited.

B. FMLA Shortcomings

While being a victim of domestic violence is a serious health condition that requires continued treatment or supervision by a health care provider, being a domestic violence victim is not covered under

36. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2653 (2006).

37. *Id.*

38. *Id.* §§ 2611(4)(i), 2612(a)(1).

39. *Id.* § 2611(11).

40. *Id.* § 2611(2)(A).

the FMLA. Therefore, employees are not entitled to the leave that could allow them the time to take the first corrective steps in leaving their abusive partner.

If a domestic violence victim is experiencing a serious medical condition, she can take unpaid time off to secure medical help—but this unpaid time off does not cover all of the problems domestic violence victims face.⁴¹ For instance, if a victim of domestic violence suffers a broken wrist or black eye, her injuries may not fall under the definition of a serious medical condition and, therefore, she may not be able to take time off from work to address the problem. Likewise, non-medical needs of domestic violence victims are not covered, such as acquiring restraining orders, filing court actions, or securing new housing. This lack of protection contributes to a dependent situation, where the victim of domestic violence will not risk losing her job and livelihood to seek the protection and care she needs.

Although the FMLA offers guaranteed leave to help balance the fine line between work and family, the federal scheme does little to protect the countless women who face domestic violence and the other employees where the victim is employed. Due to this inadequacy at the federal level, states have enacted laws to combat this social issue. However, as analyzed in the next Part, inconsistent state laws do not fully protect the rights of domestic violence victims nationwide.

C. Occupational Safety and Health Act and Its Shortcomings

Although this Comment focuses on amendments to the FMLA, it is worthwhile to recognize a brief comparison to the Occupational Safety and Health Act (“OSHA”).⁴² OSHA makes employers responsible for providing and maintaining a safe and healthy workplace for their employees.⁴³ The Act sets forth a general duty clause stating that each employer “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees”⁴⁴ Further, OSHA requires that each employer comply with all occupational safety and health standards, rules, regulations, and orders issued under the Act.⁴⁵ OSHA is more expansive in its reach than the FMLA; it covers virtually all employees (except min-

41. *See id.* § 2612(a)(1)(D).

42. Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651–678 (2006).

43. *Id.* §§ 654(a)–(b).

44. *Id.* § 654(a)(1).

45. *Id.* § 654(b).

ers, transportation workers, public employees, and the self-employed).⁴⁶

OSHA was enacted to create federal protection for employees who faced dangerous situations in their work environment. Yet, OSHA's bite has not been particularly effective because of its limited enforcement mechanisms and lack of a private cause of action. Much like the FMLA, OSHA does not offer domestic violence victims the protection and support they need.

To enforce health and safety standards, the Secretary of Labor conducts inspections, issues citations, and brings cases on behalf of employees.⁴⁷ However, OSHA has many documented drawbacks and falls short of achieving all its objectives. OSHA severely lacks financial resources, is understaffed, and does not utilize its potential by issuing strong penalties.⁴⁸ OSHA is responsible for enforcing its standards at 8.5 million workplaces where 131 million workers are employed.⁴⁹ To undertake its mission, OSHA receives less than \$500 million annually from Congress, averaging about \$3.70 per covered worker.⁵⁰ This number is significantly less than the amount annually received by both the Food and Drug Administration and the Environmental Protection Agency.⁵¹ Given its limited financial resources and employees, OSHA could maximize its impact by delivering strong penalties for found violations.⁵² However, this has not been the case. The average civil penalty for a serious violation of the Act, defined as a hazard posing a "substantial probability that death or serious physical harm could result" is \$873.⁵³ The maximum penalty for such a crime is \$7,000.⁵⁴ The average fine for a willful violation of the law is \$32,000, though the maximum is \$70,000.⁵⁵

46. Occupational Safety & Health Admin., U.S. Dep't of Labor, OSHA's Mission Statement, <http://www.osha.gov/oshinfo/mission.html> (last visited Mar. 19, 2010).

47. *See id.*

48. Lynn Rhinehart, *Workers at Risk: The Unfulfilled Promise of the Occupational Safety and Health Act*, 111 W. VA. L. REV. 117, 122–23 (2008).

49. *Id.* at 122.

50. *Id.*

51. *Id.*

52. *See id.* at 123 (noting a person harassing a wild burro can receive double the penalty of an employer who kills an employee as a result of a OSHA violation).

53. *Id.* at 123 (citing AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT 27 (16th ed. 2007), available at http://www.aflcio.org/issues/safety/memorial/upload/doj_2007.pdf).

54. *Id.*

55. *Id.*

Further, OSHA holds the power to criminally charge violators through the Department of Justice if an employee is killed.⁵⁶ In the Act's thirty-eight years, there have been a total of sixty-eight such prosecutions, and defendants have served a total of forty-two months in jail.⁵⁷ OSHA rarely refers cases to the Department of Justice, and the Department of Justice rarely decides to pursue prosecution because the penalty, a misdemeanor, is not worth the investment of prosecutorial resources.⁵⁸ Due to its lack of resources and the fact that strict penalties are rarely issued, OSHA's effect has not reached the level it aimed for in 1970.

In addition, like the FMLA, OSHA does not offer domestic violence victims the protection and support they need. While OSHA aims to provide a safe workplace for all American employees, OSHA does not create private actions for employees. The Secretary of Labor brings the suit on behalf of the injured employee.⁵⁹ While this may be beneficial in situations where an employee is injured by machinery or exposed to toxic chemicals, it does not provide adequate relief for a victim of domestic violence. The perpetrator of the crime in these situations is the abuser, not the employer, and an employee will not likely choose to charge their employer for a situation they are embarrassed about and afraid to admit. For these reasons, an addendum to the Act to cover domestic violence victims does not practically fit.

While both the FMLA and OSHA currently act on a federal level to create a safe environment for employees and offer guaranteed leave to help balance the fine line between work and family, these federal schemes do little to protect the countless women who face domestic violence creating a workplace issue for all involved. Due to this inadequacy at the federal level, states have enacted laws to try to combat the social issue. However, as analyzed in the next Part, inconsistent state laws do not fully protect the rights of domestic violence victims nationwide.

III. State Responses to Domestic Violence and Their Effect on the Workplace

Recently, states have begun drafting legislation to protect employees from the ramifications of domestic violence. Protections include requiring all state agencies to adopt workplace policies on domestic

56. *Id.*

57. *Id.* at 124.

58. *Id.*

59. Occupational and Safety Health Act of 1970, 29 U.S.C. § 663 (2006).

violence, legislature-created model workplace policies for voluntary adoption by public and private employers, and monetary incentives for private employers to adopt such policies or to institute domestic violence awareness and training programs at their worksites.⁶⁰

These state laws, while a good starting point in the effort to provide protection to domestic violence victims in the workplace, are not complete. They provide a basis for a federal amendment but are not sufficient independently. This Part first looks at other general sources of law that domestic violence victims have attempted to use for workplace protection; it then analyzes some of the approaches states have taken.

Aside from the state laws discussed below, domestic violence victims have also looked to other general sources of state law for workplace protection, including wrongful discharge in violation of public policy. This common law tort claim prohibits employers from using certain “bad” reasons in discharging employees. Typical “bad” reasons include refusing to commit an illegal action, exercising a statutory right, fulfilling a public obligation, or whistleblowing. While an employee fired for her status may have a claim under such a statute, the claim may not be successful. In *Green v. Bryant*,⁶¹ a victim of domestic violence was fired so that her employer would not have to deal with the ramifications of the issue.⁶² When she brought a wrongful discharge suit, the court rejected the claim.⁶³ Further, even if this remedy were successful, it would not fully solve the problem. In fact, it might further a victim’s shame. A woman fired for being in an abusive relationship may likely not want to go through the long and possibly public process of suing her employer and further admitting to the world the violent details of her home life.

A. Domestic Violence Leave Legislation

Nearly a dozen states, as well as New York City, have created laws that give domestic violence victims the right to take time off without fear of losing their jobs. As of June 2008, California, Colorado, Florida, Hawaii, Illinois, Kansas, Maine, North Carolina, Oregon, and

60. *Domestic and Sexual Violence Workplace Policies*, STATE LAW GUIDE (Legal Momentum: Advancing Women’s Rights, New York, N.Y. July 2006).

61. 887 F. Supp. 798 (E.D. Pa. 1995).

62. *Id.* at 800.

63. *Id.* at 801.

Washington have all enacted such laws.⁶⁴ These state laws guarantee unpaid leave for a victim to file a restraining order or participate in a criminal proceeding against her abuser.⁶⁵ Moreover, in March 2008, Washington D.C. enacted the first legislation granting paid time off to domestic violence victims to take steps to resolve the violence.⁶⁶ Because of the potential for employees to abuse the right of leave for domestic violence victims, many state leave laws allow the employer to ask for proof of a domestic violence situation.⁶⁷ The benefit of these laws is that they cover more than just medical needs associated with domestic violence; they also protect time off for relocation, psychological counseling, and seeking new child-care.⁶⁸

The states listed above modeled their new legislation after two existing laws. Many states modeled the leave laws after the FMLA, creating a law that applies to a certain sized employer and specifying the amount of leave the employee can take.⁶⁹ Other states modeled their laws on existing state laws, creating a law that prohibits employers from discriminating or penalizing employees who are victims of crimes and, therefore, must take days off of work to participate in the proceedings.⁷⁰ States that have drafted their domestic violence victim laws on these victims of crime protection differ from the FLMA-based state laws in two principal areas. First, they grant an employee the ability to take a “reasonable time off” to combat their domestic violence situation, and second, they require that all employers, regardless of their size, adhere to the law.⁷¹

Some states, California in particular, have created a hybrid law to address domestic violence victims in the workplace.⁷² The legislation requires all employers to allow victims to take off work for a non-specified amount of time for court related procedures but requires only

64. See *Domestic and Sexual Violence Workplace Policies*, *supra* note 60; see also CAL. LAB. CODE §§ 230–230.1 (West 2002); COLO. REV. STAT. § 24-34-402.7 (2007); FLA. STAT. § 741.313 (2007); HAW. REV. STAT. § 378-72 (2007); 820 ILL. COMP. STAT. 180/30(b)93 (2006); KAN. STAT. ANN. § 44-1132 (2006); ME. REV. STAT. ANN. tit. 26, § 850 (2007); 2007 Or. Laws ch. 180; 2008 Wash. Legis. Serv. ch. 286 (West).

65. See *Domestic and Sexual Violence Workplace Policies*, *supra* note 60.

66. Accrued Sick and Safe Leave Act of 2008, 55 D.C. Reg. 3452 (Apr. 4, 2008), available at <http://www.dccouncil.washington.dc.us/images/00001/20080311113451.pdf>.

67. See Widiss, *supra* note 4, at 701.

68. *Id.* at 700.

69. *Id.* at 701.

70. *Id.*

71. *Id.* at 703–04; see also *Domestic and Sexual Violence Workplace Policies*, *supra* note 60 (illustrating the variety of anti-domestic violence policies enacted by states).

72. Widiss, *supra* note 4, at 704.

larger employers to allow victims to take off work for medical related reasons.⁷³

B. Domestic Violence Antidiscrimination Legislation

Domestic violence can leave psychological as well as physical wounds. A victim may fear seeking help at work due to shame or fear of retaliation. This reluctance puts the entire company in danger. Employers and employees are better off if victims know they can ask for help at work without jeopardizing their employment.⁷⁴

California, Illinois, New Jersey, New York, Oklahoma, and Pennsylvania have enacted legislation that protects employees from being discriminated or retaliated against for their status as a domestic violence victim. These states have modeled their laws on existing antidiscrimination provisions including Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, national origin, or sex.⁷⁵

C. Domestic Violence Accommodation Legislation

To protect domestic violence victims, Illinois and New York City have passed legislation allowing domestic violence victims the right to receive “reasonable accommodations” from their employers so that they may perform their job safely and adequately.⁷⁶ Illinois defines “reasonable accommodation” to include “an adjustment to job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, in response to actual or threatened domestic or sexual violence.”⁷⁷ These state protections were modeled after the Americans with Disabilities Act and seek to reduce domestic violence in the workplace setting.⁷⁸

D. Domestic Violence Insurance Legislation

Financial insecurity is a leading factor for women who stay with their abusive partner. Ignoring this condition furthers the cycle of vio-

73. CAL. LAB. CODE §§ 230–230.1 (West 2006).

74. See Widiss, *supra* note 4, at 705–06.

75. *Id.* at 706–07.

76. 820 ILL. COMP. STAT. 180/30(b)(1)–(3) (2006); N.Y.C. ADMIN. CODE § 8-107.1(3)(a) (2007).

77. 820 ILL. COMP. STAT. 180/30(b)(3) (2006).

78. See Widiss, *supra* note 4, at 709.

lence. To overcome this obstacle, numerous states have changed their unemployment insurance statutes.

Generally, unemployment insurance is granted to employees who lose their jobs through no fault of their own.⁷⁹ It provides economic security while people look for new jobs and attempts to stimulate the economy through consumer spending.⁸⁰ Unemployment insurance is operated on a statewide level and, by and large, individuals must have lost their job for reasons other than misconduct or leaving without good cause.⁸¹ States can determine what qualifies as “good cause.” As one commentator points out, in the past ten to fifteen years, twenty-nine states and Washington D.C. have included domestic violence among the reasons giving rise to “good cause.”⁸²

While leaving the job may be through no fault of the employee, in situations of domestic violence, the fault may not lie with the employer either. The perpetrator of violence is the at-fault party, who is unfortunately out of reach for liability purposes.⁸³ By amending unemployment insurance statewide, the cost is not borne by either of the victims and is instead spread to all employers in the hope of creating a safer workplace environment for every business.⁸⁴

E. Domestic Violence Workplace Restraining Orders

As of June 2008, Arizona, Arkansas, California, Colorado, Georgia, Indiana, Nevada, North Carolina, Rhode Island, and Tennessee have enacted legislation that allows employers to apply for restraining orders against executors of violence.⁸⁵ Furthermore, even in states that have not enacted such laws, employers can generally take action against someone who interferes with their business.⁸⁶ These types of

79. *Id.* at 711 (citing *Cal. Dep’t of Hum. Res. v. Java*, 402 U.S. 121, 125–26 (1971)).

80. *See* Federal Unemployment Tax Act, 26 U.S.C. §§ 3301–3311 (2000).

81. *See id.* § 3304(a)(10).

82. *See* Widiss, *supra* note 4, at 669 n.151 (States include: Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, Wisconsin, and Wyoming.).

83. *See id.* at 713–14.

84. *Id.*

85. ARIZ. REV. STAT. § 12-1810 (LexisNexis 2007); ARK. CODE ANN. § 11-5-115 (2008); CAL. CIV. PROC. CODE § 527.8 (West 2007); COLO. REV. STAT. § 13-14-102(4)(B) (2007); GA. CODE ANN. § 34-1-7 (2007); IND. CODE § 34-26-6 (2007); NEV. REV. STAT. §§ 33.200-360 (2007); N.C. GEN. STAT. § 95-261 (2007); R.I. GEN. LAWS § 28-52-2 (2007); TENN. CODE ANN. § 20-14-101-109 (2007).

86. *See* Widiss, *supra* note 4, at 715.

laws further the idea that the victim is not the problem and can offer employees a feeling of solace and security in their place of work.

Approximately twenty states have taken progressive measures to offer some sort of protection to domestic violence victims, illustrating the overwhelming social desire to combat the consequences of domestic violence head on. States offer leave legislation, antidiscrimination legislation, accommodation legislation, insurance legislation, and workplace restraining orders. A federal law, however, will better serve the comprehensive needs of domestic violence victims and offer protection to employees across the country.

F. Problems with Existing State Laws

The fact this issue has recently been addressed in so many states affirms the notion that domestic violence is a widely recognized problem in the workplace. However, the existing state laws are inadequate in solving the problem. Employers are hesitant about these laws for fear of added cost, and the protection is not applied consistently throughout the country.

On a state-by-state basis, employers are less willing to implement laws to protect what they do not perceive as an extremely pervasive problem. Without federal backing, it might seem that providing unpaid leave to domestic violence victims would be costly to a company's bottom line. However, as mentioned previously, the current situation costs nearly six billion dollars annually.⁸⁷ Federally implemented legislation would prevent individual employers or states from realizing this mathematical solution and require employee protection that actually improves the bottom line for employers.

The problem has thus far been addressed as a state issue, and domestic violence victims are ending up with significantly different protections depending on their state of residence as a result. Unfortunately, domestic violence does not follow a similar state-by-state pattern; one in five employed adults is a victim of domestic violence.⁸⁸

Consider the following example: Mary is an employee of a large organization in New York City. Her husband has been beating her for two years. When he breaks a bone or creates visible contusions, Mary calls in sick. She does not want her employer or coworkers to know what is going on at home. However, Mary's boss knows something is

87. SafeWork, DV in the Workplace: Domestic Violence and Corporations, http://www.safehorizon.org/safework/dv_corporations.htm (last visited Mar. 19, 2010).

88. SafeWork, DV in the Workplace: Overview, http://www.safehorizon.org/safework/dv_overview.htm (last visited Mar. 19, 2010).

wrong with Mary's home-life situation. Her husband often sits outside the place of business during lunch hours, calls numerous times a day, and does not allow Mary to attend work-related social functions. In New York City, if Mary gives her employer notice of the violent situation she faces at home, then her employer is required to allow flexible use of leave benefits and to create an individualized workplace safety plan, which includes options for voluntary transfer or permanent relocation of the work site.⁸⁹ Furthermore, state law prohibits Mary's employer from making staffing decisions based on her exposure to domestic violence or disciplining her with work performance problems that result from domestic abuse without first taking extensive proactive measures.⁹⁰ Because New York City law allows Mary leave to attend to domestic violence issues and grants reasonable accommodations, Mary may likely feel secure in her employment status and gain solace at her job. With this security, Mary may find enough confidence and strength to leave her abusive husband and start a new life.

However, Mary's friend Jackie, who lives with the same kind of problem in Texas, is granted no such protection. Instead, Jackie will risk losing her job for taking time off work to seek medical treatment, file a protective order, or find a new place to live. To create equal protection for Mary, Jackie, and all victims of domestic violence, a federal law is needed to prevent the differences faced by having varying state protections.

Solving this problem state-by-state requires each state to pass legislation. Some states have recognized the importance of this social problem and have taken steps to remedy it.⁹¹ Unfortunately, other states have not taken these steps.⁹² Social problems such as this should not be at the whims of each state's legislature. Citizens throughout the country need this protection.

IV. Solving This Problem on a Federal Level

The widespread recognition of this problem and the prevalence of state law suggest that federal action is necessary. While addressing the problem of domestic violence affecting the workplace on a state level is a step in the right direction, a comprehensive federal law will best serve the needs of victims and employers alike. The ideal way to

89. *Domestic and Sexual Violence Workplace Policies*, *supra* note 60.

90. *Id.*

91. *Id.*

92. *Id.*

create a federal law would be to add a provision to the existing FMLA. Amending the current act as opposed to creating an entirely new free-standing federal law will prove more effective as it limits costs to employers, holds familiarity with employers, and ensures judicial efficiency. While the FMLA is limited in its coverage, an amendment offers the best step forward to eradicating this widespread social problem.

A. FMLA as Opposed to New Freestanding Federal Law

Currently, the FMLA allows qualifying employees to take unpaid time off work to tend to a serious medical condition or the birth/placement of a new child.⁹³ However, it does not include domestic violence status within the definition of a “serious health condition.”⁹⁴ If the amendment proposed below were enacted, qualifying victims of domestic violence would be guaranteed unpaid leave to take steps toward solving their domestic problem.

An amendment to the FMLA protecting domestic violence victims can follow the amendment-based solution addressing military personnel concerns. In January 2008, President George W. Bush, recognizing concerns military personnel and their families faced, enacted an amendment to the FMLA.⁹⁵ The amendment created two new leave entitlements for military personnel and their family: military caregiver leave and qualifying exigency leave.⁹⁶ The amended FMLA allows eligible employees up to twelve weeks of leave because of “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call to active status.⁹⁷ The amendment also allows an eligible employee who is the son, daughter, spouse, parent, or next of kin of a covered service-member who is recovering from a serious illness or injury sustained in the line of duty while on active duty up to twenty-six weeks of leave in a single twelve-month period to care for the service-member.⁹⁸

The enactment of the amendment in 2008 shows how a recognized social problem, such as caring for military personnel, can be

93. Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(a)(1) (2006).

94. *Id.* § 2611(11).

95. Family and Medical Leave Act of 1993, Pub. L. No. 110-181, § 585, 122 Stat. 3 (2008) (codified as amended at 29 U.S.C. § 2612).

96. *Id.*

97. *Id.* § 2612(a)(1)(E).

98. *Id.*

solved through federal legislation. Employers have successfully incorporated this provision into their existing FMLA framework. Under the same reasoning, Congress could recognize the problem domestic violence is creating in the workplace and enact an amendment to help those in need.

The FMLA limits costs to employers. It does not require employers to grant paid leave and allows an employer to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for the FMLA leave.⁹⁹ A new freestanding federal law set specifically for domestic violence victims might not give employers the same options. By amending an existing law that employers are already comfortable with, employers are more likely to support and implement the law.

The FMLA was enacted sixteen years ago. Employers are familiar with the basic procedural requirements and have the internal systems in place to comply with the FMLA. Employers are aware they cannot deny qualifying leave, but can require notice and certification.¹⁰⁰ Employers are also well aware that employees are entitled to their positions upon return and that an employer cannot interfere with the rights set out in the FMLA.¹⁰¹ Adding a provision for domestic violence victims will fit easily into the procedures already in place and require few modifications. The Department of Labor has already created standard forms on its website for use by employers to implement the 2008 military amendment.¹⁰² The website also includes a Fact Sheet, Compliance Guide, and Electronic Advisor.¹⁰³ A similar system can be set up for an amendment to protect domestic violence victims. Moreover, because the FMLA has been in place for over a decade, the courts are accustomed to typical remedies and defenses. Adding a provision to such a well-understood law will enable the amendment to be readily understood by employees, employers, legislatures, and court systems alike.

The FMLA can also create a comprehensive set of protections for domestic violence victims. Not only will victims be able to take unpaid leave to seek medical treatment, participate in criminal proceedings, and secure new housing, they will no longer fear losing their job, they

99. *Id.* § 2612(d)(1)(2).

100. 29 U.S.C. § 2612(e)(1) (2006) (notice); *id.* § 2613 (certification).

101. *Id.* §§ 2614(a), 2615(a).

102. U.S. Department of Labor, Leave Benefits: Family & Medical Leave, <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm> (last visited Mar. 20, 2010).

103. *Id.*

will maintain health benefits, and they will be safe from employer retaliation due to their status as domestic violence victims.¹⁰⁴ The additional benefits, already built into the FMLA, will instill upon the victims a sense of safety and protection, giving them the strength they may otherwise lack to overcome the fear of stepping forward. These additional rights, therefore, will create not only legal rights and protections for domestic violence victims but also a social system of support and safety for potentially scared and vulnerable victims.¹⁰⁵

B. FMLA Amendment Worthwhile Even Though Limited in Scope

Though the FMLA is limited in coverage, it is the most sensible and beneficial arena to extend coverage for domestic violence victims. Providing protection for qualifying employees of qualifying employers is a step in the right direction. With this amended FMLA, the country will acknowledge domestic violence as a national problem that needs to be addressed federally and will further advance the rights of domestic violence victims.

While an amendment to the FMLA only protects employees who have been working with their employer for twelve months at a place where fifty or more workers are employed,¹⁰⁶ this legislation does not set a cap on greater protection. State laws mentioned previously can still be utilized by offering more expansive coverage. The FMLA simply provides a solid floor of protection nationwide.

Further, an amendment to the FMLA, as opposed to a freestanding law counters the cost concern of numerous employers. Smaller employers, if forced to enact domestic violence protection, may not be able to stay afloat financially. Using the FMLA's requirement of eligibility for both employers and employees expands guidelines already in play that employers generally agree with and understand.

V. FMLA Coverage for Domestic Violence Victims

In amending the FMLA to cover domestic violence victims, there are two possible courses of action. One would require amending the definition of "serious health condition" to include the status of a do-

104. 29 U.S.C. §§ 2612, 2614, 2615, 2617 (2006).

105. See Widiss, *supra* note 4, at 699 ("[T]he variety of mechanisms employed in the domestic violence employment legislation may offer suggestions for tackling other work-family issues for which existing models have proven inadequate.").

106. Family and Medical Leave Act of 1993, Pub. L. No. 110-181, 122 Stat. 3 (2008) (codified as amended at 29 U.S.C. § 2611(2)(a)).

mestic violence victim. The other would involve adding a new provision to the Act.

A. Proposed Amendment to the FMLA

This Comment proposes adding a new provision similar to the one added in 2008, which covered service members. Congress should recognize the need for protected leave for domestic violence victims.

The amendment, added as subsection (F), might read:¹⁰⁷

(F) Because of a problem with domestic violence that requires the employee to take time off from work to seek medical attention, participate in any level of a criminal proceeding, secure safe housing, or other condition associated with a victim of domestic violence.¹⁰⁸

Just as the covered service member amendment required new definitions to be added to section 2611, so will the domestic violence victim amendment. To clearly define who is covered and what protection is offered the definition section, section 2611, could add:

(20) Covered victim. The term “covered domestic violence victim” means any person who is a victim of a relationship where his/her partner uses a pattern of abusive or coercive behavior used to establish power and control over another person through fear and intimidation, often including the threat or use of violence.

(21) Other condition. The term “other condition” in the case of a domestic violence victim includes any necessary act required by the victim to eradicate his/her violent situation that may require him/her to invoke the FMLA. This includes, but is not limited to, seeking medical attention, filing restraining orders, pressing charges,

107. The language for this amendment to the FMLA has been taken from a combination of the state laws discussed in Part IV, the language of the 2008 Service Member Amendment to the FMLA, and the definition of domestic violence provided by VAWA and SafeWork.

108. Family and Medical Leave Act of 1993, Pub. L. No. 110-181, § 585, 122 Stat. 3 (2008) (codified as amended at 29 U.S.C. § 2612(a)(1)) currently reads:

(a) In general (1) Entitlement to leave. Subject to § 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following: (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter. (B) Because of the placement of a son or daughter with the employee for adoption or foster care. (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition. (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee. (E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

assisting in a criminal proceeding in any way, obtaining new housing, leaving the current housing situation, setting up new child care commitments, attending physical or psychological therapy, healing, obtaining legal counsel, or if the condition of being a victim of domestic violence makes the employee unable to perform the functions of the position of such employee.¹⁰⁹

As the FMLA currently reads, section 2612(e) requires that in cases where the leave is foreseeable, the employee must notify the employer not less than thirty days before a placement or birth and make a reasonable effort to schedule foreseeable medical treatment so as not to disrupt unduly the operations of the employer.¹¹⁰ When the leave is not foreseeable, employees are required to give notice as soon as is practicable.¹¹¹ In domestic violence situations, the amendment could read section 2612:

(e)(4) Notice for leave due to status as victim of domestic violence. In any case in which the necessity for leave under subsection (a)(1)(F) of this section is foreseeable . . . the employee shall provide such notice to the employer as is reasonable and practicable.¹¹²

109. *Id.* § 2611 currently reads:

(2) Eligible employee (A) In general The term ‘eligible employee’ means an employee who has been employed— (i) for at least 12 months by the employer with respect to whom leave is requested . . . ; and (ii) for at least 1,250 hours of service with such employer during the previous 12-month period. (B) Exclusions The term ‘eligible employee’ does not include—(i) any Federal officer or employee covered under subchapter V of chapter 63 of Title 5; or (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50

110. *Id.* § 2612(e).

111. *Id.*

112. *Id.* § 2612(e) currently reads:

(e) Foreseeable leave (1) Requirement of notice In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) of this section is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable. (2) Duties of employee In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) of this section or under subsection (a)(3) of this section is foreseeable based on planned medical treatment, the employee—(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered service member of the employee, as appropriate; and (B) shall provide the employer with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subparagraph,

Because this new provision would mirror the one amended for the needs of service members, implementation by employers would not be difficult. However, unlike being called to duty, the status of an employee as a domestic violence victim is one that would be known by the employee. In that vein, the employee would be required to notify the employer of her plan to take leave as is reasonable and practicable. A time limit, such as thirty days as is required in section 2612(e)(1)(2), would not be a practical application because there is no way to know what might trigger the victim's decision to seek help and end her cycle of violence. By notifying her employer as soon as reasonable and practicable, the FMLA allows the victim to notify her employer when she is ready and seek the leave and protection under the law shortly thereafter.

Section 2612(b) of the FMLA permits an employee to take leave on an intermittent or reduced leave schedule when the employee and employer agree to such leave.¹¹³ For domestic violence victims, this section would remain intact, requiring the employer and employee to discuss the situation on a case-by-case basis to determine if intermittent or reduced leave is appropriate. In domestic violence situations, where the employee may need to frequent a courtroom or hospital, intermittent or reduced leave should be allowed, similar to state laws that allow for reasonable accommodations of domestic violence victims.

B. Benefits of Proposed FMLA Amendment Outweigh Potential Problems

Amending the FMLA to protect domestic violence victims creates a comprehensive nationwide law, while limiting costs to employers and promoting equality for women in the workforce. Federal domestic violence legislation ensures economic security, enabling victims to shatter their cycle of violence and creates a unified front against a compelling social problem. These benefits outweigh any potential risks; namely, potential abuse, costs to employers, and fear that other proposed amendments will follow.

Given the enormous fear and risks that domestic violence victims face in stepping forward and asking for help, it is unlikely that employees will take advantage of the FMLA amendment for other purposes. As previously noted, the existing notice provisions require employees

except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

113. *Id.* § 2612(b).

to notify their employer where the acceptable leave is considered foreseeable.¹¹⁴ The addition of section 2612(e)(4), as laid out in Part VII.A., would further require employees to notify their employees as soon as practicable.

Many victims of domestic violence fear stepping forward and asking for help despite the prevalence of the problem. Financial dependence, children, fear of the abuser, safety concerns, societal expectations, shame/humiliation, fear of retribution, self esteem, and lack of resources all factor into a victim's mind and may cause them to endure the abusive relationship secretly.¹¹⁵ Specifically, cases often go unreported because the victim fears the way society will view her plight. In a 2007 survey, employees reported that sixteen percent of their coworkers are victims of domestic violence, however CEOs only knew of six percent of their victim employees.¹¹⁶ This statistic highlights the vast difference between those experiencing the problem of domestic violence and those reporting it to their employer. Because the problem is one closely associated with humiliation and shame, it seems highly unlikely that one would purposefully put themselves through the ordeal of admitting a violent relationship just to get a few unpaid days off of work.

Furthermore, the notice requirement can serve to create a safe situation for the victim. Knowing their employer must help them, by order of law, an employee may be more likely to seek help, ultimately reducing the amount of domestic violence situations in the United States.

Domestic violence currently affects the bottom line for employers through productivity losses, absences, and healthcare bills. Therefore, amending the FMLA is actually less costly to employers than the current scheme or the implementation of a new freestanding law. Implementation of an amendment to the FMLA will be less costly due to the fact that employers and courts are already familiar with the law and have systems in place to handle employee concerns, absences, and litigation. As it stands, domestic violence costs nearly \$6 billion each year in aggregate costs, including more than \$4.1 billion in direct medical and mental health services and \$1.8 billion in productivity losses.¹¹⁷

114. *Id.* § 2612(e).

115. American Institute on Domestic Violence, Corporate Myth-Management, http://www.aidv-usa.com/Corp_Myth.htm (last visited Mar. 19, 2010).

116. SafeWork, Leading Change: Research, http://www.safehorizon.org/safework/lc_research.htm (last visited Mar. 19, 2010).

117. SafeWork, DV in the Workplace: Domestic Violence and Corporations, http://www.safehorizon.org/safework/dv_corporations.htm (last visited Mar. 19, 2010).

Given these staggering figures, the costs to implement a protective law pale in comparison. Even more costly, employers could face liability if domestic violence turns into workplace violence.¹¹⁸

Domestic violence is clearly a rampant “public crisis requiring systemic solutions.”¹¹⁹ The situation affects countless victims not only at their homes, but also at their workplaces, adding coworkers and employers to the victim list. Every law enacted faces an argument regarding future implications. Affording protection to domestic violence will not necessarily create a compelling argument for other populations to obtain protected leave. Furthermore, this concern is no reason to neglect an at-risk population. A federal law that guarantees protection and offers support to those attempting to take steps to combat the problem of domestic violence should be enacted and applauded.

Conclusion

Domestic violence is not a problem that resides solely in the home of the perpetrator and victim. The abuse often follows the victim to work in countless ways: requiring absences, reducing productivity, and creating a potentially dangerous work environment. The battered partner is not the only victim in a situation where a company suffers and employees are put at risk. Moreover, domestic violence continues to pose a significant threat to women’s complete participation in society, including in the workplace.

Accordingly, numerous states have enacted laws offering protection to their employees who are victims of domestic violence. These states provide victim protection through leave, antidiscrimination protection, required accommodations, altered unemployment insurance, and workplace restraining orders. These laws borrow from Title VII, the Americans with Disabilities Act, criminal justice laws, and the FMLA to protect domestic violence victims. While these state laws are a step in the right direction, they do not offer a comprehensive approach to a nationwide problem. Further, they may impose costs on employers who cannot bear the burden while the perpetrator of the violence is often beyond the reach of the law.

A federal law offers a more complete approach to the public problem. The Family and Medical Leave Act is the most appropriate method to implement such protection. Employers and courts are familiar and comfortable with the FMLA, and the costs will be spread to

118. *Id.*

119. *See* Widiss, *supra* note 4, at 728.

larger employers who can afford such an amendment. Affording such protection to victim employees would not only increase productivity and safety at the workplace, but also offer solace and support to a population large in size but fearful and reluctant to seek help from its peers.