What Does #MeToo Mean for Survivors’ Employment Rights?

Lisalyn R. Jacobs, CEO
Just Solutions
Interim Legal & Policy Director
Center for Survivor Agency and Justice
What’s New?

- How we talk about the issue:
  - More discussion of sexual harassment and violence together;
  - Talking about the perpetrator’s behavior
Performance

- 80% of perpetrators said their own job performance was negatively affected by their perpetration of domestic violence.
- 19% caused or almost caused an accident at work.
- In many cases supervisors were aware of the perpetrator’s behavior but failed to confront or admonish the employee about it.

(Schmidt & Barnett, 2012)
Perpetrators and the Workplace

Missed Work:
Between 42% and 51.8% of perpetrators of domestic violence were either late or missed work entirely because of their abusive behavior.

Use of Company Resources:
More than three-quarters of perpetrators used workplace resources at least once to express remorse or anger, check up on, pressure, or threaten the victim. (Lim, et al, 2004)
Incidence of Workplace Violence

- 27% of women have experienced intimate partner violence at least once.
- For men, the about 16% have experienced intimate partner violence.
Costs of Domestic/Sexual Violence

- $4.9 billion direct costs
  - Medical – 70%
  - Lost productivity – 15%
  - Lost lifetime earnings – 15%
- 95% of incidents occur in households with incomes below $75,000

Source: http://fortune.com/2016/04/07/violence-against-women-cost/
Impact on Victims’ Employment

- Changes in work performance
- On the job harassment and violence
- Unexplained bruises or injuries
- Employment resignation
- Employment termination
Impact on Victims’ Employment

- Absences
  - legal proceedings
  - obtaining medical care or psychological counseling
  - safety planning
  - relocation
- Unscheduled or unexplained absences
- Chronic tardiness
- Safety
Workplace Policy & Laws: History

• Workplace laws were first enacted in the early 90’s;
• Victims’ Economic Security and Safety Act in IL by then Senator Obama in 1993;
• Each version of the Violence Against Women Act (‘94, ‘00, ‘05 and ‘13) have included economic justice proposals.
  – Only VAWA 2005 contained a new economic justice program: the creation of the National Resource Center on Workplace Responses www.workplacesrespond.org;
• Obama Administration put forward 3 policies: 1) in 2012, an Executive Order creating federal agency workplace polices for federal employee survivors; 2) in 2015, an Exec. Order requiring federal contractors to allow their employees to accrue sick and safe leave days; 3) a Question and Answer document re: the interplay of Title VII and sexual and domestic violence published by the Equal Employment Opportunity Commission.
• Laws: Key Components
  – Anti-discrimination
  – (Un)paid leave
  – Unemployment insurance
Anti-discrimination

Protection from firing, or refusal to hire someone, or terms of employment bias, just because they are a survivor

- DV, SA, stalking
- Actual or perceived
- Employer size
- Acts of abuser
- Proof requirements
Nondiscrimination

Sexual Harassment

- Federal Laws
- State Laws – regarding domestic/sexual violence
  - CA
  - CT
  - DE
  - IL
  - HI
  - NY
  - OR
- Local Laws
(Un)Paid Leave

• Over 30 states have laws affording various degrees of protection for those needing to take time off to attend court. They vary greatly.
  – Most relate to jury duty or to responding to a subpoena. Some enable crime victims to attend relevant proceedings.
  – See https://www.legalmomentum.org/sites/default/files/reports/employment-rights.pdf
(Un)Paid Leave

- States/Localities - While recently passed state (CA, HI, MA, NNJ, OR, RI) and local (DC, Phila., SF, Seattle) paid leave laws include access to leave for survivors of violence, they were predated by laws that gave survivors access to unpaid leave (CO, FL, IL, KS, ME, NC, NM, WA).
- Federal - A September 2015 executive order also permits federal contractors to accrue paid sick and safe time.
Unemployment Insurance

- When leaving work is necessary to protect themselves or family from domestic violence, sexual assault or stalking
- 40+ states by statute, or practice
  - Some states include only domestic violence
  - Others domestic violence and stalking
  - Some domestic and sexual violence and stalking
Unemployment Insurance Eligibility
For Domestic Violence, Stalking & Sexual Assault Victims

- **Red**: Domestic Violence (includes DC & the US Virgin Islands)
- **Purple**: Domestic Violence, Sexual Assault & Stalking
- **Blue**: Domestic Violence & Stalking
- **Green**: Domestic Violence & Sexual Assault
- **Yellow**: Benefits may be available under state policy or practice (by agencies or court orders) even though it is not required by statute

Last updated April 2015
Federal Policy & Bill re: Workplace Violence

• In April of 2012, President Obama directed all federal agencies to create policies to address the workplace needs of employees who were survivors of domestic/sexual violence.
Federal Resources

- **White House**

- **Department of Commerce**
  - [http://hr.commerce.gov/s/groups/public/@doc/@cfoasa/@ohrm/documents/content/prod01_010324.pdf](http://hr.commerce.gov/s/groups/public/@doc/@cfoasa/@ohrm/documents/content/prod01_010324.pdf)

- **Department of Justice**

- **Department of Labor**

- **Equal Employment Opportunity Commission**
  - [https://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm](https://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm)
New Workplace Toolkit

Employers and unions play an important role in connecting victims to assistance and addressing the workplace impact of violence. Use the free resources in this NEW toolkit so that your workplace can make a difference. Learn More →

Create a Policy

Use our tool to create a policy for your organization that follows best practices.

Create a Policy

Take a Quiz

How much do you know about violence and its effects on the workplace? Take one of our quizzes and find out.

Take a Quiz

Use the Toolkit

You can make a difference! Use these resources to help keep everyone in the workplace safe and productive.

Use the Toolkit

Information on:

- Workplace Violence
- Guns and the Workplace
- Protection Orders
- Union Responses

I would like to...

- Interact with a virtual employee
- Create a workplace policy
- Learn about the cost of sexual violence
- Identify security concerns

www.workplacesrespond.org
twitter.com/WorkplaceNRC
facebook.com/WorkplacesRespond
VAWA 2018 Reauthorization

• Workplace/Economic Justice Asks:
  – Reauthorize the Workplace Resource Center;
  – Clarify that WRC’s scope includes sexual harassment training and materials;
  – Study on the cost of sexual violence in the campus context;
  – SAFE Act provisions
  – #MeToo proposal
ABOUT THE CENTER
We’re passionate champions of policies and laws that help women and girls achieve their potential throughout their lives — at school, at work, at home, and in their communities. We’re committed advocates who take on the toughest challenges, especially for the most vulnerable women — and we make change happen. We’re proud to have been on the frontlines of virtually every advance for women for more than 40 years, benefitting their families, their communities, and the nation.
Increasing Transparency

• Secrecy in employment agreements
• Secrecy in settlements
• Forced arbitration
• Affirmative reporting by employers
• Encouraging reporting by victims – hotline or anonymous reporting
Expanding Protections

- Extending laws to cover smaller workplaces
- Protecting more types of people
- Extending the statute of limitations to file a complaint
- Strengthening accountability for employers
- Remove caps on damages
- Amending severe or pervasive standard
Promoting Prevention

- Mandatory training
- Climate surveys
- Eliminating tipped minimum wage
- Confidential reporting mechanisms within a company
- Whistleblower protections
- Clarifying what constitutes retaliation