

Oregon at the Forefront: State Employment Law Protections for Victims of Domestic and Sexual Violence

Domestic and sexual violence are a serious public health and safety concern in Oregon.¹ This article discusses one prong of Oregon's public policy response to this devastating epidemic.

In 2002, the Oregon Women's Health and Safety Survey found that 31% of Oregon women aged 20–55 experienced one or more types of intimate partner violence (including threats of violence, physical violence, sexual violence, or stalking) in the five years preceding the survey.² Statistics show that one in six Oregon women is a victim of forcible rape in her lifetime.³ Victims of domestic or sexual violence often suffer serious physical injuries and experience depression, anxiety, and post-traumatic stress disorder as a result of the violence. Such violence can be fatal—in 2003 alone, 26 Oregonians (including men, women, and children) were killed as a result of intimate partner violence.⁴

The ramifications of domestic and sexual violence reach far beyond the impact on the primary victim. Oregon children witness 33% of domestic assaults, and may have adverse emotional, physical, or developmental reactions as a result.⁵

Domestic and sexual violence also adversely affect Oregon's workplaces. Violence doesn't stay at home when its victims go to work. In Oregon, 69% of victims of domestic violence are employed at the time of the abuse.⁶ Sometimes the abuse takes place at the workplace—work may be the one place a perpetrator knows where to find his victim. In these circum-

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stances, violence targeted at a primary victim can also injure co-workers.

Even if the violence takes place elsewhere, its impact often spills over to the workplace. Physical and mental health injuries interfere with daily activities, including work activities. Compared to women who had not been abused, Oregon women who experienced physical or sexual violence at the hands of an intimate partner reported twice as many days in which physical health problems interfered with their usual activities, and four times as many days in which poor mental health interfered with these activities.⁷

The cost of this violence is tremendous: Intimate partner sexual and physical assault costs Oregon more than \$50 million each year. Approximately \$35 million of this annual total is for direct medical and mental health care services, and approximately \$9.3 million is for lost productivity from paid work for victims of nonfatal violence. Approximately \$10.7 million in lifetime earnings is lost per year by victims of intimate partner homicide.⁸

The impact of domestic and sexual violence on victims, and on our communities, is staggering. Employers have unique and important opportunities to provide employees who are victims with support and assistance. Often, victims of domestic or sexual

violence are isolated by the abuse. Perpetrators may prevent victims from contact with friends, family, and community. The workplace may be the only environment in which the victim is able to reach out. And economic security is vitally important to survivors—it is one of the primary indicators of whether a victim will be able to escape abuse and achieve safety.

For these reasons, public policy makers in Oregon have begun to focus specific efforts on providing workplace protections for survivors and their children.

Unemployment Compensation

Amanda's boyfriend began to act violently toward her. On one occasion, he tried to light her nightgown on fire while she was asleep. She feared that if she ended her relationship with her boyfriend and continued to live in the same area, he would assault her, so she decided to move to another state. She never obtained a restraining order against her boyfriend, because he had threatened to kill her if she did.⁹

Sometimes, victims of domestic violence, sexual assault, or stalking must

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Referrals to Victims' Advocates Help Survivors Access Essential Services

Attorneys working with clients who are survivors of domestic or sexual violence or stalking

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should consider referring their clients to specialists for help in safety planning and healing from the violence. Victims' advocates are available throughout the state to assist victims of domestic violence and sexual assault in Oregon. A victim's advocate is a trained person who can provide the victim with support, advocacy, safety planning, shelter, and the information necessary to access services. Advocates are trained to respond appropriately to the victim's needs and assess eligibility for services.

The two most prominent sources of advocates for victims of domestic and sexual violence are the Oregon Coalition Against Domestic and Sexual Violence (OCADSV) and the victim assistance programs administered by each district attorney's office.

On its website, www.ocadsv.com, the OCADSV lists the nonprofit domestic violence and sexual assault service providers in each county in Oregon. Trained staff and volunteers at each of these programs

- Provide 24-hour hotlines and referrals to safe shelters;
- Inform victims about temporary restraining orders and stalking orders;
- Provide information and referral to community services, including housing, public benefits, child care, community mental health programs, and other community resources;
- Connect victims with support systems (including on-going support groups);
- Provide victims with support as they access law enforcement or prosecution systems, or as they seek medical care or other assistance; and
- Help victims develop safety plans.

Each district attorney's office in Oregon has a victim assistance program. These

programs are for victims within the prosecutorial system—the staff and trained volunteers provide advocacy for crime victims. As stated on the Oregon Department of Justice website, at www.doj.state.or.us/crimev/vap.shtml, the duties of victim assistance programs include the following:

- Inform victims and witnesses of their case status and progress;
- Perform advocate duties for victims within the criminal justice system;
- Assist victims in recovering property damaged or stolen and in obtaining restitution or compensation for medical and other expenses incurred as a result of the criminal act;
- Prepare victims for pending court hearings by informing them of procedures involved;
- Accompany victims to court hearings;
- Involve victims, when possible, in the decision-making process in the criminal justice system;
- Assist victims in obtaining the return of property held as evidence;
- Assist victims with personal logistical problems related to court appearances;
- Develop community resources to assist victims of crime;
- Assist victims of crimes in the preparation and presentation of claims against the Criminal Injuries Compensation Account; and
- Generally encourage and facilitate testimony by victims of and witnesses to criminal conduct.

The nonprofit victim service providers and victim assistance programs provide much-needed support to victims of domestic and sexual violence. Attorneys working with clients who are victims should always consider

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National Trends in Domestic and Sexual Violence and Employment Law

Domestic violence and sexual violence have always existed in our homes and communities. Only recently, however, has the U.S. legal system begun to address the impact that these crimes have on all aspects of victims' lives. Starting in the mid-1990s, extensive studies regarding the work-related experiences of victims¹ of domestic violence have helped shape our understanding of the need for employment-related advocacy for victims of both domestic and sexual violence. Over the last ten years, there has been an explosion of local, state, and federal legislation introduced to address the intersection of domestic and sexual violence and the workplace. At the same time, we have seen a dramatic increase in education, awareness, and adoption of workplace policies by employers, as well as the assertion of new theories of liability. This article discusses those developments.

Domestic and Sexual Violence Intersect with the Workplace

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, and emotional, sexual, or economic abuse to control the other partner in the relationship. It is not defined by physical acts—it is a combination of factors, and it affects the entire family, community, and workplace.

Domestic violence knows no economic, racial, ethnic, religious, age, or gender limits. One in four women will be a victim of domestic violence in her lifetime. More than 50% of victims of domestic violence experience some form of sexual violence, including sexual assault and rape.

In 2001, 248,000 people in the United States were raped or sexually assaulted, and 91% of them were women.² The majority of survivors of sexual assault knew their perpetrators—as intimate partners, neighbors, or acquaintances. Only one-fifth of

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non-intimate partner rape is committed by strangers.³

Over the last ten years, extensive research has been conducted regarding the number of employees in the workforce who are victims of domestic violence, the ways in which domestic and sexual violence affect a victim who is an employee, and the ways in which that violence negatively affects a workplace overall.

Importantly, survivors of intimate partner violence make up a large percentage of the workforce, and the violence they experience creates a ripple effect. In 2005, a national benchmark survey of 1,200 employed adults (aged 18 and over) by the Corporate Alliance to End Partner Violence found that intimate partner violence has a wide and far-reaching effect on Americans' working lives: 44% of employed adults surveyed personally experienced the effect of domestic violence in their workplaces; 21% of respondents (men and women) identified themselves as victims of intimate partner violence; and 64% of victims of domestic violence indicated that their ability to work was affected by the violence.

Survivors seeking to address the violence in their lives may need to miss work to go to court to seek safety from the perpetrator for themselves and their families, or they may miss work or need job accommodations due to injuries or illnesses caused by the violence. Victims may not feel comfortable disclosing the reason for missing work, or they may exceed their limited annual leave, leading to job loss. Violence survivors may need to seek ongoing counseling to cope with the trauma caused by the abuse, requiring them to miss work as well.

Moreover, a batterer seeking to maintain power and control over the relationship with his intimate partner may attempt to sabotage her income, making her more dependent on him, by stalking her at work, calling her repeatedly, or even threatening her or her co-workers at the workplace. Not infrequently, victims and perpetrators work at the same place, so incidents of abuse may take place at work, including physical and sexual assault. Finally, survivors may experience difficulty focusing and concentrating at work because of their fear that the perpetrator may come to the workplace, or harm them or their children when they return home.

Studies and surveys of survivors of domestic and sexual violence indicate the following: Almost 50% of sexual assault survivors lose their jobs or are forced to quit their jobs in the aftermath of the crime.⁴ Of the victims of domestic violence who are employed, 30–53% lose their jobs due, at least in part, to the domestic violence; 78% reported being late to work as a result of domestic abuse; 47% reported being assaulted before work; 67% said the perpetrator came to the workplace; and 96–98% of employed domestic violence victims experienced problems at work related to the violence.

Perpetrators Are Also Employees

Although the primary focus of studies and responses regarding the intersection of domestic violence and employment have focused on the experiences of victims of the abuse, it must be mentioned that perpetrators of sexual and domestic violence are employees, too, and their abusive behavior has a dramatic, negative impact on the victims and their workplaces. A 2003 study conducted by the Maine Department of Labor found that 78% of surveyed perpetrators used workplace resources at least once to express remorse or anger, or check up

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on, pressure, or threaten their victims; 74% had easy access to their victim's workplace; and 21% contacted her at the workplace in violation of a no-contact order. Survey results released in 2003 by the Council for Women & Domestic Violence Commission in North Carolina noted that 81% of abusers were employed while abusive toward their partners, and 28% of abusers worked for the same employer as their victims. Consequently, the most effective responses to these crimes in the workplace incorporate policies regarding batterers in the workplace.

Employers Respond

Across the country and around the world, employers—large and small, state and local government, and private sector—have begun to voluntarily develop effective policies and protocols for addressing domestic and sexual violence in the workplace.

In 2002, Liz Claiborne, Inc., conducted its second survey of corporate leaders regarding domestic violence, with these results: 66% of corporate leaders said domestic violence is a major problem in today's society; 56% said they were aware of employees within their organization affected by domestic violence; 68% said that a company's financial performance would benefit if domestic violence were addressed among its employees; 50% reported that domestic violence has had a harmful effect on their organization's insurance and medical costs; and 32% said their company's bottom line performance has been damaged by domestic violence.

This awareness of the impact that domestic and sexual violence have on workplace productivity has caused employers to respond. The most effective employer responses include creating a committee, composed of employees from all levels of the company, to develop policies and procedures that include ongoing training for all staff regarding the appropriate responses to the violence.⁵

The Legal Response

Employees who are survivors of domestic and sexual violence have the same rights and responsibilities as other employees. Although federal employment laws did not originally consider the needs and experiences of victims of domestic and sexual violence as employees, in recent years, several have been interpreted to apply to the specific experiences of victims, including the Family and Medical Leave Act, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act. State laws with similar prohibitions regarding discrimination and the provision of job-guaranteed leave have also been used by victims of sexual and domestic violence, as have unemployment insurance and workers' compensation laws. Finally, over the last ten years, several states have enacted legislation providing specific protections and rights to employees who are victims of domestic and sexual violence, including job-guaranteed leave and antidiscrimination provisions.⁶

Job-Guaranteed Leave from Work

The federal Family and Medical Leave Act (FMLA) is the only federal law that provides job-guaranteed leave from work for employees. Although this law does not expressly mention domestic or sexual violence, it may offer job-protected leave to victims of these crimes to heal from mental or physical injuries caused by the violence, or to care for a child who is healing from injuries, if she is eligible and if the injuries rise to the level of a "serious health condition."⁷ An employee who has experienced an injury or illness caused by domestic or sexual violence, and has missed work because she is incapacitated due to the injury, may qualify for job-guaranteed leave under FMLA, instead of facing termination due to missing days of work.⁸

In addition, almost half the states—including Oregon—have family or

medical leave laws that provide unpaid, job-guaranteed time off for a variety of reasons related to family or illness, some of which may assist a survivor by providing much-needed, job-guaranteed leave.⁹ Thirty-three states have "crime-victim leave laws" that give victims of crimes, including domestic and sexual violence, time off or some form of job protection to go to criminal court if subpoenaed to appear as a witness or victim of a crime or to participate in legal proceedings. These laws enable victims to take the necessary time to assist in the prosecution of the perpetrators without fear of job loss or other negative consequences related to employment. The laws suggest a strong public policy argument for permitting necessary leave without penalty.

Another, more recent source of job-guaranteed leave for survivors of domestic and sexual violence are state laws that provide support specifically designed with the survivor's needs in mind. In the 1990s, victims' advocates began working with workers' rights advocates, welfare advocates, and women's rights groups to pass state laws providing targeted leave for victims of domestic violence and sexual assault. Today, nine states (California, Colorado, Florida, Hawaii, Illinois, Kansas, Maine, North Carolina, and Oregon) have statutes providing unpaid, job-guaranteed leave or leave as a reasonable accommodation specifically to victims of domestic violence and sexual assault/violence.¹⁰

The laws vary, but generally provide leave for victims to (1) go to civil court to obtain protection for themselves and their family, (2) seek medical attention, (3) obtain services from a rape crisis program, and (4) obtain legal assistance. These laws all prohibit an employer from discriminating against an employee, including for exercising her right to the leave. The employer, however, may require the employee to provide certification of her qualifying need for leave. Oregon's statute¹¹

is more expansive than most; please see pages 10 and 11 of this newsletter for details.

Finally, if none of these laws provides protection, a survivor still may have some recourse if her employer voluntarily provides any type of paid or unpaid sick time, vacation time, personal time, or disability leave or if these provisions are included in an applicable collective bargaining agreement. It is more and more common for employment policies and collective bargaining agreements to specifically mention benefits for victims of violence.¹²

Application of Antidiscrimination Statutes

When domestic or sexual violence takes place at work, either inside the building or on premises controlled by the employer, an employer may be at risk for liability under state and federal antidiscrimination laws if the employer fails to take action regarding the assault or retaliates against an employee for reporting it. Title VII of the Civil Rights Act of 1964, as amended, prohibits employers with 15 or more employees from discriminating against an employee in hiring, terms and conditions of employment, and firing based on sex (including pregnancy), race, national origin, religion, and color.¹³ The courts have recognized that sexual harassment is a prohibited form of sex discrimination.¹⁴

An employer can be held liable for sexual harassment if the employer failed to exercise reasonable care to prevent and correct the behavior and the employee did not unreasonably fail to take advantage of corrective opportunities the employer provided.¹⁵ Sexual assault can constitute sexual harassment when the perpetrator is a supervisor or otherwise an agent of the employer and he commits an act of rape or sexual assault on the job. Rape may create a sufficiently severe or pervasive hostile environment to hold an employer liable for the resulting damages.¹⁶ It can also constitute sexual harassment when the perpetrator is a

co-worker or nonemployee, such as a customer, and the employer knew or should have known of abuse that involved the workplace and failed to take prompt and appropriate remedial action.¹⁷ Sexual harassment laws apply to all employees, regardless of the relationship between the perpetrator and the victim.¹⁸

The Americans with Disabilities Act (ADA) prohibits discrimination against an employee because she has, has a record of having, or is regarded as having a qualified disability as defined in the statute.¹⁹ The ADA also may require an employer to take affirmative steps through a "reasonable accommodation" for a qualified disabled employee.²⁰ A victim of domestic or sexual violence may develop severe post-traumatic stress disorder or another physical or mental disability as a result of the violence that qualifies as a disability under the ADA or a comparable state law, and thus she may be entitled to an accommodation at work related to her disability.

Each state has antidiscrimination statutes that prohibit discrimination on some or all of these bases as well, some of which provide more protections, such as covering smaller employers.

In recent years, some states have begun to pass legislation specifically prohibiting discrimination against survivors of domestic and sexual violence. As of this writing, Illinois and New York City both specifically prohibit employers from discriminating against employees because they are victims of domestic or sexual violence, and the laws require employers to make "reasonable accommodations" for victims.²¹ Claims under these laws are more straightforward than the Title VII discrimination claims—they don't need to be tied back to sex discrimination theories. Also, under these laws, discrimination is defined to include firing or penalizing a victim because of actions of her abuser. Similar legislation is pending in several other states and in Congress.

Workplace Protection Orders

Beginning in the 1990s, led by California and Georgia, states began passing statutes that enable employers to obtain workplace protection orders or restraining orders on behalf of employees who are threatened at the workplace. Today ten states have such laws. The Arkansas law, for example, states that

"if an employer or employer's employee or invitee has been a victim of unlawful violence, received a threat of violence at the work site, or been stalked or harassed by an individual at the work site, the employer may, in addition to or instead of filing criminal charges against the individual, seek a temporary restraining order (TRO), a preliminary injunction, or an injunction prohibiting further unlawful acts by that individual at the work site." Ark. Code § 11-5-115.

Obtaining a workplace protection order may be an effective way for the employer to improve the safety of the workplace and meet its duties under state and federal Occupational Safety and Health Acts. Employees should always be consulted, however, before such an order is obtained, since obtaining that type of protection order may place them at greater risk by angering the perpetrators.

Workers' Compensation, Tort Action, and OSHA

When employees are injured in the workplace or while on the job, they may be entitled to compensation via either the workers' compensation system or a tort claim. Both are possibilities for victims of domestic or sexual violence who are employees, but state laws generally permit employees to pursue one or the other, but not both, remedies.

Workers' compensation is a state-run system of workplace insurance that each employer is required to carry, and in many states it is the presumptive remedy. To be eligible for workers' compensation, the victim must have suffered the domestic or

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sexual violence within the scope of employment. For example, the Georgia Court of Appeals has specifically found that when the circumstances of the employment are such that there is an increased risk of sexual assault and the assault was not personal, then such an assault is compensable under the Georgia Workers' Compensation Act.²² However, when an employee can prove that she was equally exposed to the hazards of sexual assaults outside of her employment and that the risk of sexual assault was unconnected with the responsibilities of the employment, the employee may be able to successfully pursue a tort action.

In situations in which workers' compensation laws do not apply, an employee who is a victim of sexual or domestic violence may succeed in pursuing a tort action against her employer. Tort actions are generally used, in accordance with negligence theories, to hold the employer liable for an act of violence committed in the workplace. For example, if an employee was sexually assaulted at the workplace by a co-worker, she could seek damages from her employer by filing a claim for negligent hiring or retention of the perpetrator, or both, if the employer knew or should have known that the perpetrator posed a risk of violence and the employer failed to take preventive or remedial action.

Another theory of tort liability that an assault victim might be able to pursue is intentional infliction of emotional distress—if the victim can demonstrate a causal connection between the employer's intentional or reckless behavior and her emotional distress.²³

An employer also may face liability for domestic or sexual violence if it fails to take adequate measures to keep the workplace safe. Inadequate safety measures can trigger an employer's obligations under the general duty clause of the federal Occupational Safety and Health Act.²⁴

Wrongful Termination in Violation of Public Policy

Almost every state recognizes "wrongful discharge in violation of public policy" as an exception to the general rule of at-will employment. This exception protects employees who are fired for a reason deemed in violation of a state's public policy (e.g., firing a whistleblower). Public policy generally must be based in the state's statutes, and every state has statutes evidencing a strong public policy in support of victims and survivors of crime. For example, firing an employee after she took one day off from work to get a protective order may violate public policy.²⁵

Unemployment Insurance Benefits

Unemployment insurance is a state-run social insurance program that provides temporary income to workers who lose their jobs through no fault of their own. Unemployment insurance is primarily funded through employers' payroll tax deductions. Federal law provides guidance but leaves most decisions under the control of participating states, including monetary earnings requirements, eligibility requirements for benefits, disqualification provisions and penalties, and benefit levels and duration.

Until recently, it was unclear when victims of domestic violence, sexual assault, or stalking were eligible for unemployment insurance if they were fired or forced to quit their jobs because of the violence. As of this writing, 28 states, including Oregon, and the District of Columbia have amended their unemployment insurance codes to clarify that victims of domestic violence are eligible for benefits. Oregon's law²⁶ is discussed in the article that starts on page 1.

Proposed Federal Legislation

In 1995, the first federal legislation was introduced to provide employment-related protections to victims of domestic violence in the workplace.

The Battered Women's Employment Protection Act provided for an amendment to the Family and Medical Leave Act and access to unemployment insurance for victims of domestic violence. Congress did not pass the bill, and every year since 1995, some form of the bill has been introduced, in recognition of the dramatic impact that these crimes have on the lives of the victims and their ability to maintain employment.

Most recently introduced, in the Senate by Senator Murray and in the House by Representative Roybal-Allard, is S 1136/HR 2395, called the Survivors' Empowerment and Economic Security Act in the Senate and the Security and Financial Empowerment Act (SAFE Act) in the House. The bill would allow eligible employees to take up to 30 days of unpaid leave to handle domestic violence-related priorities, such as finding a new place to live, obtaining medical care, seeking counseling, and attending court appearances related to restraining orders and divorce and child custody proceedings.

The proposal would also allow victims in every state access to unemployment benefits if they are fired or forced to leave their jobs because of abuse, and would prohibit discrimination in employment and insurance based on domestic or sexual violence. The bill would also strengthen the Family Violence Option in the Temporary Assistance for Needy Families program (TANF), in order to protect some of the most economically vulnerable victims.

These legislative proposals, and the state laws that have been adopted, recognize that employers have a responsibility to support employees who are victims of domestic and sexual violence and that discrimination against these survivors should be prohibited. ♦

Robin Runge is the director of the American Bar Association Commission on Domestic Violence.

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NATIONAL TRENDS

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Endnotes

1. Throughout this article, I use the terms “victim” and “survivor” interchangeably to refer to those who experience domestic and sexual violence. I refer to survivors as “she” and perpetrators as “he” because the majority of victims and survivors of domestic and sexual violence are women and the majority of perpetrators are men. Men, however, may be victims and women may be perpetrators, especially in same-gender relationships.
2. National Center for Victims of Crime statistics, available at www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32291#90.
3. D.G. Kilpatrick et al., *Rape in America: A Report to the Nation* (1992).
4. S. REP. NO. 138, 103rd Cong., 2d Sess. 54, n. 69, citing E. Ellis, B. Atkeson, and K. Calhoun, “An Assessment of the Long Term Reaction to Rape,” 50 *J. Abnormal Psychology* No. 3, 264 (1981).
5. See www.caepv.org, www.endabuse.org, and www.safeatwork.org for model policies and responses for employers to the impact of domestic and sexual violence on their employees.
6. For a more comprehensive discussion of the federal and state employment remedies available to victims of domestic and sexual violence, see Robin Runge, “Employment Rights of Sexual Assault Victims,” 299 *Clearinghouse Review* (September–October 2006), and Wendy R. Weiser & Deborah A. Widiss, “Employment Protection for Domestic Violence Victims,” 38 *Clearinghouse Review* 3, 4–5 (May–June 2004).
7. See, e.g., *Municipality of Anchorage v. Gregg*, 101 P.3d 181 (Alaska 2004) (holding that a woman’s incapacitated condition resulting from domestic violence, a car accident, and pregnancy rises to the level of a “serious health condition,” qualifying for leave under the Family and Medical Leave Act).
8. *Id.*
9. See www.nationalpartnership.org for additional information about state leave laws.
10. Cal. Lab. Code §§ 230 & 230.1 (West 2004); Colo. Rev. Stat. § 24-34-402.7 (2004); Fla. Stat. § 741.313 (2007); Haw. Rev. Stat. 378-72 (2004); 820 Ill. Comp. Stat. 180/1–180/45 (2004); HB 2928 (Ks. 2006); 26 Me. Rev. Stat. § 850 (2004); N.C. Gen. Stat. Chap. 50-B-5.5 (2005); ORS 659A.270 et seq. (2007).
11. ORS 659A.885.
12. See ABA Commission on Domestic Violence, *A Guide for Employers: Domestic Violence in the Workplace* at 36–38 (1999). This guide, available for purchase from www.abanet.org/domviol, discusses how an employee who is a victim of domestic violence may use her sick time, flextime, and other leave options.
13. 42 USC § 2000e (2004).
14. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64–65 (1986).

15. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

16. See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (sexual assault by supervisor with whom employee had a prior social relationship); *Little v. Windermere Relocation, Inc.*, 265 F.3d 903, 911 (9th Cir. 2001) (serial rape on one occasion during business trip); *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1305 (2d Cir. 1995); *Brock v. United States*, 64 F.3d 1421, 1423 (9th Cir. 1995) (every rape committed in the employment setting is also discrimination based on the employee’s sex); *Jones v. United States Gypsum*, 81 FEP Cases (BNA) 1695 (N.D. Iowa 2000) (upholding sexual harassment claim based on assault in genital area, including discussion citing cases).

17. See, e.g., *Little v. Windermere Relocation, Inc.*, 265 F.3d 903 (9th Cir. 2001) (rape by client); *Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1012 (8th Cir. 1988) (unwanted touching and offensive comments by co-workers); *Menchaca v. Rose Records, Inc.*, 67 Fair Empl. Prac. Cases (BNA) 1334 (N.D. Ill. 1995) (harassment by employer’s customer); *Otis v. Wyse*, 1994 WL 566943 (D. Kan. 1994) (harassment by co-worker); *Powell v. Las Vegas Hilton Corp.*, 841 F. Supp. 1024, 1025–1026 (D. Nev. 1992) (harassment by employer’s customer); see also 29 CFR § 1604.11 (d)–(e) (EEOC guidelines confirming employers’ liability for sexual harassment by co-workers and customers); Ann Parks, “Win for Gantt,” *Maryland Daily Record*, Feb. 14, 2005.

18. See, e.g., *Fuller v. City of Oakland*, 47 F.3d 1523 (9th Cir. 1995) (holding city liable for failing to take steps to stop a police officer from harassing another officer after she ended their relationship); see also *Excel v. Bosley*, 165 F.3d 635 (8th Cir. 1999) (finding that sexual harassment at work by employee’s ex-husband violated Title VII).

19. 42 USC § 12102 (2004).

20. 42 USC § 12111(9).

21. 820 Ill. Comp. Stat. 180/1–45 (West 2004); N.Y.C. Admin. Code § 8-107(2004).

22. *Insurance Company of Alabama v. Wright*, 108 Ga. App. 380, 133 S.E.2d 39 (1963).

23. See *Kennedy v. Pine Land State Bank*, 439 S.E.2d 106 (1993); *Gantt v. Security U.S.A. Incorporated*, 356 F.3d 547 (4th Cir. 2004) (holding that a supervisor’s behavior constituted the necessary intention and causal connection for a jury to conclude that intentionally placing the victim in harm’s way resulted in her emotional distress).

24. 29 USC § 651 (2004).

25. See, e.g., *Aspessos v. Memorial Press Group*, No. 01-1474-A, 2002 Mass. Super LEXIS 404 (Mass. Super. Ct. Sept. 30, 2002) (denying motion to dismiss claim that terminating employee because she was a victim of domestic violence violated public policy).

26. ORS 657.176(12)(2006).

VICTIMS’ ADVOCATES

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making these referrals to ensure that their clients have support in addressing the far-reaching ramifications of these crimes. ♦

Additional Resources for Victims

Statewide Crisis Number for immediate assistance or referral to a program near you: 1.888.235.5333

National Domestic Violence Hotline: 1.800.799.SAFE (7233)

National Sexual Assault Hotline: 1.800.656.HOPE

Crime Victims’ Rights: Information about victims’ rights in criminal proceedings and about crime victim compensation: 503.378.5348 or www.oregoncrimevictimsrights.org

Address Confidentiality Protection: The attorney general’s Address Confidentiality Program allows certain victims of domestic violence, sexual assault, and stalking to keep their residential address information confidential: www.doj.state.or.us/crimev/confidentiality.shtml

Statewide directory of confidential nonprofit domestic and sexual violence services: www.dhs.state.or.us/abuse/domestic/gethelp.htm

Information for Perpetrators

Choices For Men (Domestic Violence Intervention Program): 503.309.9742

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If you’d like to write an article for this newsletter, please contact the editor, Elise Gautier, at elise.gautier@comcast.net.

Recent Decisions

Richard F. Liebman
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Ninth Circuit Court of Appeals

***Alaska v. EEOC,*
508 F.3d 476 (9th Cir. 2007)**

Finding that Congress did not validly abrogate Eleventh Amendment immunity in the passage of the Government Employee Rights Act in 1991, the Ninth Circuit held that a Title VII claim by high-level assistants to a state's governor was barred by the state's Eleventh Amendment immunity.

***Babasa v. LensCrafters, Inc.,*
498 F.3d 972 (9th Cir. 2007)**

Cases removed on the grounds of diversity must be removed within 30 days of the defendant's knowledge that the case is or has become removable. The court held that a confidential settlement letter, even when part of mediation, is considered valid notice of the amount in controversy, triggering the start of the removal period.

***Bates v. United Parcel Service,*
No. 04-17295, ___ F.3d ___, 2007
WL 4554016 (9th Cir. Dec. 28,
2007) (en banc)**

In a change of course from an October 2006 decision, the Ninth Circuit, en banc, looked at the decision by UPS to impose a Department of Transportation (DOT) regulation applying to vehicles in excess of 10,000 pounds to smaller vehicles operated by UPS. The DOT regulation related to hearing qualifications for vehicle drivers. Remanding the case to the trial court, the court issued three rulings: (1) the employer must prove a nexus between the use of the hearing qualification and safe driving, (2) the employee bears the ultimate burden of showing that he was qualified to perform the essential function of driving the vehicle safely, and (3) the "bona fide occupational qualification" (BFOQ) defense does not apply under the Americans with Disabilities Act (ADA). Instead, an employer must show that the qualification standard is job-related and consistent with business necessity, and that performance cannot be accomplished by reasonable accommodation.

***Gambini v. Total Renal Care, Inc.,*
486 F.3d 1087 (9th Cir. 2007)**

The court found that treating an employee with a disability the same as other employees can be discrimination. "Identical treatment may be a source of discrimination in the case of the handicapped, whereas different treatment may eliminate discrimination against the handicapped and open the door to employment opportunities."

***Nilsson v. City of Mesa,*
503 F.3d 947 (9th Cir. 2007)**

In a challenge to a waiver signed in an ADA case, the employee claimed that she had been unable to understand the completeness of the waiver since the waiver did not specifically delineate every claim that had been waived. The court, however, found that her college-level education and prior work with a police department, and the absence of evidence indicating that she was either discouraged or precluded from seeking a lawyer, blocked her claim. Significantly, even though the waiver was not covered by the Older Worker Protection Act, it nonetheless contained the following line printed in capital letters: "Read carefully before signing—if not understood, seek competent legal advice."

***Pittman v. Oregon,*
509 F.3d 1065 (9th Cir. 2007)**

The court held that section 1981 of the Civil War Era Statutes, 42 USC § 1981, does not provide a cause of action against state entities.

***Walton v. U.S. Marshals Service,*
492 F.3d 998 (9th Cir. 2007)**

The court held that the plaintiff, a court security officer who was disqualified from her job due to partial hearing loss, failed to establish that the ability to locate sounds is a "major life activity" under the ADA. To establish a major life activity, the plaintiff was required to show that the proposed

activity (locating sounds) was of comparable significance as a major life activity enumerated in the regulations implementing the ADA—the "comparative importance" standard. The court reaffirmed its observation that the fact that "a proposed activity may be important because it 'is necessary in many instances to perform' an enumerated major life activity does not obviate the need to meet the ultimate standard that a proposed activity must be 'of comparative importance, and . . . central to most people's daily lives' in order to be considered a major life activity."

U.S. District Court for the District of Oregon

***Mougeot v. McLane Foodservice
Inc., No. 06-150-KI, 2007 WL
4365755 (D. Or. Dec. 12, 2007)***

Under Oregon's whistleblower law and wrongful discharge tort rules, to establish a retaliation claim a plaintiff must prove (1) involvement in a protected activity, (2) an adverse employment action, and (3) a causal link between the protected activity and the employment action. An employee was terminated for violating a company rule regarding loitering and videotaping after work hours on company premises. Although the employee later claimed that he was taking the videotapes to report illegal activity, he did not so inform the supervisor who terminated him. Therefore, no causal link was established.

Oregon Court of Appeals

***Sprague v. Quality Restaurants
NW, Inc., 213 Or. App. 521,
162 P.3d 331 (2007).***

The court held that an employee's assertion that an arbitration clause was unconscionable was to be decided by the court, not the arbitrator, because the employee challenged the arbitration clause alone rather than an entire employment agreement. ♦

Rick Liebman has represented employers in labor and employment law for 35 years.

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Supreme Court Update

Certiorari Granted

***Kentucky Retirement Sys. v. EEOC*, No. 06-1037 (Sept. 25, 2007)**

The Court will review a Sixth Circuit case to decide whether any use of age as a factor in a retirement plan is "arbitrary" and thus renders the plan facially discriminatory in violation of the Age Discrimination in Employment Act (ADEA).

***Gomez-Perez v. Potter*, No. 06-1321 (Sept. 25, 2007)**

The Court agreed to hear a case from the First Circuit regarding whether 29 USC § 633a (part of the ADEA), which applies to federal employees, prohibits retaliation against employees who complain of age discrimination. The First Circuit held that it did not, thereby creating a split with the Circuit Court for the District of Columbia.

***CBOCS West, Inc. v. Humphries*, No. 06-1431 (Sept. 25, 2007)**

In this case from the Seventh Circuit, the Court will determine whether a race retaliation claim is recognized under 42 USC § 1981, which derives from the Civil Rights Act of 1866.

***Baze v. Rees*, No. 07-5439 (Sept. 25, 2007)**

The Court will decide whether Kentucky's procedures for capital punishment, which require giving an inmate a choice between electrocution and lethal injection, or lethal injection if no choice is made, violate a defendant's right to be free from cruel and unusual punishment.

Matthew Duckworth
Busse & Hunt

Rachelle Hong Barton
Fisher & Phillips LLP

***Crawford v. Marion County Elec. Bd.*, No. 07-21 (Sept. 25, 2007); *Indiana Democratic Party v. Rokita*, No. 07-25 (Sept. 25, 2007)**

The Court will decide whether an Indiana statute requiring individuals seeking to vote in person to produce a government-issued photo identification violates the First and Fourteenth Amendments to the U.S. Constitution.

***District of Columbia v. Heller*, No. 07-290 (Nov. 20, 2007)**

The Court agreed to consider whether the Second Amendment forbids the District of Columbia from banning individuals from possessing handguns for private use in their homes.

***Huber v. Wal-Mart Stores, Inc.*, No. 07-480 (Dec. 7, 2007)**

The Americans with Disabilities Act expressly lists "reassignment to a vacant position" as a "reasonable accommodation." The Court has agreed to review this Eighth Circuit case to determine whether the ADA requires an employer to reassign a qualified employee with a disability to a vacant, equivalent position for which the employee is qualified or whether it merely requires the employer to permit the employee to apply and compete with other applicants for the position.

***Engquist v. Oregon Dept. of Agriculture*, No. 07-474 (Jan. 11, 2008)**

In a case arising out of the U.S. District Court for the District of Oregon, the Court will consider whether traditional equal protection analysis applies to public employers who intentionally treat similarly situated employees differently without a rational basis.

***Crawford v. Metropolitan Govt. of Nashville and Davidson County*, No. 06-1595 (Jan. 18, 2008)**

The Court has agreed to hear this Sixth Circuit case to determine whether the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 protects an employee from being dismissed because the employee cooperated with the employer's investigation of sexual harassment.

***Meacham v. Knolls Atomic Power Laboratory*, No. 06-1505 (Jan. 18, 2008)**

In this case from the Second Circuit, the Court will decide whether an employee alleging disparate impact discrimination under the ADEA bears the burden of persuasion on the "reasonable factors other than age" defense. ♦

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OREGON AT THE FOREFRONT

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quit their jobs in order to get safe. This might be because of a specific threat at the workplace, or because of a threat in the community. Sometimes, the only way to get protection is to leave the workplace, or to move away from the community. This can be especially true when the perpetrator is addicted to drugs, has a mental illness, or is stalking the victim.

In most states, including Oregon, individuals are ineligible for unem-

ployment benefits if they leave work voluntarily without "good cause" or if they are discharged for "misconduct." Even so, before 2005, Oregon victims who had to quit work because of domestic or sexual violence were often denied unemployment insurance benefits. Thus these victims were often further victimized by the loss of income in their time of greatest need. Without the protection of unemployment benefits, working people were

forced into poverty or onto public assistance. Other victims were simply unable to relocate without income, and thus were forced to stay in their jobs longer than was safe for them, their families, or their communities.

In 2001, the legislature took a first critical step in specifically addressing domestic violence in the context of unemployment benefits, passing HB 2767 (chief-sponsored by Represen-

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tative Karen Minnis and then-Senator Susan Castillo) with broad bipartisan support.¹⁰ The bill provided coverage for those victims of domestic violence who were threatened or injured at the workplace and who had pursued all reasonable alternatives prior to voluntarily leaving work.

This was an important first step, but some victims in need of protection continued to be denied unemployment benefits. Advocates for the 2001 law had not identified that sexual assault and stalking victims had similarly compelling needs, and these victims were ineligible for relief. And some domestic violence victims deserving of protection were being denied because of the requirement that the safety threat exist *at the workplace*, or because of strict requirements that the victim have pursued *all* reasonable alternatives prior to leaving work. Employees who would have otherwise qualified for unemployment insurance were being denied sorely needed benefits in their time of crisis as they were forced to jump through impossible hoops to show that they had taken a litany of steps to protect themselves, without regard to whether or not such steps were actually protective or available to the victim.

Advocates and the legislature kept working. In 2005, HB 2662, chief-sponsored by Representative Paul Holvey, expanded previous protections and was passed with broad bipartisan support.¹¹ The law now offers protection to victims of sexual assault or stalking as well as victims of domestic violence. The law also protects employees if they must quit work to protect their minor children who are victims. The law now clarifies that the two key questions in determining eligibility for benefits are (1) whether the employee had the reasonable belief that quitting work was necessary to avoid further abuse *at the workplace or elsewhere* and (2) whether the employee had pursued reasonable *available* alternatives prior to quitting. "Reasonable available

The law now offers protection to victims of sexual assault or stalking as well as victims of domestic violence.

alternatives" are defined by rule as whatever action or series of actions, *in the perception of the individual*, best guarantee the safety of the individual or the minor child.¹²

Oregon is at the forefront of unemployment insurance protection for victims of domestic and sexual violence. Of the 29 states (plus the District of Columbia) offering similar benefits,¹³ only a few address the needs of sexual assault or stalking victims. And many states do not provide coverage for employees who need to leave work in order to protect their minor children.

Additionally, the Oregon statute and administrative rule recognize that there is no one set of safety steps that meets the needs of all victims. As illustrated by the examples above, many victims legitimately fear the ramifications of seeking court or law enforcement protection, and choose not to do so because such steps would not be safe for them. Oregon's law is forward thinking in that it recognizes that each case is different, and that victims themselves are in the best position to determine which alternatives to quitting are available and best able to provide safety, if any.

The protections of this law, codified at ORS 657.176(12) (administrative rule at OAR 471-030-0150), have worked well and have given victims and their employers a positive option to avoid violence in the workplace, thus enhancing safety for victims, families, co-workers, and employers.

Broad Leave from Work

Janet was a longtime blue-collar employee of a big company. After her ex-husband violently assaulted her, she obtained a restraining order to protect herself and her young child. A hearing

was set for a few weeks later. Janet was unable to get permission to take the half day off she needed to go to court. She had to decide whether to drop the protective order and save her job, or risk her economic security by going to court to protect herself.

In 2007, Oregon became one of nine states in the nation to provide guaranteed leave from work for employees who are survivors of domestic violence, sexual assault, or stalking.¹⁴ SB 946 was chief-sponsored by Representative Carolyn Tomei and Senators Laurie Monnes-Anderson and Kate Brown. It was passed with broad bipartisan support for the position that it is good public policy to help reduce domestic and sexual violence by enabling victims to seek safety for themselves and their children without losing their jobs.¹⁵ The bill also had the support of the Bureau of Labor and Industries and many employers.¹⁶

Codified at ORS 659A.270–659A.285 (rules at OAR 839-009-0325 through 839-009-0365), the law allows qualifying employees to take *reasonable, unpaid* time off from work to pursue protection or to redress the impact of violence. Leave is allowed for a broad range of reasons, not only to facilitate a survivor's right to protect herself or her family, but also to help survivors take the steps they need to heal from the violence.

Leave is allowed for the following authorized purposes: seeking legal or law enforcement help (this includes preparing for and participating in protective order proceedings or other civil or criminal legal proceedings); seeking medical attention; obtaining services from a crisis center; obtaining psychological counseling; or relocating or securing a current home (this includes time to pack, move, or make security arrangements, among other things). The amount of leave requested must be reasonable. Employers may limit leave, but only if leave would create an undue hardship.

Employees who avail themselves of the benefits of the new law are protected.

To be eligible for relief, an employee must be a victim (or the parent or guardian of a victim) of domestic violence, sexual assault, or stalking and must meet certain longevity requirements. If requested by the employer, the employee must provide certification of eligibility for relief. Certification can be in any of these forms: a copy of a police report; a copy of a protective order or other court evidence; or documentation from an attorney, law enforcement officer, licensed health care or mental health professional, clergy member, or victim service provider. It is the employee's choice as to which form of certification she provides, if certification is requested.

Employees who avail themselves of the benefits of the new law are protected: Any documents or records kept by an employer related to the leave must be kept confidential. And an employer may not discriminate or retaliate against an employee who accesses or inquires about the law's protection.

Violation of the law is an unlawful employment practice that can be enforced via an administrative or civil action.

Oregon's leave law is significantly broader than some, in that it applies to all but the smallest employers (it applies to those with six or more employees), and does not arbitrarily limit the amount of time off allowed. The amount of time allowed as reasonable is necessarily dependent on the individual facts of the case—this assessment will depend on the nature and severity of the abuse, and the complexity of the protection or assistance needed, among other things. Oregon's law is also broader than some in that it covers victims of

sexual assault and stalking as well as victims of domestic violence, which is now the recognized best practice when addressing the needs of victims of violence against women.

Unfortunately, Oregon's law does not provide coverage for temporary workers or for part-time workers. This coverage may be an area for future development in this and other states.

Employer Responses: Workplace Violence Policies

Jessica left her boyfriend, and then was stalked. He followed her to and from work and called her office extension frequently, interrupting her customer service work. He threatened to kill her one day when she would least expect it. Frequently, he sat in the window of the coffee shop across the street and watched Jessica through her office window. Jessica was scared and had trouble concentrating at work. She saw a flyer in the women's bathroom indicating that employees who were victims of domestic and sexual violence could confidentially ask their HR managers for help.

Jessica talked to her manager, who had been trained about domestic and sexual violence and workplace responses. The manager gave her information about local advocacy support programs where she could get safety planning assistance, and offered to work with her to address any reasonable safety requests at the workplace. Jessica was assigned a new telephone extension number, so her abuser could no longer harass her by phone. At Jessica's request, her workstation was moved away from the window, so her abuser could not see her from across the street. And her parking space was moved to a spot that was safer when she left work at night.

Employers can play a great role in helping victims like Jessica by setting up policies that establish a zero tolerance for violence, and providing strong practical support for victims. In doing so, employers assure themselves of a safer workplace as a whole.

For these reasons, several states now require all state agencies to adopt workplace policies on domestic and sexual violence. In October 2007, Governor Kulongoski signed Executive Order No. EO 07-17, making Oregon the 18th state in the nation to require such policies.¹⁷ Other states have passed laws or created model workplace policies for voluntary adoption by both public and private employers. Some states have proposed legislation that would provide monetary incentives for private employers to adopt such policies or to institute domestic and/or sexual violence awareness and training programs at their work sites.

Executive Order No. EO 07-17 required the Oregon Department of Administrative Services (DAS) to adopt a statewide written policy regarding issues of domestic violence, sexual assault, or stalking involving agency employees. DAS has worked hard to craft a strong policy in response, which became effective February 1, 2008, and applies to all state agencies. Key elements of the executive order require the following:

- Training about domestic violence, sexual assault, and stalking for all managers and supervisors;
- Confidentiality protection for adult victims;
- Posting of counseling resources for victims as well as programs for perpetrators;
- Prohibition of the commission of domestic violence, sexual assault, or stalking by any agency employee on agency premises, during working hours, or at an agency sponsored event, toward any person;
- Prohibition of discrimination against employees on the basis of their victimization; and
- A commitment, to the extent feasible, to help victims resolve safety issues so they can continue to work.

DAS has already begun to provide training to state managers and supervisors, as required by the executive

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order. This effort will continue over the years and will have a great impact on employees' abilities to come forward to ask for help and support.

In the preamble to the executive order, Governor Kulongoski recognizes that "coordination among many elements of the community is necessary in order to effectively respond to domestic violence, sexual assault and stalking. Employers, both public and private, play a critical role in any coordinated community response. . . . Employers should share a basic concern for their employees' well-being, recognizing that the employment relationship gives employers unique opportunities to provide victim support and assistance."¹⁸

It is good public policy to help reduce domestic and sexual violence by enabling victims to seek safety for themselves and their children without losing their jobs. State agencies in Oregon are leading by example. Their leadership should influence other governments and private employers to support their own employees who may find themselves victimized by domestic violence, sexual assault, or stalking.

Without economic resources, victims cannot achieve safety for themselves and their children.¹⁹ Allowing victims to take steps to get safe also reduces danger and stress to other employees in the workplace. In summary, workplace protection for victims is essential, for their safety and for the safety of our workplaces and communities. ♦

Sybil Hebb is the director of legislative advocacy for the Oregon Law Center.

Endnotes

1. Throughout this article, I use the terms "victim" and "survivor" interchangeably to refer to those who experience domestic and sexual violence. Survivors are referred as "she" and perpetrators as "he" because the majority of victims and survivors of domestic and sexual violence are women and the majority of perpetrators are men. Men, however, may be victims and women may be perpetrators, especially in same-gender relationships.
2. Linda Drach, *Intimate Partner Violence in Oregon: Findings from the Oregon Women's Health and Safety Survey, 2000–2001* (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, 2004).
3. D. G. Kilpatrick and K.J. Ruggiero, *Rape in Oregon: A Report to the State* (National Violence Against Women Prevention Research Center, Medical University of South Carolina, 2003).
4. Linda Drach, *Intimate Partner Homicide in Oregon, 1997–2003* (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, 2005), www.oregon.gov/DHS/ph/ipv/docs/IPV_Homicide97-03.pdf.
5. Drach, *Intimate Partner Violence in Oregon: Findings from the Oregon Women's Health and Safety Survey, 2000–2001*, *supra* note 2.
6. *Community Partnered Response to Intimate Violence* (RO1 NR008771-03, PI: N.Glass, National Institutes of Health/National Institute for Nursing Research, 2007).
7. Drach, *Intimate Partner Violence in Oregon: Findings from the Oregon Women's Health and Safety Survey, 2000–2001*, *supra* note 2.
8. Linda Drach, *Costs of Intimate Partner Violence Against Oregon Women* (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, 2005).
9. Throughout this article, I use examples to illustrate the issues presented. The names of all victims have been changed, and the facts generalized, so as not to violate confidentiality.

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10. www.leg.state.or.us/01reg/measures/hb2700.dir/hb2767.a.html.
11. www.leg.state.or.us/05reg/measpdf/hb2600.dir/hb2662.en.pdf.
12. OAR 471-030-0150.
13. A.R.S. § 23-771; Cal. U.I. Code §§ 1030, 1032 & 1256; Colo. Rev. Stat. Ann. § 8-73-107(1)(g) & § 8-73-108(4)(r); Conn. Gen. Stat. § 31-236(a)(2)(A)(iv); Del. Code Ann. tit. 19, § 3314(1); D.C. Code §§ 51-131 – 136; 820 Ill. Comp. Stat. 405/601; Ind. Code §§ 22-4-15-1(1)(c)(8), 22-4-15-1(1)(e), 22-4-15-2(e) & 5-26.5-2-2; Kan. Stat. Ann. § 44-706(A)(12); La. Rev. Stat. 23: 1770-73, 1774 & 1775; Me. Rev. Stat. Ann. tit. 26, ch. 13 §§ 1193(1)(A)(4) & 1043(23)(B)(3); Mass. Gen. L. Ann. ch. 151A, §§ 1, 14, 25, 30; Minn. Stat. §§ 268.095(1)(9) & 268.095(6)(c); Mont. Code Ann. § 39-51-2111; Neb. Rev. Stat. Ann. § 48-628.01(1)(a); N.H. Rev. Stat. Ann. tit. 23, § 282-A:32(l)(a)(3); N.J. Rev. Stat. § 43:21-5(j); N.M. Stat. Ann. § 51-1-7 A(1)(b); N.Y. Lab. Law § 593(1)(a); N.C. Gen. Stat. § 96-14(1f); Okla. Stat. Title 40, §§ 40-2-405(5) & 40-3-106(G)(8); ORS 657.176(12); R.I. Gen. Laws § 28-44-17.1; S.C. Code Ann. §§ 41-35-125 & 41-35-130; S.D. Codified Laws § 61-6-13.1; Tex. Lab. Code §§ 204.022(a)(11) & 207.046(a)(2); 21 Vt. Stat. Ann. ch. 16A § 1251 et seq; Wash. Rev. Code §§ 50.20.050, 50.20.100, 50.20.240 & 50.29.020; Wis. Stat. § 108.04(7)(s); Wyo. Stat. § 27-3-311.
14. Cal. Lab. Code §§ 230 & 230.1 (West 2004); Colo. Rev. Stat. § 24-34-402.7 (2004); Fla. Stat. § 741.313 (2007); Haw. Rev. Stat. 378-72 (2004); 820 Ill. Comp. Stat. 180/1–180/45 (2004); HB 2928 (Ks. 2006); 26 Me. Rev. Stat. § 850 (2004); N.C. Gen. Stat. Chap. 50-B-5.5 (2005); ORS 659A.270 et seq. (2007).
15. www.leg.state.or.us/07reg/measpdf/sb0900.dir/sb0946.en.pdf.
16. For technical assistance about this law and more information, visit www.oregon.gov/BOLI/.
17. <http://governor.oregon.gov/Gov/pdf/eo0717.pdf>.
18. *Id.*
19. Vera E. Mouradian, *Abuse in Intimate Relationships: Defining the Multiple Dimensions and Terms* (National Violence Against Women Prevention Research Center).