



DOMESTIC VIOLENCE AND THE WORKPLACE: HOW NON-CANADIAN JURISDICTIONS HAVE IMPLEMENTED WORKPLACE PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

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The National Union of Public and General Employees (NUPGE) is a family of 11 Component and 3 affiliate unions. Taken together, we are one of the largest unions in Canada. Most of our 390,000 members work to deliver public services of every kind to the citizens of their home provinces. We also have a large and growing number of members who work for private businesses.

Larry Brown, President

Bert Blundon, Secretary-Treasurer

Domestic violence (DV) is increasingly being recognized as a workplace issue, both in Canada and internationally. DV's impact on the health, well-being, and safety of victimsⁱ can extend into the workplace by affecting the victim's productivity, motivation, morale, and overall job security.ⁱⁱ Furthermore, DV can affect the performance of the victim's co-workers and the workplace as a whole.ⁱⁱⁱ In recent years, the Canadian federal government and all provincial governments have added paid or unpaid job-protected leave for victims of DV.^{iv} Despite these gains, paid DV leave in all Canadian jurisdictions continues to be an objective for advocates.^v

The purpose of this paper is to survey how non-Canadian jurisdictions have implemented protections, especially job-protected leaves, for victims of DV in the workplace. By examining different international models, this paper seeks to illustrate potential policy options and best practices. In addition, it aims to provide critical commentary to help identify potential gaps or issues with the effectiveness of certain legislative schemes meant to help victims of DV at work. Using the examples described below, advocates can implement and push for changes that are more effective and protect victims of DV in the workplace to the fullest extent.

First, this paper begins by comparing how different jurisdictions have implemented DV employment leave, identifying the key considerations and concerns in different DV-leave legislative frameworks. Second, this paper surveys how different jurisdictions have implemented other protections for workers experiencing DV, including

- access to flexible work arrangements,
- anti-discrimination provisions,
- workplace gender-equality strategies, and
- protection measures for workers' physical safety while at work.

Third, this paper examines how collective bargaining has helped victims of DV gain rights and protections at work. Finally, this paper describes recent international agreements that address DV as a workplace issue.

DV EMPLOYMENT LEAVE

The characteristics of DV employment leave vary between jurisdictions with leave provisions. Key considerations for analyzing and comparing different leave provisions include whether the leave is paid or unpaid, the length of leave, the type of leave, eligibility, evidentiary requirements to take leave, and issues with implementing leave provisions.

PAID OR UNPAID LEAVE

New Zealand, Italy, and the Philippines are examples of jurisdictions with higher coverage in terms of leave length and access to pay while on leave. The Philippines was one of the first countries to grant paid leave to victims of DV, giving workers experiencing DV access to 10 days of paid leave a year and protection from discrimination in the workplace.^{vi} In New Zealand, employees experiencing DV are also entitled to at least 10 days a year of paid leave.^{vii} Italy's leave is set up slightly differently. The Italian 2016 *Jobs Act* includes 3 months of paid leave for victims of DV that can be taken flexibly over the course of a 3-year period. The act is based on maternity-leave principles, and the victim receives full pay, social security, and holiday leave while on DV leave.^{viii} The leave can be taken so that the worker works on a part-time basis over the 3-year period.^{ix}

The above-mentioned jurisdictions have ideal leave provisions. While other jurisdictions give victims of DV access to leave that is just as long or longer, the fact that leave is *paid* in New Zealand, Italy, and the Philippines is likely just as important, if not more important for some people, than the actual length of time. Unpaid leave may be unrealistic for some workers, especially those in low-wage jobs. More specifically though, victims of DV may already have financial concerns because of costs associated with leaving an abusive living situation or accessing services. Making sure that leave is paid removes one more barrier to victims' access to DV leave.

Some American states have laws that explicitly allow for the employer to decide whether DV leave is paid or unpaid. For example, in Nevada, the leave may be paid or unpaid, at the employer's discretion.^x Some workers may have access to paid leave in these jurisdictions. However, these provisions raise questions of how employer discretion could be applied inequitably, or could exacerbate existing power imbalances, if the employer does not have a policy on whether DV leave is paid or unpaid. Furthermore, clarity on whether the leave is paid or unpaid is likely important for some workers who need to decide whether they can afford to take the leave.

LENGTH OF LEAVE

Most jurisdictions explicitly provide for a certain number of days, weeks, or hours of leave that victims of DV can take per year. The length of leave allowed varies extensively: from 5 days,^{xi} to 10 days,^{xii} to 12 weeks.^{xiii} What remains unclear in all of the examples analyzed is why the lengths of leave are so different. To a certain extent, the varying lengths of leave suggest that some lengths are decided arbitrarily. This raises questions regarding what length of leave is most adequate for ensuring victims can take the time necessary.

In comparison, some jurisdictions with leave provisions do not state the specific length of time that a worker can take. For example, in Oregon employees who are victims of DV can take "reasonable" unpaid leave.^{xiv} In the state of Maine, employees can take "reasonable and necessary" leave.^{xv} Of concern is that language such as "reasonable"

and “necessary” may give the employer control over the length of leave allowed, and could cause unnecessary disputes. Furthermore, substantive lengths of time likely allow workers to more easily understand and assert their DV leave rights. Victims of DV may be reluctant to ask for the time they need if they are concerned their employer will think that the amount of time is unreasonable. That all said, by not having a cap, the laws in Oregon and Maine could allow for more flexibility in some cases and ensure that the victim has time to do what they need to without fear of running out of time. Thus, as DV leave becomes more prevalent, more research and analysis will be needed on how time is allocated for DV leave, and which legislative scheme is the most effective for workers experiencing DV.

TYPE OF LEAVE

In some jurisdictions, leave for DV is incorporated into other types of leave, such as sick leave. In Florida, for example, employers who employ 50 or more employees must give victims of DV 3 days’ leave (with or without pay). However, unless the employer waves the requirement, the employee must use vacation, personal leave, or sick leave when taking those 3 days.^{xvi} Another common tool is to incorporate leave as a *safe-time* provision under paid or unpaid sick-time laws. For example, in Arizona employees can earn sick time, which can be used for absences because of DV, sexual violence, abuse, or stalking.^{xvii} When safe time is incorporated under sick time, the time allotted is usually dependent on how long the employee has worked for the employer. For example, in California, employees earn 1 hour for every 30 hours worked, with employers being allowed to cap the amount of sick time/safe time earned at 48 hours, and the amount of paid time a worker can use at 24 hours a year.^{xviii}

From a workers’ rights perspective, incorporating DV leave under sick leave or other types of leave is unlikely to be a best practice in comparison to stand-alone DV leave. DV leave in New Zealand is an example of stand-alone DV leave, because it is its own type of leave that workers have access to, separate from annual leave, sick leave, and bereavement leave.^{xix} While access to some leave for victims of DV is better than access to no leave, access to both DV leave and sick leave is a best practice. When leaves are combined, a concern arises that a worker may be hesitant to use safe-time leave if it means they will not have any sick leave for the rest of the year, or vice versa. This point is especially poignant during the COVID-19 pandemic, when people are more likely to need their sick leave, and when we are seeing a rise in DV, as more people have to spend time at home and/or work from home.^{xx} A comprehensive leave provision would not force workers to choose between taking time off because they are sick and taking time off because they are experiencing DV.

While not technically a leave provision, Spain has implemented measures so victims can take time away from work and maintain job security. Workers in Spain can “suspend” their employment contract.^{xxi} Furthermore, if a victim of DV needs to leave their job because of their experience with DV, for 6 months after the worker leaves, they have a right to an alternative position at the company with similar characteristics to the job that they held and left.^{xxii} Additionally, companies cannot use absence from work as

justification for dismissal if physical or psychological stress related to DV caused the absence.^{xxiii} Spain's approach may be more flexible because victims could be less constricted by a capped time limit on leave and appear to have access to comprehensive job protection. Further research comparing the Spanish framework to other leave provisions could be useful in understanding which model best meets the needs of victims of DV.

Finally, Brazil provides employees with access to leave through the courts. A judge can order the employer to grant up to 6 months of leave so the victim can deal with the impacts of DV.^{xxiv} While the legislation is silent on whether the leave is paid or unpaid, as one commentator has stated analyzing the recent case law, the Superior Court in Brazil did not think victims should be hindered by measures meant to protect them, and "it established that, as long as there is a normative gap on leave remuneration, sickness pay shall be applied to [DV leave] cases. For the Court, the offence to the physical and psychological integrity of victims of domestic violence can be equated to illness contemplated by social security norms."^{xxv} The employer in these cases pays the first 15 days of salary, and then the National Institute of Social Security pays the remaining leave time.^{xxvi} Benefits to the Brazilian model are the flexibility in length of time and the ability for a court to assess the victim's needs on a case by case basis. However, requiring court intervention also raises issues about access to justice; going through the courts could place an undue burden on the victim and may make accessing leave more challenging.

ELIGIBILITY FOR DV LEAVE

An important question for leave and other workplace rights of victims of DV is who has access to the protection. In many jurisdictions, the employee has to have worked for the employer for a certain length of time before having access to DV leave.^{xxvii} While many jurisdictions require the employee to have worked for the employer for a few months before the leave provisions apply, in Colorado, the leave provisions only apply to employees who have been employed with their employer for more than 12 months.^{xxviii} Lengthy employment requirements are more likely to affect precarious and low-wage workers who may have less job stability. While a few months of time may be a reasonable limit on eligibility, 12 months seems excessive, especially when the employee then has access to only 3 days of unpaid leave, as is the case in Colorado.^{xxix}

Another example of how timing may be an issue for eligibility is when the legislation is silent on whether employees can take leave for violence that started or occurred before they started working for their employer. The Government of New Zealand has specifically stated employees can still take DV leave even if the DV started before the employee started working for their employer.^{xxx} This is not to suggest that in other jurisdictions employees would be barred from taking leave if the DV started or occurred before they began working for their employer. However, explicitly stating the victim can still take the leave, as is done in New Zealand, is a best practice for ensuring those in that circumstance know they can take the leave. Explicit provisions may also further deter unnecessary disputes.

Many American states have placed limits on the size of the business that DV workplace laws apply to. For example, California's laws have been criticized because the leave legislation applies only to workplaces with 25 or more employees, limiting access for people working at small businesses.^{xxxii} Similarly, in Colorado, victims of DV have access to 3 days of leave only if they work for an employer who employs more than 50 employees.^{xxxiii} Less restrictive are laws in states like Connecticut, which require employers with 3 or more employees to provide leave.^{xxxiii} In some states, such as Hawaii, the amount of unpaid leave changes drastically depending on the size of the business. For employers with 50 or more employees, victims can take 30 days of unpaid leave; however, employers with 49 employees or less only need to provide 5 days of unpaid leave a year.^{xxxiv} The relationship between business size and leave provisions means that even though a jurisdiction may have a law in place, many workers may still not have access to DV leave. Moreover, the big differences among various lengths of leave time, which depend on business size (such as in Hawaii), further call into question the arbitrariness of the time allocated for DV leave. While the intention is likely to lessen the burden on small businesses who have fewer employees, from the perspective of a worker experiencing DV, it is unclear why they should get 5 days of leave if they work for an employer with 49 employees, but 30 days of leave if they work for an employer with 50 employees.

In most jurisdictions with leave provisions, victims can take leave to address a variety of issues arising from their experience with DV. For example, leave is often allowed for medical treatment, psychological services or other counseling, legal assistance, court hearings, or relocation.^{xxxv} However, in North Carolina, for example, the victim is limited to taking leave to obtain a restraining order or legal relief under the state's DV laws.^{xxxvi} Similarly, in some American states, the state has no specific DV leave for workers, but workers have access to job-protected leave to attend court proceedings related to crimes against them.^{xxxvii} These leaves, while better than no job-protected leave, are very limited and fall short of helping victims access the many other services they may need to address their experience with DV. Leave provisions that allow workers to take leave for a variety of scenarios (medical, legal, psychological, and housing, etc.) relating to the DV they are experiencing are ideal.

Finally, as is a broader issue in labour and employment law, the laws may also exclude workers who do not meet the definition of an "employee." Issues with classification are common problems for workers who do not work within traditional employment relationships. For example, in Italy, which has comprehensive legislated protections, many have criticized the legislative framework because it excludes domestic workers. Yet, domestic workers are at a higher risk of violence.^{xxxviii} In general, laws that are predicated on protecting workers through standard employment legislation can only go so far when they rely on definitions of traditional employment relationships. Workers that are already vulnerable are less likely able to access these rights.

EVIDENTIARY REQUIREMENTS

Evidentiary requirements for taking leave are likely an important consideration for victims of DV who are considering taking DV leave. DV leave laws often state that the employer can ask for evidence that the worker is taking leave for reasons related to DV. For example, in Delaware, the employee must verify the offence for the employer. Verification can include “an official document, such as a court order, or [verification] by a reliable third-party professional.”^{xxxix} In Australia, the employer can ask for evidence that the leave is being used to deal with DV. While specific requirements are not outlined, the Fair Work Commission web page states that “the evidence has to convince a reasonable person that the employee took the leave to deal with the impact of family and domestic violence.”^{xi} In Puerto Rico, the time off granted for leave must be used to handle the situation related to DV; however, the victim does not need to file a police report to request the leave.^{xii} Many jurisdictions stipulate that the employer needs to take reasonable steps to keep the evidence and the leave confidential.^{xlii}

Brazil has some of the longest leave protections available for victims of DV, with victims being able to access paid leave for up to 6 months. However, an impediment is that to qualify to receive the leave, a court that specializes in domestic violence or criminal law must mandate the leave. Furthermore, as one paper has stated, the ruling alone is not enough, and to receive pay during their leave, “victims must present a medical report issued by the INSS declaring work incapacitation, a prerequisite of overall sickness pay.”^{xliii}

More research is likely needed on the extent to which evidentiary and verification requirements deter victims from requesting leave or result in the employer denying a leave request. Concerns may arise around what counts as documentation and how much information an employer may request. Additionally, victims may not want to disclose information about the DV they are experiencing to their employer, or they may not trust their employer to handle the information appropriately. Excluding specific types of evidence, such as police reports, from requirements may be a useful step forward to making leave more accessible. For some victims of DV, contacting the police or filing a police report may not be the safest or best option.

IMPLEMENTATION AND AWARENESS OF DV LEAVE

Studies have identified that lack of awareness has impeded workers’ use of DV leave rights in many jurisdictions. An American study found that most participants surveyed for the study who would have qualified for DV leave did not know about DV leave provisions in their jurisdiction; many would have likely taken leave if they had known the provisions existed.^{xliv} Furthermore, despite strong leave provisions in Italy, a 2019 paper identified that very few women, less than 100 a year, have actually benefited from the leave.^{xlv} A study is planned to understand why so few people have used the leave; however, the authors hypothesize that the low figures are due to a combination of lack of awareness and victims’ reluctance to disclose DV experiences to their employer.^{xlvi}

This issue of awareness was further illustrated in a study done on the Philippines' laws for DV leave. Despite offering 10 days of paid leave, implementation, and specifically, the funding for implementation, have been an ongoing issue. The weaknesses of implementing the DV leave provision were exposed when the International Trade Union Confederation - Asia Pacific and Philippine affiliates surveyed members on their knowledge of DV at work.^{xlvii} 1 in 5 members had experienced DV, but only 39% knew about the paid domestic violence leave. Furthermore, only 23% of eligible workers had actually used the leave.^{xlviii}

Some jurisdictions have tried to address the issue of rights awareness. 3 states — New York, Illinois, and Oklahoma — have laws requiring the employer to educate employees about the workplace rights of victims of DV.^{xlix} For example, in Illinois and Oklahoma, employers must post a notice in the workplace about the employment protections.^l However, more research is needed on the effectiveness of these notice and education requirements.

OTHER BARRIERS TO ACCESSING LEAVE

Another barrier to DV leave accessibility is that despite the legislation, workers remain concerned about their job security if they do access the leave. As one paper stated, “despite being a law aimed at protecting leave for survivors, participants still feared that taking the leave would affect their career and that supervisors may look differently at them, not consider them a reliable worker, reprimand them for taking time off or find another reason to fire them.”^{li} Supervisors who are untrained, or who are unsupportive of employees, can compound this fear.^{lii}

Unions in Spain have also highlighted the connection between the impact of austerity measures and service cuts on victims of DV. While the laws related to employment, such as leave provisions, may be positive, cuts to resources and services have had an overall negative effect on the safety and well-being of victims of DV.^{liii} What this critique suggests is that issues around DV at work cannot be examined in a silo from other protections and services for victims of DV outside the workplace. Even if a jurisdiction has job-protected paid leave, the effect of the leave will be limited if the victim of DV does not have access to medical care, legal assistance, housing, or other necessary services.

OTHER LEGAL PROTECTIONS FOR VICTIMS OF DV

While access to leave is important for victims of DV, comprehensive policies include other workplace protections for workers experiencing DV, in addition to DV leave. Other protections can include flexible working arrangements, non-discrimination provisions, laws that help employers protect the safety of the worker in the workplace, and broader strategies to address gender-based violence.

Flexible working arrangements may help victims of DV in the workplace over a longer term than leave provisions allow. In New Zealand, employees have a right to ask for a flexible work arrangement of up to 2 months.^{liv} In Spain, workers have the right to change their hours of work or ask to be relocated.^{lv} However, practical barriers exist for victims who want to access the flexible work arrangements in Spain, and trade unions are currently working to reform the enabling law so that victims can more easily organize alternative working hours or obtain job transfers.^{lvi}

Many jurisdictions have non-discrimination provisions to protect workers from being discriminated against for accessing, or requesting access to, employment rights related to DV. For example, in New Zealand, employees cannot be treated adversely because of their experience with DV.^{lvii} Furthermore, 40 American states have policies that prohibit employment discrimination against victims of DV.^{lviii} In North Carolina, for example, an employee can take leave according to the employer's regular leave practices, and the employer cannot discriminate against the employee for taking the time needed by "discharging, demoting, disciplining, or denying a promotion".^{lix} Many American states have additionally passed laws to ensure that victims of DV have access to unemployment insurance if they have to leave their job because of their experience with DV.^{lx} In those jurisdictions with leave, non-discrimination legislation can further ensure that the victim's job security is protected. In those jurisdictions without DV leave, non-discrimination clauses can also ensure that the person's job is protected, although without specific rights to DV leave the effectiveness of these provisions is unclear.

Mandating or recommending workplace gender-equality plans and strategies is another tactic used in some jurisdictions to address DV in the workplace. In Spain, Organic Law 3/2007 requires companies with over 250 employees to create a Gender Equality Plan in cooperation with unions. This has led to most large companies introducing policies on DV at work.^{lxi} However, while small and medium businesses are recommended to implement similar policies, the fact that they are not mandatory means that many in precarious employment, or who work for smaller companies, are not covered by any policies.^{lxii}

The UK government has a strategy on violence against women and girls that states that employers have a role in identifying abuse and developing policies in the workplace.^{lxiii} Furthermore, Scotland's strategy, entitled "Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls," states that workplaces play a role in creating a culture that has zero tolerance for harassment and "one in which there is understanding of the needs of those experiencing violence and domestic abuse."^{lxiv} While these strategies may have some normative force, the limited specificity and lack of enforceability limits their ability to ensure that victims of DV are protected at work. Overall, the UK still has no provision for leave and places no onus on the employer to help victims of DV.^{lxv}

Laws that aim to protect workers from their abusers while they are in the workplace are common. For example, in Italy, a 2009 criminal law introduced a crime of stalking that specifically addressed when stalking takes place in the workplace.^{lxvi} 10 American states have specific laws allowing the employer to get restraining orders.^{lxvii} Similarly, in Germany, under the German *Act on Protection against Violence* of 2002, protection orders can bar perpetrators from a victim's workplace.^{lxviii} However, the employer has no other specific obligations to support victims of DV.^{lxix} Another issue with some of these laws is that they require positive action on the part of the employer, which further requires a degree of knowledge of their employees' situations. Thus, while these physical workplace protections and national strategies are important, without other measures, such as DV leave, they do little to address the harm caused to the person experiencing DV. Instead, comprehensive policies that include DV leave, and other protective provisions identified, are ideal and the most likely to meet the needs of workers experiencing DV.

THE ROLE OF COLLECTIVE BARGAINING

Unions have played, and continue to play, an important role in advocating for employment protection and workplace leave rights for victims of DV internationally. Australia provides a strong example of the power of collective bargaining resulting in a national standard of job-protected DV leave for all workers. Beginning in 2010, the Australian Domestic and Family Violence Clearinghouse and public sector unions in the state of New South Wales worked together to draft a DV clause to be incorporated in collective agreements.^{lxx} While the clause was modeled on British examples, an important innovation in the Australian context was the inclusion of *paid* leave.^{lxxi} The inclusion of up to 20 days of paid leave has led the Australian DV clause to be dubbed the “world's best practice.”^{lxxii} By 2016, more than 2,000 collective agreements in Australia contained a DV clause, and by the end of 2016, 75% of workers covered by collective agreements had a DV clause in their agreement.^{lxxiii}

The success of collective bargaining led the Australian Council of Trade Unions to advocate in 2015 for paid DV leave for all workers. The Fair Work Commission has since implemented policies that entitle employees to 5 days a year of unpaid leave.^{lxxiv} Employees can use the leave to do things related to the impact of DV when it is “impractical to do so outside their ordinary hours of work.”^{lxxv}

Despite highlighting the success of collectively bargaining for DV clauses in Australia, Ludo McFerran et al. provide some apt critiques of the Australian model and history of DV leave clauses. As they state, an ideal DV clause “covers dedicated paid leave, flexible work arrangements, confidentiality of employee details, workplace safety plans or strategies (for example, screening of phone calls or emails), referral processes to support services, protection from discrimination or adverse action and training, among other labour rights.”^{lxxvi} However, since most of the gains have been made through collective bargaining, there has been no standard of the conditions negotiated. As McFerran et al. point out, DV leave has always attracted the most attention, even

though all parts of the clause are necessary to provide a holistic support system for workers experiencing DV. They state that “the neglect of other conditions, and the varied nature of the very conditions being negotiated, suggest that collective bargaining has not met the goal of introducing minimum terms and conditions.”^{lxxvii} What McFerran et al. conclude is that minimum standards enforceable through employment legislation are needed to make sure protection is consistent and all inclusive.^{lxxviii}

Furthermore, in reference to the Australian example, Jane Aeberhard-Hodges and McFerran have suggested that “the most effective national approach would be to also include other legal strategies to address domestic violence in the workplace that have been adopted internationally, notably anti-discrimination legislation . . . that provide protection from discrimination for domestic violence survivors, and explicit domestic violence protection in occupational health and safety legislation.”^{lxxix} Thus, the Australian case study suggests that advocates should be careful not to focus on leave to the detriment of other protections. As suggested above, a best practice would be comprehensive and include paid DV leave as well as other workplace protections for victims of DV.

In another example highlighting the role of unions, the European Trade Union Confederation (ETUC) gender-equality program set the goal for trade unions in Europe to “address the link between domestic violence and workplace violence.”^{lxxx} The goal led to the Safe at Home, Safe at Work project, which culminated in a 2017 report surveying 11 European countries and their policy developments regarding gender-based violence and harassment at work, including DV.^{lxxxi} One of the main conclusions from the report was that collective bargaining “is one of the most important mechanisms for preventing and addressing violence against women at work, either as part of agreements that address violence against all workers, or in relation to specific issues, such as sexual harassment at work, third-party violence, or preventing domestic violence at work.”^{lxxxii} Strong legislative frameworks also aid collective bargaining.^{lxxxiii} As the *Safe at Home, Safe at Work* report states, “persuading employers to sign agreements or workplace policies is a significant challenge unless there is already a legal framework in place requiring them to act in preventing domestic violence at work. . . . in Italy and Spain, having a legal framework has given weight to collective bargaining on this issue.”^{lxxxiv} Unions in Spain have been able to negotiate strong collective agreements in part because there is a strong legislative framework as a starting point. In one exceptional agreement with Lidl supermarkets, victims of DV have access to up to 3 years of leave and the right to return at the same professional level if the problem is ongoing for more than 18 months.^{lxxxv}

These international examples suggest that collective bargaining can play a very important role in expanding the rights and protections of workers experiencing DV. However, legislated minimum standards are also important for creating consistency and access for all workers, as demonstrated in Australia, and can give weight to bargaining, as demonstrated in Italy and Spain.

INTERNATIONAL AGREEMENTS

The International Labour Organisation recently passed the C190 - Violence and Harassment Convention, 2019 (No. 190) and R206 - Violence and Harassment Recommendation, 2019 (No. 206), both of which address the issues of DV at work. The convention states that ILO members “shall take appropriate measures to recognize effects of domestic violence and mitigate its impact in the world of work.”^{lxxxvi} Recommendation No. 206 expands on what is stated in the convention and lists appropriate measures that countries can take to meet the convention’s objective.

These include

- leave for victims,
- access to flexible work arrangements,
- protection from dismissal of victims,
- DV in workplace risk assessments,
- a system to refer to public mitigation and awareness raising about DV and its effects.^{lxxxvii}

As with many international agreements, the weakness will likely be in implementation. To date, 2 countries, Fiji and Uruguay, have ratified the convention.^{lxxxviii} Without more widespread ratification, the Violence and Harassment Convention and Recommendation, while useful for imagining best practices, are normative at best.

While not a convention, UN Women has also outlined good practices that countries have, or could, incorporate into their legislation to address DV at work. The good practices include

- recognizing DV is a workplace issue,
- prohibiting discrimination or retaliation against employees for their experience with DV,
- providing paid or unpaid DV leave,
- ensuring employment security following leave,
- providing support services in the workplace, and
- putting duties on the employer to ensure that the worker is safe in the workplace.^{lxxxix}

CONCLUSIONS

By examining international examples of workplace DV laws, we can draw conclusions about best practices and concerns when advocating for and drafting legal protections for victims of DV in the workplace. Unsurprisingly, paid and comprehensive regulatory regimes that account for the various issues that victims of DV experience are ideal.^{xc} Legislation should include not only job-protected leave, but other workplace protections

such as anti-discrimination provisions and flexible working arrangements. Victims who need to take leave should have access to job-protected leave for a large variety of reasons; advocates should be cautious about restrictive leave provisions, such as in North Carolina, where victims only have the right to take leave for specific legal purposes. Furthermore, DV leave is likely more accessible when it is its own stand-alone leave and not incorporated into other types of leave, such as sick leave.

More research is needed to better understand concerns with implementation and awareness of DV leave and other workplace protections. Places that have studied implementation, such as the Philippines, have found that even when a state provides access to paid leave, the leave is less useful if victims of DV do not know about their rights, or are concerned about disclosing abuse to their employer. This ties into the issues of what is required of victims when requesting leave. More research is needed on the impact of evidentiary requirements on workers' choice to take DV leave or not. For now, we can speculate that having to disclose experience with DV to their employer likely deters some workers from requesting leave.

While legislation is important for providing a minimum standard that applies to all workers, unions have an important role in ensuring workers have access to DV leave and other protections. As illustrated in the Australian example, collective bargaining clauses that address DV in the workplace can create best practices for workers. The Australian example further demonstrates how bargaining for strong DV clauses can play a big role in pushing governments to implement minimum standards for all workers.

Finally, while workers' advocates and unions focus on DV and its impact on workers and the workplace, the effectiveness of these policies is also largely dependent on the broader societal supports for victims of DV. As unions in Spain have highlighted, even with strong employment legislation, overall cuts to services for victims of DV will have a net negative impact on safety and the protection of victims' rights.

This paper was prepared for NUPGE by Emily McBain-Ashfield.

BIOGRAPHY

Emily McBain-Ashfield is a third-year student in the Common Law program at the University of Ottawa. Before law school, Emily completed a Master's in History at the University of Ottawa with a focus on immigration policy in the early years of the HIV/AIDS epidemic. During the summer of 2020, Emily worked as a summer student at Raven, Cameron, Ballantyne & Yazbeck LLP, giving her the opportunity to pursue her interests in union-side labour law and human rights. As part of her summer term, she did a six-week placement with NUPGE.

DOMESTIC VIOLENCE AND THE WORKPLACE: NUPGE RECOMMENDATIONS

1. Support a National Action Plan to end domestic violence.
2. Legislate job-protected leave for workers experiencing domestic violence. Leave must be paid and dedicated to situations of domestic violence (i.e., not tied to sick leave or other types of leave).
 - a. Consider expanding DV leave according to best practices internationally (e.g., Italy’s DV leave program that is based on parental leave principles).
3. Along with leave, implement comprehensive workplace protections for workers experiencing domestic violence, including non-discrimination provisions, flexible work arrangements, and workplace gender-equality plans.
4. Include specific reference to domestic violence within occupational health and safety legislation, as is the case in Alberta, Manitoba, Ontario, New Brunswick, and Newfoundland and Labrador.
5. Support collective agreement language on domestic violence and the workplace.
6. Ensure appropriate funding and resources for shelters and transition houses, as well as for mental health services, legal aid, affordable housing, income supports, child care, and other community-based supports, to stop the cycle of violence.
7. Support prevention:
 - a. Mandate and fund educational programs and resources (in schools, institutions, and workplaces, etc.)
 - b. Fund resources aimed at perpetrators of violence to address root causes (e.g., mental health services) and prevent further harm.
8. Support the ratification of the ILO Violence and Harassment Convention, 2019 (No. 190), and implement the recommendations.

ⁱ We recognize that there is an important ongoing debate on whether the term victim or survivor is most appropriate in relation to gender-based violence. For the purposes of this paper we use the term victim.

ⁱⁱ NUPGE, “Domestic Violence, Workers, and Workplaces” (January 2020) online (pdf) at 2: <https://nupge.ca/sites/default/files/documents/Domestic%20Violence%20at%20Work%20Backgrounder%20-%20Revised%20%28002%29.pdf>.

ⁱⁱⁱ *Ibid* at 2-3.

^{iv} *Ibid* at 6.

^v *Ibid* at 6.

^{vi} Ludo McFerran et al, “An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence” (2018) 1 University of Oxford Human Rights Hub Journal 167 at 182.

^{vii} Ministry of Business, Innovation & Employment, “Domestic violence leave: Rights and responsibilities for domestic violence leave and short-term flexible working arrangements” (2020) online: *New Zealand Government* < <https://www.employment.govt.nz/leave-and-holidays/domestic-violence-leave/>>.

^{viii} Jane Pillinger, “Violence and Harassment Against Women and Men in the World of Work: Trade Union Perspectives and Action” (2017) online (pdf) at 87: International Labour Organization < https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf>.

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^{xi} *Fair Work Act 2009* (Austl), 2020/37, ss 106A-107.

^{xii} “Domestic Violence – Victims’ Protection Bill” (2016) online: Parliamentary Counsel Office, New Zealand Legislation < <http://www.legislation.govt.nz/bill/member/2016/02/15/latest/DLM7054315.html>>.

^{xiii} California Labour Code §§230-230.1.

^{xiv} Naima Laharnar et al, “Workplace domestic violence leave laws: implementation, use, implications” (2015) 8:2 International Journal of Workplace Health Management at 110.

^{xv} Jennifer E Swanberg and Mamta U Ojha, “State of Employment Protection Statutes for Victims of Domestic Violence as an Employment Matter” (2010) online (pdf) at 8: University of Kentucky Center for Poverty Research Discussion Paper Series, DP2010-11 <<http://www.ukcpr.org/Publications/DP2010-11.pdf>>.

^{xvi} Jennifer E Swanberg and Mamta U Ojha, “State of Employment Protection Statutes for Victims of Domestic Violence as an Employment Matter” (2010) online (pdf) at 14: University of Kentucky Center for Poverty Research Discussion Paper Series, DP2010-11 <<http://www.ukcpr.org/Publications/DP2010-11.pdf>>.

^{xvii} Arizona Fair Wages and Healthy Families Act, s 23-373(4); Workplace Fairness, “Domestic Violence and the Workplace” (2020) online: <<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>>.

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^{xx} NUPGE, “Working From Home: Considerations for Unions” (2020) online (pdf) at 13: < https://nupge.ca/sites/default/files/documents/Working%20From%20Home%20Considerations%20for%20Unions%20web_0.pdf>.

^{xxi} Katherine Lippel, “Addressing Occupational Violence: An overview of conceptual and policy considerations viewed through a gender lens” Working Paper No 5/ 2016, International Labour Office, Geneva at 50.

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^{xxxv} Natalia Brigagao, “Brazilian Superior Court of Justice Decide that Victims of Domestic Violence are Entitled to Paid Work Leave. – While New Legislation Could Hinder Their Right to an Adequate Standard of Living” (19 September 2019) online: Oxford Human Rights Hub < <https://ohrh.law.ox.ac.uk/brazilian-superior-court-of-justice-decides-that-victims-of-domestic-violence-are-entitled-to-paid-work-leave-while-new-legislation-could-hinder-their-right-to-an-adequate-standard-of-living/> >.

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^{xxvii} Ministry of Business, Innovation & Employment, “Domestic violence leave: Rights and responsibilities for domestic violence leave and short-term flexible working arrangements” (2020) online: *New Zealand Government* < <https://www.employment.govt.nz/leave-and-holidays/domestic-violence-leave/> >.

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^{xxxi} Naima Laharnar et al, “Workplace domestic violence leave laws: implementation, use, implications” (2015) 8:2 *International Journal of Workplace Health Management* at 111.

^{xxxii} CO Rev stat § 24-34-402.7 (2016); Workplace Fairness, “Domestic Violence and the Workplace” (2020) online: <<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>>.

^{xxxiii} CGS § 31-51 – Leave from employment for victims of family violence

https://www.cga.ct.gov/current/pub/chap_557.htm#sec_31-51ss;

<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>

^{xxxiv} Workplace Fairness, “Domestic Violence and the Workplace” (2020) online:

<<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>>.

; Hi Rev Stat §378-72. See also the District of Columbia: employers with 100 or more employees must provide 1 hour of paid leave for every 37 hours worked, employers 25-99 employees must provide 1 hour for every 43 hours worked, and employers with less than 25 must provide 1 hour for every 87 hours worked. Code of the District of Columbia § 32-531.02; Workplace Fairness, “Domestic Violence and the Workplace” (2020) online: <<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>>.

^{xxxv} Naima Laharnar et al, “Workplace domestic violence leave laws: implementation, use, implications” (2015) 8:2 *International Journal of Workplace Health Management* at 110; Arizona Fair Wages and Healthy Families Act, s 23-373(4).

^{xxxvi} NC Gen Stat § 50B-5.5; Workplace Fairness, “Domestic Violence and the Workplace” (2020) online: <<https://www.workplacefairness.org/domestic-violence-workplace#ARIZONA>>.

^{xxxvii} Jennifer E Swanberg and Mamta U Ojha, “State of Employment Protection Statutes for Victims of Domestic Violence as an Employment Matter” (2010) online (pdf) at 15-16: University of Kentucky Center for Poverty Research Discussion Paper Series, DP2010-11 <<http://www.ukcpr.org/Publications/DP2010-11.pdf>>.

^{xxxviii} Jane Pillinger, “Safe at Home, Safe at Work – Italy Country Case Study” (2017) online (pdf) at 20: European Trade Union Confederation < https://www.etuc.org/sites/default/files/document/files/italy_etuc_safe_at_home_safe_at_work_final_2017_0.pdf >.

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^{xl} Fair Work Ombudsman, “Notice & evidence for family & domestic violence leave”, online: *Australian Government* < <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave/notice-and-evidence-for-family-and-domestic-violence-leave> >.

^{xli} Janine Guzman & Mariana Muñis-Lara, “Puerto Rico: New leave available for employees to deal with domestic violence, sexual abuse, sexual harassment, stalking and child abuse” (14 August 2019) online: DLA Piper < <https://www.dlapiper.com/en/argentina/insights/publications/2019/08/puerto-rico-new-leave-available-for-employees/> >.

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- ^{xlv} Group of Experts on Action against Violence against Women and Domestic Violence (GEVIO), “Baseline Evaluation Report: Italy” (2020) online: Council of Europe < <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>>.
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- ^{xlvii} Ludo McFerran et al, “An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence” (2018) 1 University of Oxford Human Rights Hub Journal 167 at 184.
- ^{xlviii} *Ibid* at 185.
- ^{xlix} Jennifer E Swanberg and Mamta U Ojha, “State of Employment Protection Statutes for Victims of Domestic Violence as an Employment Matter” (2010) online (pdf) at 23-24: University of Kentucky Center for Poverty Research Discussion Paper Series, DP2010-11 <<http://www.ukcpr.org/Publications/DP2010-11.pdf>>.
- ⁱ *Ibid* at 24.
- ⁱⁱ Naima Laharnar et al, “Workplace domestic violence leave laws: implementation, use, implications” (2015) 8:2 International Journal of Workplace Health Management at 121.
- ⁱⁱⁱ *Ibid* at 123.
- ⁱⁱⁱⁱ Jane Pillinger, “Safe at Home, Safe at Work – Spain Country Case Study” (2017) online (pdf) at 18-19: European Trade Union Confederation < https://www.etuc.org/sites/default/files/document/files/spain_etuc_safe_at_home_safe_at_work_final_0.pdf>.
- ^{liv} Ministry of Business, Innovation & Employment, “Domestic violence leave: Rights and responsibilities for domestic violence leave and short-term flexible working arrangements” (2020) online: *New Zealand Government* < <https://www.employment.govt.nz/leave-and-holidays/domestic-violence-leave/>>.
- ^{lv} Katherine Lippel, “Addressing Occupational Violence: An overview of conceptual and policy considerations viewed through a gender lens” Working Paper No 5/ 2016, International Labour Office, Geneva at 50.
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^{lxii} *Ibid*.

^{lxiii} *Ibid* at 50-51

^{lxiv} *Ibid* at 50-51

^{lxv} “Domestic violence and the workplace: How England and New Zealand compare” (2018) online: Penningtons Manches Cooper < <https://www.penningtonslaw.com/news-publications/latest-news/2018/domestic-violence-and-the-workplace-how-england-and-new-zealand-compare>>.

^{lxvi} “Legislation and policies on domestic violence and its effects on the world of work” (6 July 2020) online: UN Women < <https://www.endvawnow.org/en/articles/1946-legislation-and-policies-on-domestic-violence-and-its-effects-on-the-world-of-work.html>>.

^{lxvii} Jennifer E Swanberg and Mamta U Ojha, “State of Employment Protection Statutes for Victims of Domestic Violence as an Employment Matter” (2010) online (pdf) at 25: University of Kentucky Center for Poverty Research Discussion Paper Series, DP2010-11 <<http://www.ukcpr.org/Publications/DP2010-11.pdf>>.

^{lxviii} Jane Pillinger, “Safe at Home, Safe at Work: Trade Union strategies to prevent, manage and eliminate work-place harassment and violence against women” (2017) online (pdf) at 50: European Trade Union Confederation < <https://www.etuc.org/sites/default/files/document/files/en - brochure - safe at home 1.pdf>>. Another example of this is in Bulgaria under Article 5 of Bulgaria’s 2005 Law on Protection Against Domestic Violence which prohibits the perpetrator from entering the victim’s place of work. See *ibid* at 50.

^{lxix} *Ibid* at 87; “Legislation and policies on domestic violence and its effects on the world of work” (6 July 2020) online: UN Women < <https://www.endvawnow.org/en/articles/1946-legislation-and-policies-on-domestic-violence-and-its-effects-on-the-world-of-work.html>>.

^{lxx} Ludo McFerran et al, “An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence” (2018) 1 University of Oxford Human Rights Hub Journal 167 at 174.

^{lxxi} *Ibid*.

^{lxxii} *Ibid*.

^{lxxiii} *Ibid* at 170.

^{lxxiv} The leave does not accumulate from year to year. *Fair Work Act 2009* (Austl), 2020/37, ss 106A-107; Fair Work Ombudsman, “National Employment Standards”, online: *Australian Government* < <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>>.

^{lxxv} Fair Work Ombudsman, “Taking family & domestic violence leave”, online: *Australian Government* < <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave/taking-family-and-domestic-violence-leave>>.

^{lxxvi} Ludo McFerran et al, “An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence” (2018) 1 University of Oxford Human Rights Hub Journal 167 at 170.

^{lxxvii} *Ibid* at 180.

^{lxxviii} *Ibid* at 180.

^{lxxix} Jane Aeberhard-Hodges & Ludo McFerran, “An International Labour Organization instrument on violence against women and men at work: The Australian influence” (2017) *Journal of Industrial Relations* 1 at 14.

^{lxxx} Ludo McFerran et al, “An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence” (2018) 1 University of Oxford Human Rights Hub Journal 167 at 189.

^{lxxxi} Jane Pillinger, “Safe at Home, Safe at Work: Trade Union strategies to prevent, manage and eliminate work-place harassment and violence against women” (2017) online (pdf) at 5: European Trade Union Confederation < <https://www.etuc.org/sites/default/files/document/files/en - brochure - safe at home 1.pdf>>.

^{lxxxii} *Ibid* at 6.

^{lxxxiii} *Ibid* at 6.

^{lxxxiv} *Ibid* at 72

^{lxxxv} Jane Pillinger, “Safe at Home, Safe at Work – Spain Country Case Study” (2017) online (pdf) at 14: European Trade Union Confederation < https://www.etuc.org/sites/default/files/document/files/spain_etuc_safe_at_home_safe_at_work_final_0.pdf>.

^{lxxxvi} International Labour Office, “Ending violence and harassment against women and men in the world of work – Report V(1)” (2017) online (pdf) at 51: < https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf>. “C190 – Violence and Harassment Convention, 2019” (2019) online: International Labour Office < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190>.

^{lxxxvii} International Labour Office, “Ending violence and harassment against women and men in the world of work – Report V(1)” (2017) online (pdf) at 51: < https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf>; “R206 – Violence and Harassment Recommendation, 2019 (No. 206)” (2019) online: International Labour Office < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206>.

^{lxxxviii} “Ratification of C190 – Violence and Harassment Convention, 2019 (No. 190)” (2020) online: International Labour Office: < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3999810>.

^{lxxxix} “Legislation and policies on domestic violence and its effects on the world of work” (6 July 2020) online: UN Women < <https://www.endvawnow.org/en/articles/1946-legislation-and-policies-on-domestic-violence-and-its-effects-on-the-world-of-work.html>>.

^{xc} This is not a new conclusion, as advocates have, and continue to, push for paid leave provisions. NUPGE, “Domestic Violence, Workers, and Workplaces” (January 2020) online (pdf) at 6: < <https://nupge.ca/sites/default/files/documents/Domestic%20Violence%20at%20Work%20Backgrounder%20-%20Revised%20%28002%29.pdf>>.



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- Ontario Public Service Employees Union (OPSEU)
- Canadian Union of Brewery and General Workers (CUBGW)
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- Nova Scotia Government and General Employees Union (NSGEU)
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■ 15 AURIGA DRIVE
NEPEAN, ONTARIO
CANADA / K2E 1B7

■ [613] 228-9800
FAX [613] 228-9801

■ www.nupge.ca

■ national@nupge.ca

