

# **DOMESTIC VIOLENCE AT THE WORKPLACE: AN EMPLOYER'S LIABILITY TO VICTIM EMPLOYEES**

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## **Introduction**

“Domestic violence can be physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”<sup>1</sup> Domestic violence affects individuals from across the socio-economic spectrum.<sup>2</sup> It also transcends race, gender, age, religion, and sexual orientation.<sup>3</sup> Domestic abuse follows the victim out of her<sup>4</sup> home and into the workplace.<sup>5</sup> Although domestic violence has become a workplace issue, employer resistance remains a barrier to addressing the problem.<sup>6</sup>

This note provides an analysis of imposing more responsibility on employers under the law to protect their employees who are victims of domestic violence. More responsibility should fall on employers to educate employees about domestic violence. A registry system for victims of domestic violence would increase workplace security by making employers aware of potential workplace issues. Employers should also be prevented from wrongfully discharging victims of domestic violence.

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<sup>1</sup> U.S. Dep’t of Justice, Office on Violence Against Women, *About Domestic Violence*, available at <http://www.ovw.usdoj.gov/domviolence.htm> (last visited Nov. 28, 2010).

<sup>2</sup> Marta B. Varela, *Protection of Domestic Violence Victims Under the New York City Human Rights Law’s Provisions Prohibiting Discrimination on the Basis of Disability*, 27 Fordham Urb. L.J. 1231, 1232-33 (2000).

<sup>3</sup> Safe @ Work Coalition, *What is Domestic Violence?*, available at <http://www.safeatworkcoalition.org/dv/whatisdv.htm> (last visited Nov. 28, 2010).

<sup>4</sup> *Id* (citing Bureau of Justice Statistics, *Violence Between Intimates*, U.S. Dep’t of Justice, 1994). The U.S. Department of Justice estimates over ninety-six percent of victims of domestic violence are women.

<sup>5</sup> Elissa Stone, Comment, *How the Family and Medical Leave Act Can Offer Protection to Domestic Violence Victims in the Workplace*, 44 U.S.F. L. Rev. 729, 729 (2010)

<sup>6</sup> See Meg Hobday, *Domestic Violence Comes to Work*, 67 Bench & B. Minn. 20, 22 (2010).

Part I of this paper examines statistics on domestic violence and the workplace and looks at employers' attitudes as a barrier to addressing this problem. Part II addresses workplace security issues and an employer's tort responsibility for protecting employees from domestic violence at the workplace. This section focuses on foreseeability of domestic violence in the workplace as key to recovering damages from one's employer. Part III deals with an employer's liability for wrongfully discharging an employee who is a victim of domestic violence. This section looks at a city ordinance, state statutes, and public policy exceptions to the at-will employment doctrine as sources of employer liability. Part IV includes recommendations about the type of future measures that can be taken to protect employees through the implementation of a proposed Uniform Domestic Violence Act. This Act supports victims of domestic violence by protecting them from wrongful discharge; makes it easier for victims of domestic violence at the workplace to recover damages against their employers in tort law claims by creating a registration system that addresses the problem of foreseeability, which is a barrier to tort law recovery; and mandates education in the workplace about domestic violence.

## I. Domestic Violence: Workplace Statistics and Employer's Attitudes

Studies reveal that between twenty-five percent<sup>7</sup> and thirty-three percent of American women have been victims of domestic violence.<sup>8</sup> Domestic abuse accounts for over twenty percent of emergency room visits for women, and accordingly, is responsible for the largest

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<sup>7</sup> Comment, *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?*, 31 Tex. Tech L. Rev. 139, 143 (2000) (citing statistics from a YMCA and The Body Shop survey).

<sup>8</sup> Stone, *supra* note 4, at 731 (referencing a 1998 Survey of Women's Health).

number of injuries to females.<sup>9</sup> Since “[t]he effects of domestic violence—such as lowered self-esteem and physical manifestations of abuse—travel outside the home and evolve into a workplace issue,”<sup>10</sup> employers cannot ignore the effects of domestic violence.

A perpetrator’s access to a victim at the workplace allows for increased levels of abuse “because many women spend predictable hours on the job, [so] abusers can track down their victims at work with relative ease and continue the harassment....”<sup>11</sup> A study found that ninety-six percent of employees who are victims of domestic violence experienced issues at their workplaces because of the abuse.<sup>12</sup> These problems include a decrease in productivity due to harassment by one’s abuser while at the workplace, arriving at work late due to domestic abuse, or leaving work early as a result of the abuse.<sup>13</sup>

A barrier to addressing domestic violence at the workplace stems from the attitudes of employers. A study in 2007 by Corporate Alliance to End Partner Violence (CAEPV), Safe Horizon, and Liz Claiborne reveals that a mere thirteen percent of corporate executives believe that corporations should address domestic violence.<sup>14</sup> Employers often view domestic violence as a strictly personal matter; thus, it should not be addressed at the workplace.<sup>15</sup> The Bureau of Labor Statistics released information in October of 2006 that indicated that more than seventy percent of employers have no formal policy that addresses violence in the workplace.<sup>16</sup> The Bureau of Labor Statistics also found that of employers who do address workplace violence, only

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<sup>9</sup> Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer’s Responsibility*, 16 Law & Ineq. 633, 636 (1998) (citing statistics from Joan Zorza, *Mandatory Arrest for Domestic Violence, Why It May Prove the Best First Step in Curbing Repeat Abuse*, 10 Crim. Just. 2,2 (1995)).

<sup>10</sup> Stone, *supra* note 4, at 729.

<sup>11</sup> Robertson, *supra* note 9, at 637.

<sup>12</sup> Stone, *supra* note 4, at 731 (citing statistics from the American Institute on Domestic Violence).

<sup>13</sup> *Id.*

<sup>14</sup> Hobday, *supra* note 6, at 22.

<sup>15</sup> *Id.*

<sup>16</sup> Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3) (last visited Nov. 28, 2010).

forty-four percent specifically address workplace domestic violence.<sup>17</sup> This translates to a mere four percent of employers who address the impact of domestic violence on the workplace.<sup>18</sup>

The United States Department of Justice (DOJ) has guidelines<sup>19</sup> that an employer can use to implement a domestic violence awareness program. The recommendations include involving management in the process of addressing domestic violence, establishing policies to address the needs of domestic violence victims, and ensuring that employee assistance programs serve domestic violence victims.<sup>20</sup> Additionally, the DOJ suggests that businesses sponsor workshops and distribute literature to educate their employees about the effects of domestic violence.<sup>21</sup> The DOJ recommends that employers train supervisors to respond to the needs of employees who are facing domestic violence.<sup>22</sup>

Several companies, such as Marshalls, Target, and Liz Claiborne, have implemented the Department of Justice's domestic violence education recommendations.<sup>23</sup> Marshalls educated employees by posting domestic violence hotline numbers and providing employees with the company's Employee Assistance Program phone number.<sup>24</sup> Target held educational seminars about domestic violence and provided 140,000 of its employees with information on domestic violence.<sup>25</sup> Liz Claiborne, Inc. included domestic violence information in all employee paycheck envelopes.<sup>26</sup> Unfortunately, such efforts are uncommon among employers, and the resistance to

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<sup>17</sup> *Id.*

<sup>18</sup> Hobday, *supra* note 6, at 22.

<sup>19</sup> U.S. Dep't of Justice, *A Community Checklist: Important Steps to End Violence Against Women*, available at <http://www.ncjrs.gov/pdffiles1/pr/166403.pdf> (last visited Nov. 28, 2010).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Robertson, *supra* note 9, at 656-57.

<sup>24</sup> *Id.* at 657.

<sup>25</sup> *Id.* at 656.

<sup>26</sup> *Id.* at 657.

addressing domestic violence remains problematic, as the effects of domestic violence follow victims into the workplace.<sup>27</sup>

An employer's failure to address domestic violence is expensive, as domestic violence costs businesses in the United States approximately six billion dollars per year in lost productivity, missed days of work, and health care costs.<sup>28</sup> Domestic abuse victims lose twenty-six percent more time due to tardiness and absenteeism than do non-victims.<sup>29</sup> Half of abused women have reported missing three days of work on average each month due to domestic violence,<sup>30</sup> which translates into an average of 137 lost work hours per year per abused woman.<sup>31</sup> Because of the large number of abused women, these missed days add up to about eight million lost days of paid work annually.<sup>32</sup> These statistics demonstrate "that it is in an employer's best interest to work with employees experiencing domestic violence and that such work will ultimately result in a stronger and more stable workforce."<sup>33</sup> Once an employer recognizes the importance of addressing domestic violence at the workplace, its next step should be to turn to the law to understand its legal responsibility to employees who are victims of domestic violence.

## **II. Tort Responsibility & Workplace Security: Protecting Employees from Domestic Violence at the Workplace**

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<sup>27</sup> See Hobday, *supra* note 6, at 21.

<sup>28</sup> Juju Chang, Liz Sintay, and Imaeyen Ibanga, *Domestic Violence Enters the Workplace*, ABC News (Dec. 16, 2008), available at <http://abcnews.go.com/GMA/story?id=6466718&page=2>.

<sup>29</sup> Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3).

<sup>30</sup> Comment, *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?*, 31 Tex. Tech L. Rev. 139, 143 (2000).

<sup>31</sup> Stone, *supra* note 4, at 732.

<sup>32</sup> *Id.*; Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3); New Hampshire Coalition Against Domestic and Sexual Violence, *DV in the Workplace*, available at [http://www.nhcadsv.org/dv\\_workplace.cfm](http://www.nhcadsv.org/dv_workplace.cfm).

<sup>33</sup> Danny v. Laidlaw Transit Serv., Inc., 193 P.3d 128, 141 (Wash. 2008).

An employer's knowledge of her duty toward employees can aid the employer in assessing the sufficiency of current workplace security measures. Workplace security is crucial to ensure a victim employee's safety on the work premises. Victim Services of New York released a report indicating that seventy-four percent of victims of domestic violence have been harassed by their abuser while at work.<sup>34</sup> A National Safe Workplace Institute Survey found “[ninety-four] percent of corporate security directors rank partner violence as a high security problem.”<sup>35</sup> The DOJ recommends that employers increase workplace safety by training security guards on how to address the needs of domestic violence victims.<sup>36</sup> Liz Claiborne has implemented this recommendation by providing employees who are victims of domestic violence with designated parking spaces and security escorts.<sup>37</sup> If security measures fail, and an employee is injured or killed by her abuser while at her workplace, tort theories may offer the victim or her family recovery of economic damages from her employer.

If a legal duty is established between employer and employee, and the employer fails to protect the employee at the workplace, the employer could be found liable under a negligence or wrongful death theory. The general rule on employer liability in tort theory is that “absent a special relationship”<sup>38</sup> or special circumstances a person has no duty to protect another from criminal acts of a third person.”<sup>39</sup> To establish a duty, a plaintiff must prove “(1) that there were warning signs of the violence act; (2) that if the company had been paying attention, it would

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<sup>34</sup> Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3).

<sup>35</sup> New Hampshire Coalition Against Domestic and Sexual Violence, *DV in the Workplace*, available at [http://www.nhcadsv.org/dv\\_workplace.cfm](http://www.nhcadsv.org/dv_workplace.cfm); Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3).

<sup>36</sup> U.S. Dep't of Justice, *A Community Checklist: Important Steps to End Violence Against Women*, available at <http://www.ncjrs.gov/pdffiles1/pr/166403.pdf>.

<sup>37</sup> Robertson, *supra* note 9, at 658.

<sup>38</sup>“Case law is split regarding whether a special relationship exists between employers and employees....” Robertson, *supra* note 9, at 650. Although special relationships or special circumstances can create employer liability in tort law, the focus of this paper will be on foreseeability leading to employer liability.

<sup>39</sup> Carroll v. Shoney's Inc., 775 So.2d 753, 756 (Ala. 2000).

have noticed the warning signs; and (3) the company could have minimized or prevented the violence.”<sup>40</sup> The second element of establishing a duty between employer and employee is an issue of foreseeability.<sup>41</sup> Foreseeability is a crucial part of determining employer liability for the criminal conduct of a third party, as the risk of harm must be foreseeable to determine employer liability. The following cases turn on the court’s analysis of foreseeability.

The employer in *Midgette v. Wal-Mart Stores, Incorporated* was found not liable for negligence when an employee was shot by her husband on the work premises.<sup>42</sup> Under a theory of foreseeability, Wal-Mart did not know the plaintiff was in a “position of imminent danger of serious harm.”<sup>43</sup> Marsha Midgette, a Wal-Mart employee, did not experience domestic violence in her relationship with her husband until after she had been married to him for twenty-six years.<sup>44</sup> On August 26, 1999, Midgette’s husband assaulted her, was arrested by the police, and was ordered by the District Justice to have no contact with her until his preliminary hearing.<sup>45</sup> Midgette informed two support managers and the store manager at Wal-Mart that her husband had assaulted her.<sup>46</sup>

Three days later, Midgette reported for work early and was waiting in the break room to start her shift, when her husband entered the break room and shot Midgette in the head, before fatally shooting himself.<sup>47</sup> Ms. Midgette survived the incident and filed suit against Wal-Mart for negligence.<sup>48</sup> The court held that Wal-Mart did not assume a duty to protect Ms. Midgette,<sup>49</sup> and

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<sup>40</sup> Nicole Buonocore Porter, *Victimizing the Abused?: Is Termination the Solution When Domestic Violence Comes to Work?*, 12 Mich. J. Gender & L. 275, 316 (2006).

<sup>41</sup> *Id.*

<sup>42</sup> See *Midgette v. Wal-Mart Stores, Inc.*, 317 F.Supp.2d 550, 550 (E.D. Pa. 2004).

<sup>43</sup> *Id.* at 559.

<sup>44</sup> *Id.* at 553.

<sup>45</sup> *Id.* at 553-54.

<sup>46</sup> *Id.* at 554.

<sup>47</sup> *Id.* at 555.

<sup>48</sup> *Midgette v. Wal-Mart Stores, Inc.*, 317 F.Supp.2d 550, 555-56 (E.D. Pa. 2004).

even if there was a duty, “it cannot be expected that Wal-Mart would have reason to foresee Mr. Midgette’s violent actions.”<sup>50</sup>

Another case involving domestic violence at the workplace in which foreseeability played a crucial role is *Clark v. Carla Gay Dress Company*.<sup>51</sup> In August 1980, Barbara Clark informed her work supervisor, Lancy, that she had filed for divorce from her husband, Willie Clark, because he was a drug addict who beat her.<sup>52</sup> On October 1, 1980, Mr. Clark came to Carla Gay Dress Company to visit Mrs. Clark.<sup>53</sup> Mrs. Clark spoke briefly with him, and as Mr. Clark was leaving, he asked Lancy if he could speak with Mrs. Clark again.<sup>54</sup> Lancy twice asked Mrs. Clark if she wanted to speak with her husband, and twice Mrs. Clark replied that “she and Willie were getting a divorce and he was going to court that day; that he was trying to talk her out of getting the divorce, and she did not want to talk to him.”<sup>55</sup> Despite this, Mrs. Clark feared her husband would ““start a scene”” if she did not see him, so she met him at the door.<sup>56</sup> When Mrs. Clark tried to end the conversation, Mr. Clark grabbed her and shot her in the head.<sup>57</sup>

Barbara Clark survived this abuse and sued her employer for negligence.<sup>58</sup> The court held Clark had not told Lancy that she was afraid of her husband, thus Clark “did not herself foresee the physical danger she was in and [the court found] no circumstance from which Carla Gay’s

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<sup>49</sup> *Id.* at 558.

<sup>50</sup> *Id.* at 562.

<sup>51</sup> See *Clark v. Carla Gay Dress Co., Inc.*, 342 S.E.2d 468, 472 (Ga. Ct. App. 1986).

<sup>52</sup> *Clark*, 342 S.E.2d at 469.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 469-70.

<sup>58</sup> *Clark v. Carla Gay Dress Co., Inc.*, 342 S.E.2d 468, 469 (Ga. Ct. App. 1986).

management should have reasonably foreseen it.”<sup>59</sup> The court went so far as to hold that “there is no general duty to keep spouses off the business premises.”<sup>60</sup>

In *Carroll v. Shoney's*, another case involving domestic violence at the workplace, the court declined to hold a domestic violence victim’s employer liable.<sup>61</sup> On September 22, 1995, Captain D’s restaurant employee Mildred Harris told her manager, Edwards, that she was afraid of her husband, Ronnie Harris, because he beat her the night before.<sup>62</sup> That night, Mr. Harris showed up at Mrs. Harris’s work and threatened to kill her.<sup>63</sup> Edwards called the police, and the police escorted Mr. Harris off the premises.<sup>64</sup>

The next day, Mrs. Harris called work and requested time off because she was afraid of her husband; however, a second manager, Jones, told her to come in to work anyway.<sup>65</sup> During Mildred Harris’s shift that day, her husband came in and fatally shot her in the head.<sup>66</sup> The victim’s father filed a wrongful death suit against her employer.<sup>67</sup> The court conducted a negligence analysis to determine whether there was a duty between the employer and the employee.<sup>68</sup> The court found that “there was no evidence in this case that any employee of Captain D’s was told, or should have reasonably foreseen, that Ronnie Harris would enter the

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<sup>59</sup> *Id.* at 472.

<sup>60</sup> *Id.*

<sup>61</sup> *Carroll*, 775 So.2d at 753.

<sup>62</sup> *Id.* at 754.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 755.

<sup>66</sup> *Id.*

<sup>67</sup> *Carroll v. Shoney's Inc.*, 775 So.2d 753, 754 (Ala. 2000).

<sup>68</sup> *Id.* at 756.

Captain D's restaurant and murder his wife.”<sup>69</sup> Thus, the court held Mildred Harris's employer not liable in the wrongful death suit.<sup>70</sup>

The courts in *Midgette*, *Carroll*, or *Clark* refused to find employers liable for domestic violence committed upon their employees at the workplace based on a lack of foreseeability.<sup>71</sup> However, the dissent in *Carroll* brings up an interesting theory of liability<sup>72</sup> of which employers should be aware. Dissenting Justice Johnstone maintained that the majority in *Carroll* framed the foreseeability issue incorrectly, as “[t]he crucial issue is not whether the murder was foreseeable, but whether violence and injury, fatal or not, were foreseeable.”<sup>73</sup>

Justice Johnstone dismissed the majority's reasoning and found that “violence by the husband was so obviously foreseeable that the manager of the restaurant expressly promised to protect the deceased from the husband.”<sup>74</sup> In addition, the dissent held that “[f]oreseeability is a matter of common sense.”<sup>75</sup> While the majority did not accept this view in *Carroll*, the dissent heeded a warning to employers to use common sense to protect their employees from the violent effects of domestic violence, while at the workplace.

The dissent in *Carroll* suggests that although there was no employer liability in the aforementioned cases, liability could be found if the foreseeability standard was different.<sup>76</sup> Changing the foreseeability standard in order to find employers liable for domestic violence perpetrated on employees while at the workplace has been previously suggested as a solution for compensating victims and for ensuring that security measures are improved upon by

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<sup>69</sup> *Id.* at 757.

<sup>70</sup> *Id.*

<sup>71</sup> See *id.*; See *Midgette*, 317 F.Supp.2d at 562.; See *Clark*, 342 S.E.2d at 472.

<sup>72</sup> See *Carroll*, 775 So.2d at 757 (Johnstone, J., dissenting).

<sup>73</sup> *Id.* (Johnstone, J., dissenting).

<sup>74</sup> *Id.* at 758 (Johnstone, J., dissenting).

<sup>75</sup> *Id.* (Johnstone, J., dissenting).

<sup>76</sup> See *id.* (Johnstone, J., dissenting).

employers.<sup>77</sup> One author suggested that “the foreseeability requirement could be satisfied by employees’ expressed fears, by a record of threatening behavior by a potential perpetrator, or by the societal prevalence of workplace domestic violence.”<sup>78</sup> Other commentators reject such a proposal, claiming that if the foreseeability standard were changed in this way, domestic violence would be foreseeable in all circumstances.<sup>79</sup> From these recommendations it seems evident that the foreseeability standard must be changed, albeit in a way that is narrowly tailored to each victim. This new foreseeability standard should not be broad enough to encompass the general prevalence of domestic violence in the workplace as a factor that would lead to an increased risk of harm to a specific victim employee.

A registration system, in which a victim of domestic violence reports a fear of her intimate partner to her employer, addresses the foreseeability problem faced in many tort cases. Any protection orders that the victim had against her abuser could also be entered into this database. This record allows the increased risk of harm of domestic violence to be narrowly tailored to each victim; as such a system documents each individual’s fear. In addition to creating tort liability, this system allows a company to evaluate the sufficiency of its workplace security, and improve upon any realized deficiencies.

### **III. Discharging Victims of Domestic Violence: Employer Liability for Wrongful Discharge**

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<sup>77</sup> Robertson, *supra* note 9, at 651.

<sup>78</sup> *Id.*

<sup>79</sup> Porter, *supra* note 40, at 318.

Nationwide, most workers are at-will employees, meaning they can “be fired for any reason that does not otherwise violate the law.”<sup>80</sup> The Taylor Institute estimates<sup>81</sup> that up to thirty percent of abused women have lost their jobs as a result of domestic violence.<sup>82</sup>

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.<sup>83</sup>

The number of domestic violence victims that are fired is especially concerning because “[t]he ability to hold on to a job is one of the victim’s most valuable weapons in the war for survival, since gainful employment is the key to independence from the batterer.”<sup>84</sup> The importance of a victim’s financial independence is supported by a study in Washington State which “found that [sixty percent] of battered women on public assistance in Washington State stayed with their abusers out of financial necessity.”<sup>85</sup>

If a domestic violence victim is fired, she may bring a wrongful discharge claim against her employer if certain standards are met. “A wrongful discharge claim can arise when an employee is fired in contravention of public policy; a covenant of good faith and fair dealing; or promises made orally, through a course of performance, or in employer policies or handbooks.”<sup>86</sup>

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<sup>80</sup> Hobday, *supra* note 6, at 22.

<sup>81</sup> Corporate Alliance to End Partner Violence, *Workplace Statistics*, available at [http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3).

<sup>82</sup> Robertson, *supra* note 9, at 638.

<sup>83</sup> Stone, *supra* note 4, at 734.

<sup>84</sup> Reynolds v. Fraser, 781 N.Y.S.2d 885, 889 (N.Y. Sup. Ct. 2004).

<sup>85</sup> Robertson, *supra* note 9, at 638.

<sup>86</sup> Elizabeth M. Schneider, Cheryl Hanna, Judith G. Greenberg, & Clare Dalton, *Domestic Violence and the Law: Theory and Practice*, 807 (Robert C. Clark ed., Foundation Press 2008) (2001).

Some cities and states developed a public policy exception to the at-will employment doctrine that prevents victims of domestic violence from being discharged due to the domestic abuse.<sup>87</sup>

#### **a. City Ordinance Creating Protection from Wrongful Discharge**

The New York City Human Rights Law proscribes as follows:

It shall be an unlawful discriminatory practice for an employer, or an agent thereof, to refuse to hire or employ or to bar or to discharge from employment, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment because of the actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking.<sup>88</sup>

*Reynolds v. Fraser*, in which a former employee filed a wrongful discharge claim against her former employer, tested the application of this law.<sup>89</sup> Gina Reynolds was employed by the New York City Corrections Department.<sup>90</sup> Ms. Reynolds was also the victim of domestic violence at the hands of her husband, so she fled the marital residence and began to live in a domestic violence shelter.<sup>91</sup> Ms. Reynolds had surgery and was approved for six weeks sick leave by the Department's Health Management Division (HMD); however, HMD's monitor would not sign a confidentiality agreement with the shelter, so they would not provide HMD with Ms. Reynolds' address.<sup>92</sup> Ms. Reynolds was fired by her employer for being inaccessible while on sick leave.<sup>93</sup> The court held that the Department's termination of Ms. Reynolds was discriminatory in light of

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<sup>87</sup> Hobday, *supra* note 6, at 22.

<sup>88</sup> N.Y.C. Admin. Code § 8-107.1(2).

<sup>89</sup> *Reynolds*, 781 N.Y.S.2d at 885.

<sup>90</sup> *Id.* at 886.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 887.

<sup>93</sup> *Id.*

the New York City Ordinance, and the Department was ordered to reinstate Ms. Reynolds and give her back pay.<sup>94</sup>

### **b. State Statutes**

Several state statutes protect victims of domestic violence from wrongful discharge. For example, California's Labor Code states:

An employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.<sup>95</sup>

Rhode Island also protects victims of domestic violence from wrongful discharge by state statute; however, this statute is narrower than California's.<sup>96</sup> Rhode Island's statute states “[n]o employer... shall refuse to hire any applicant for employment, or discharge an employee or discriminate against... her with respect to any matter related to employment, solely by reason of his or her seeking or obtaining a protective order... or refusing to seek or obtain a protective order.”<sup>97</sup> Although these statutes have not yet been tested in court, given that the New York City Ordinance protecting domestic violence victims was enforced by the *Reynolds* court,<sup>98</sup> it suggests that these state statutes may be applied as well.

### **c. Public Policy Exception to Employment At-Will Doctrine**

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<sup>94</sup> *Id.* at 891.

<sup>95</sup> Cal. Lab. Code §230(c) (West 2003).

<sup>96</sup> See Cal. Lab. Code §230(c); See R.I. Stat. Ann. § 12-28-10.

<sup>97</sup> R.I. Stat. Ann. § 12-28-10.

<sup>98</sup> See *Reynolds*, 781 N.Y.S.2d at 891.

Not all cities or states have ordinances or statutes that protect victims of domestic violence in the employment arena. Absent a rule, some courts have found protection for victims of domestic violence from wrongful discharge based on other public policies. As the following cases demonstrate, relying on this approach is uncertain and shows a real need for uniformity among the states.

James Imes worked at Asheville City Coach Lines as an employee-at-will.<sup>99</sup> Mr. Imes was shot by his wife, and he required hospitalization for these injuries.<sup>100</sup> Imes was then told by Larnel Blair, the general manager of Asheville City Coach Lines, “that he was being terminated due to... being a victim of domestic violence.”<sup>101</sup> Imes filed suit claiming that as a victim of domestic violence, he was protected from termination as a matter of public policy.<sup>102</sup> The court held that Imes did not state a wrongful discharge claim,<sup>103</sup> as the North Carolina Statutes do “not establish victims of domestic violence as a protected class of persons or extend employment security status to such persons.”<sup>104</sup>

In *Green v. Bryant*, a federal court refused to rely upon general state public policies to provide protection for victims of domestic violence from wrongful discharge.<sup>105</sup> In this case, Philloria Green, an employee of Dr. Winston Murphy Bryant, was raped and severely beaten by her estranged husband at gun point.<sup>106</sup> She informed a doctor at her workplace about the attack, who then told the defendant what had happened.<sup>107</sup> Dr. Bryant fired Ms. Green and told her that

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<sup>99</sup> Imes v. City of Asheville, 594 S.E.2d 397, 398 (N.C.App. 2004).

<sup>100</sup> *Id.* at 398.

<sup>101</sup> *Id.* at 400.

<sup>102</sup> *Id.* at 398.

<sup>103</sup> *Id.* at 400.

<sup>104</sup> *Id.* at 399.

<sup>105</sup> *Green v. Bryant*, 887 F.Supp. 798, 801 (E.D. Pa. 1995).

<sup>106</sup> *Id.* at 800.

<sup>107</sup> *Id.*

her discharge was based upon her status as a victim of a crime.<sup>108</sup> Ms. Green filed suit for wrongful discharge, alleging that the defendant violated two Pennsylvania public policies: “an employee’s right to privacy and protecting victims of crime or spousal abuse.”<sup>109</sup>

The court rejected the right to privacy claim.<sup>110</sup> In addition, the court analyzed Pennsylvania’s Protection from Abuse Act and determined that a protected employment class was not created.<sup>111</sup> Thus, the court held that the plaintiff was not fired contrary to public policy, as there was no “indication that Pennsylvania has established a clear mandate that crime victims generally, or spousal abuse victims specifically, are entitled to benefits or privileges beyond those enumerated in the laws....”<sup>112</sup> Consequently, the court granted Dr. Bryant’s motion to dismiss Ms. Green’s wrongful discharge claim.<sup>113</sup>

Although the *Green* court did not recognize a public policy exemption to the at-will doctrine, other courts have extended this protection to victims of domestic violence. For example, in *Apessos v. Memorial Press Group*, Sophia Apessos was employed by Memorial Press Group (“MPG”) and during her time of employment by MPG, she suffered physical abuse at the hands of her husband.<sup>114</sup> On Saturday, July 29, 2000, an incident of physical abuse caused Sophia Apessos’s husband to be arrested for her assault.<sup>115</sup> Ms. Apessos called her supervisor and informed the supervisor that she would not be at work on Monday because of the court proceedings related to her assault.<sup>116</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 801.

<sup>110</sup> *See id.*

<sup>111</sup> *Green v. Bryant*, 887 F.Supp. 798, 801 (E.D. Pa. 1995).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 801.

<sup>114</sup> *Apessos v. Mem’l Press Group*, 2002 WL 31324115, \*1 (Mass.Super. 2002).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

When Ms. Apessos returned to work on Tuesday, August 1, 2000, she was fired.<sup>117</sup> She sued her employer for wrongful discharge.<sup>118</sup> The court held that “[a] victim should not have to seek physical safety at the cost of her employment.”<sup>119</sup> The court found that although a statute did not specifically prevent victims of domestic violence from discharge, it was in accordance with the Abuse Prevention Act that she appeared in court, thereby missing work.<sup>120</sup> Thus, the court denied Memorial Press Group’s motion to dismiss.<sup>121</sup>

Another case where the court granted a domestic violence victim relief when there was no express rule of law protecting victims of domestic violence from wrongful discharge was *Danny v. Laidlaw Transit Services, Incorporated.*<sup>122</sup> Ramona Danny, an employee of Laidlaw Transit Services, informed her Project Manager that she was a victim of domestic violence.<sup>123</sup> Ms. Danny was granted time off from work so that she and her children could escape the domestic violence and move to a shelter.<sup>124</sup> Shortly after returning to work, Danny was demoted and then fired from her job.<sup>125</sup>

Although Washington State did not have a specific rule protecting victims of domestic violence in the employment arena,<sup>126</sup> the court used a compilation of judicial, legislative, executive, and constitutional expressions to show that the state has “a clear public policy of protecting domestic violence survivors and their families and holding abusers accountable.”<sup>127</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at \*2.

<sup>119</sup> *Id.* at \*3.

<sup>120</sup> Apessos v. Mem’l Press Group, 2002 WL 31324115, \*3 (Mass.Super. 2002).

<sup>121</sup> *Id.* at \*1.

<sup>122</sup> See *Danny*, 193 P.3d at 137-41.

<sup>123</sup> *Id.* at 130.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 131.

<sup>126</sup> *Id.* at 137.

<sup>127</sup> *Id.* at 141.

Using this abstraction, the court found that Danny had shown she was wrongfully discharged from her job.<sup>128</sup>

#### **IV. Addressing Domestic Violence in the Workplace: Law Reform**

Because of the large number of victims of domestic violence in the workforce, the problem of domestic violence is not confined solely to the home. Although the majority of employers attempt to brush this problem aside, the unfortunate reality remains: domestic violence has entered the workplace. Not only is domestic violence costly to employers, but it is a threat to workplace security. Noting the effects of domestic violence on the workplace, I propose a Uniform Domestic Violence Act that could be adopted by the states. This proposed Act would contain three components.

The first element of the proposed Uniform Domestic Violence Act would be to extend tort liability to protect employees from domestic violence while they are at the workplace. Although the courts in *Midgette*, *Carroll*, and *Clark* did not hold the employers liable under tort theories because of a lack of foreseeability,<sup>129</sup> liability could be found if the employer had foreseen an increased risk of harm to its' employee. A Uniform Domestic Violence Act that sets up a registration system, in which victims of domestic violence would file written reports about their situations with the management at their company, would ensure that employers are aware if an employee has a reason to fear an intimate partner. This registration system would directly address the problem of foreseeability in tort law, as a problem in the negligence analysis was that

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<sup>128</sup> *Danny v. Laidlaw Transit Serv, Inc.*, 193 P.3d 128, 141 (Wash. 2008).

<sup>129</sup> See *Carroll*, 775 So.2d at 757-58 (Johnstone, J., dissenting).

employers had no way of knowing that their employees were afraid of their abusers, and thus, the employers could not be held responsible.

The second element of this Act would address the issue of wrongful discharge. Wrongful discharge may directly affect domestic violence victims who would share their status with their employers, since status as a victim of domestic violence is one of the main reasons victims of abuse are fired.<sup>130</sup> Thus, wrongful discharge becomes another workplace domestic violence-related problem. The above analysis of a city ordinance, state statutes, and a public policy exception to the employment at-will doctrine illustrates a need for uniformity among state laws. A proposed Uniform Domestic Violence Act that provides an exemption to the at-will employment doctrine for victims of domestic violence would support employees who are victims of domestic violence. This support is vital, as maintaining employment and financial independence is necessary to escape one's abuser. In addition to protection for employees, this law would provide certainty for employers whose businesses transcend city and state borders.

Combining a registration system to address tort law problems and highlight security concerns with a wrongful discharge provision would not be complete without addressing one of the DOJ's main recommendations for employers: education. By educating supervisors about the dangers of domestic violence at the workplace, thereby allowing supervisors to tighten security on the premises, many of the workplace tragedies described herein could be avoided. This federal law will provide the "push" many employers need to follow the Department of Justice's guidelines on how to address the issue of domestic violence at the workplace. It is then that domestic violence victims can achieve security at work and the workplace support that they need

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<sup>130</sup> See Stone, *supra* note 4, at 734.

to escape their abusers and at the same time, providing the blocks to build a more stable and productive workforce.