

**Unemployment Insurance and Domestic Violence:
Learning from Our Experiences**

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Introduction: Domestic Violence and Job Loss

Domestic violence and sexual assault have consequences on an individual's ability to work, often causing separations from employment. In recent years, welfare and domestic violence advocates have increasingly turned to unemployment insurance (UI) benefits as a potential source of income support during periods of unemployment caused by domestic violence and sexual assault. In some states, domestic violence advocates, women's rights advocates, workers' rights advocates and welfare advocates have formed coalitions to lobby for passage of legislation making domestic violence victims eligible for UI benefits when they are separated from work. In eighteen states in the last four years, these efforts have led to the passage of UI legislation addressing the needs of victims of domestic violence, sexual assault, or stalking.

This paper will provide the history of UI legislation as a tool for battered women in their efforts to maintain economic security, while analyzing the effectiveness of legislation that has been passed. We present our discussion in four basic components. First, we briefly describe the link between domestic violence and employment, and the relationship between maintaining economic independence and a woman's ability to escape a violent relationship. Second, we describe efforts to change UI laws to help battered women obtain temporary wage replacement when separated from their jobs because of domestic violence.

Third, we describe the different kinds of domestic violence unemployment insurance ("domestic violence UI") legislation that have been proposed and passed in the last four years in terms of scope of coverage, degree of proof required to support claims, work search requirements, and confidentiality and training. Finally, in the fourth section, we build upon this history to propose model legislation and

suggestions for advocates to increase the chances that more states will provide more UI coverage to more domestic violence victims.

I. The Link Between Domestic Violence and Unemployment

Domestic violence is widespread in America. 1.5 million women are physically or sexual assaulted by an intimate partner each year. *Tjaden & Thoennes, Nat'l Inst. of Justice & Ctrs. for Disease Control & Prevention, Extent Nature and Consequences of Intimate Partner Violence 9 (2000)*. As domestic violence victim advocates know, many survivors of domestic violence – mostly women – have difficulty at work because of the violence they are experiencing at home. *Runge, Robin, Double Jeopardy: Victims of Domestic Violence Face Twice the Abuse, 25 SPG Human Rights 19 (1998)*. Job loss and the threat of job loss prevent many battered women from escaping violent relationships by removing their ability to sustain themselves and their children. *Runge, Robin R., and Hearn, Marcellene, Employment Rights Advocacy for Domestic Violence Victims, 5 Domestic Violence Rep. 17 (2000)*.

There are many ways domestic violence and sexual assault can negatively impact a victim's ability to work. A perpetrator may stalk a victim at her workplace because it may be the only place he knows to find her. Stalking may include up to 20 phone calls a day, waiting outside her workplace in his car, or coming into the workplace and verbally or physically assaulting her. *Runge, Robin, R. Hearn, Marcellene, E. and Cama, Spenta, R. Domestic Violence as a Barrier to Employment, 34 Clearinghouse Review 552 (January – February 2001)*. Studies have shown that 96% of employed domestic violence victims experience some type of work-related problem due to the violence. *Stanley, Connie, Domestic Violence: An Occupational Impact Study (1992)*. A recent study of domestic violence victims in Kentucky found that 81% of them experienced difficulties concentrating at work, and a majority of women had their batterer show up at work and constantly interrupt them with telephone calls. *Swanberg, Jennifer, Intimate Violence, Job Performance and Workplace Supports: Experiences of Women Living in Rural and Urban Kentucky,*

Prepared for Trapped by Poverty/Trapped by Abuse Conference (October, 2001). Nationally, between 35% and 56% of employed battered women were harassed at work by their batterers; 55% to 85% missed work because of domestic violence; and 24 to 52% lost their jobs as a result of the abuse. *U. S. Gen. Accounting Office, Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients 19 (GAO report to Congressional Committees Nov. 1998)* In the Kentucky sample, women reported being stalked at work, missing work days, being prevented from going to work, and batterers calling their supervisors. *Swanberg, Intimate Violence.*

As noted above, these experiences may cause a victim to be forced to leave her employment to seek safety. Moreover, one-quarter to one-half of employed domestic violence victims lost their jobs, due in part to the abuse. *Shepard, Melanie & Pence, Ellen, The Effect of Battering on the Employment Status of Women 3 Afflia 55 (1988).* In the Kentucky sample, 97% of women were either fired or had to leave their jobs because of domestic violence. *Swanberg, Intimate Violence.* These examples and statistics point to one unnerving reality: domestic violence can push a victim into poverty, by forcing her to quit her job or creating circumstances under which she is fired. A recent study shows that direct work interference by the abuser significantly increases low-income women workers' probability of receiving welfare. *Nam, Yunju, and Richard Tolman, Partner Abuse and Welfare Receipt among African American and Latina Women Living in a Low-Income Neighborhood, Trapped by Poverty/Trapped by Abuse Conference, October 2001.*

II. Unemployment Insurance Reform and Domestic Violence

A. Some Unemployment Insurance Basics

A basic understanding of unemployment insurance (UI) is essential to understand how best to amend UI laws to address domestic violence. Unemployment insurance, also known as unemployment compensation, is a federal-state social insurance program providing partial wage replacement benefits to jobless workers. *William Haber and Merrill G. Murray, Unemployment Insurance in the American Economy*

(1966); Michael J. Graetz and Jerry L. Mashaw, *True Security: Rethinking American Social Insurance* (1999), 188-209. The goals of UI are to pay benefits to jobless workers during periods of unemployment, providing income to the unemployed worker while in turn providing an economic boost to the economy. *Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, Coverage at 3; U.S. Congress, House Ways and Means Committee, Background Materials on Programs under the Jurisdiction of the Ways and Means Committee (1998)(GREEN BOOK)*, 327.

State UI laws are enacted within a framework of two principal federal statutes, the Federal Unemployment Tax Act (FUTA) and the Social Security Act. *Federal Unemployment Tax Act, 26 U.S.C. §3301 et seq.; Social Security Act, 42 U.S.C. §501 et seq.* Unemployment insurance is financed through state and federal payroll taxes paid by employers, with regular UI benefits paid from state taxes. Federal law leaves most decisions regarding monetary earnings requirements, eligibility conditions for UI benefits, disqualification provisions and penalties, benefit levels and their duration, and state tax levels under the control of participating states. *Wimberly v. Labor and Industrial Relations Comm'n*, 479 U.S. 511, 515 (1987) and GREEN BOOK at 328. As a result, state law controls in answering most UI legal questions.

In this paper, we discuss how UI eligibility and disqualification provisions impact domestic violence survivors in specific ways. As a practical matter, three aspects of the fundamental features of UI are critical when making UI work as an income replacement safety net for survivors of domestic violence.

First, as noted, and as a general rule, UI is intended to address involuntary unemployment. *Eveline M. Burns, Unemployment Compensation and Socio-Economic Objectives, 55 Yale L.J. 1, 3 (1945)*. Most UI rules, sometimes in a rough way, are designed to separate voluntarily unemployed workers from those that were involuntarily unemployed. *Haber and Murray, Unemployment Insurance in the American Economy*, 281. As expressed by the Advisory Council on Unemployment Compensation, the "purpose of these restrictions [on UI eligibility] is to limit payment to those workers who are unemployed primarily as a

result of economic causes." *Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, Coverage at 101*. While UI rules sometimes stray from this focus on involuntary unemployment, objections to broadening UI eligibility are often based upon this ground.

Second, UI eligibility is focused on work and labor market attachment. *Haber and Murray, Unemployment Insurance in the American Economy, 249-250; Louise F. Freeman, Able to Work and Available for Work, 55 Yale L.J. 123 (1945)* As a practical matter, many survivors of domestic violence need flexibility with regard to working or seeking work, and UI rules designed for another era do not always provide that flexibility.

Third, UI benefits are paid from funds accumulated from payroll taxes paid by employers. This means employers generally view proposed expansions of UI benefits to domestic violence survivors as an increased UI payroll tax cost. Except in rare cases, that translates to political opposition to the expansions we advocate. *Haber and Murray, Unemployment Insurance in the American Economy, 134*.

State UI eligibility rules normally require that UI claimants be able and available for work, and that they seek work. Claimants are typically disqualified from UI benefits if they leave work voluntarily and without good cause, are discharged for reasons amounting to misconduct, or if they refuse work without good cause. *Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, Coverage at 110-116*. In general, these UI rules were designed on the "male breadwinner" model, not with women workers or single heads of households in mind. *Richard W. McHugh and Ingrid Kock, "Women and Unemployment Insurance," 27 Clearinghouse Review 1422 (April 1994)*. The male breadwinner model of UI leads to numerous conflicts between the realities lived by working women and traditional UI rules. *Deborah Maranville, "Feminist Theory and Legal Practice," 47 Hastings L.J. 1081 (1992)*. The impact of these general rules on domestic violence survivors is but one manifestation of the broader conflicts between UI rules and practices and the lives of women workers.

Of necessity, the specifics of each state's UI laws and agency practices must be considered if legislative amendments to assist survivors of domestic violence will work well to accomplish the intentions of their proponents. As we detail later in this paper, the failure to take into account both the needs of domestic violence survivors and the UI rules and practices that apply can lead to less than satisfactory results when amending UI laws.

A good illustration of the specificity of state UI laws is found in the variety of laws spelling out "good cause" as it applies to excuse voluntarily leaving work. In particular, whether a state permits any good cause to render quitting a job non-disqualifying, or restricts acceptable good cause to reasons related to the claimant's work or employer, is of vital concern to women workers. *McHugh and Kock, "Women and Unemployment Insurance," 27 Clearinghouse Review at 1426-1430.*

With respect to the subject of this paper, domestic violence can provide a valid reason, in many circumstances, for leaving a job. But, if domestic violence has not directly impacted the survivor's workplace, disqualification will occur in the majority of states that require that good cause be "attributable to the employer" or words of similar effect. This unsatisfactory result arises from the fact that numerous valid reasons for leaving work are excluded as "personal" in the majority of states that restrict the categories of reasons for good cause that they will consider to excuse a quit.

In those states where broader "personal" reasons for leaving a job are considered as good cause, domestic violence, if established, should provide good cause for leaving. Thirteen states have good cause for personal reasons, that is, for reasons not attributable to the employer or the claimant's work. These states are Alaska, California, Hawaii, Nebraska, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, and Virginia (and also Puerto Rico and Virgin Islands). *U.S. Department of Labor, Office of Workforce Security, Comparison of State UI Laws, Table 401.1 (January 2000).* Because of this, advocates in this minority of states might not need an amendment to their state's voluntary leaving UI law, so much as proper application of their existing laws to domestic violence survivors that leave work.

As our discussion will show, voluntary leaving provisions have been central to UI amendment efforts. Generally, more recent laws have recognized that a discharge for absenteeism related to domestic violence or a failure to seek work for reasons related to domestic violence are equally problematic for domestic violence survivors. For this reason, consideration of all facets of a state's UI laws in light of the realities of domestic violence is more likely to yield UI amendments that better address domestic violence and sexual assault.

B. Early Attempts To Judicially Cover Job Separations Result In Narrow Victories.

Recognizing that unemployment insurance (UI) is intended to help those involuntarily unemployed, and that lack of income serves as a barrier to victims' ability to leave a violent relationship, domestic violence victim advocates and workers' rights advocates attempted to secure UI benefits for unemployed domestic violence victims through administrative hearings under existing state laws.

As noted above, workers are generally not able to qualify for unemployment insurance when they leave work "voluntarily," unless they have "good cause," and the "good cause" is related to work. This means that a worker who quits a job because her wage rate has been lowered 30% would qualify for UI benefits, but a worker who must quit because she no longer has child care would not qualify. However, some states' UI laws allow benefits if an individual "left his last work due to a personal emergency of such a nature and compelling urgency that it would be contrary to good conscience to impose a disqualification." See *e.g.*, *Ark. Stat. Ann. § 81-1106(a)*. Measures like this Arkansas statute offer an intermediate means of addressing separations of work, including those related to domestic violence.

In the 1980s, some advocates began using the "good cause" and other exceptions in their unemployment laws as a way of attempting to provide benefits for domestic violence survivors. Although there are very few reported cases involving a domestic violence victim seeking unemployment compensation benefits, those cases demonstrate the inadequacy of the existing unemployment law to address the nature of these cases.

In a few instances, provisions allowing benefits when a worker has quit because of a “personal emergency” have been interpreted to include a victim of domestic violence who demonstrates that she has been the victim of ongoing abuse at the hands of her husband and was forced from her home the night before she left her job. See e.g., Rivers v. Stiles, 697 S.W.2d 938 (Ark. 1985).

In a few states, where the cause of the separation from employment need not be “connected to work,” domestic violence victims attempted to prove that the violence experienced at home was a “cause of a necessitous and compelling nature” justifying her decision to quit. These arguments met with very little success. See Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. 1994); Bacon v. Commonwealth of Pennsylvania, 491 A.2d 944 (Pa. 1985). In Bacon, the court denied claimant’s application for benefits because there had been no physical violence from her husband for two and a half years before she quit her job and she “failed to avail herself of any legal remedies.” *Id.* at 946.

A case in Washington State resulted in a grant of benefits where the court found that the long term impact of domestic violence rendered her “disabled” as defined in the unemployment compensation code. *In re C.M.* In Minnesota, provisions permitting claimants to be eligible if a “serious illness” caused them to lose their job were interpreted as covering domestic violence victims. See In re Heartland Girls’ Ranch, No. 8213 UC 94 (Minn. Dep’t of Econ. Sec. Oct. 24, 1994); Minnesota Dep’t of Econ. Sec. R.C. Memo (Sept. 29, 1998); see also Catherine Ruckelshaus, Unemployment Compensation for Victims of Domestic Violence: An Important Link to Economic and Employment Security, Clearinghouse Review Special Issue 209-221 (1996). Finally, in two cases from Alaska, domestic violence victims were awarded benefits finding that abuse qualified as “good cause” where the claimant was “subjected to continuing harassment and the threat of physical harm from her ex-husband, where the claimant’s fear was well-founded” and she pursued reasonable alternatives to “alleviate the situation.” See e.g., Stackhouse v. Wolverine Supply Inc., Docket No. 97 1126 (Alaska 5/23/97); In re Hancock, Comm’r Dec. 88H-UI-039, 1 C Unemp. Ins. Rpt. (CCH), ¶ 8142.11 (Alaska 3/25/88).

In states without broad definitions of “good cause,” domestic violence victims who have left their jobs in an effort to secure their safety from domestic violence have usually been denied benefits. *See e.g., Hall v. Florida Unemployment Appeals Commission and Laro, Inc.*, 697 So.2d 541 (Fl. 1997); *Pagan v. Board of Review*, 687 A.2d 328 (N.J. 1997). But, in an administrative ruling in Connecticut, *Coleman v. Yale Univ., Bd. Case No. 585-BR-99* (Conn. March 26, 1999), the Board held that compelling personal problems such as harassment by a spouse can provide sufficient job-connected cause for leaving one’s employment if some aspect of the claimant’s job renders her particularly vulnerable to abuse or employer is unable or unwilling to provide appropriate security. In the Connecticut case, the claimant was a battered woman who left her job when she fled her husband. Ms. Coleman’s husband had previously harassed her at work. Her employer admitted that it could not provide her with adequate security and did not oppose awarding benefits.

By the late 1990s, it became clear that the strategy of attempting unemployment insurance coverage through existing laws was a very limited one. Unless domestic violence victims were from a state with a broad “good cause” exemption, allowing personal reasons to justify a quit, they would not receive benefits. These experiences left domestic violence victim advocates and workers’ rights advocates frustrated and recognizing the need for legislative change.

C. Report from New York: DV Victims Lose Their Jobs, But Do Not Apply For UI.

In 1995, the New York State legislature directed the New York Department of Labor to study the connection between domestic violence and job separation. *New York State Dep’t of Labor, Report to the New York State Legislature on Employees Separated from Employment Due to Domestic Violence* (1996)(on file with authors). Although previous studies had looked at the ability of women to access unemployment compensation benefits, none had analyzed the specific issue of domestic violence victims as employees separated from employment. At the time of the study, New York State’s unemployment law did not include a provision specifically covering an individual who leaves a job due to circumstances

involving domestic violence. Completed and released in 1996, the report cited statistics that included: abusive spouses and lovers harass 74% of employed battered women at work; 54% of battered victims miss at least 3 days of work a month; 56% of domestic violence victims leave work early at least 5 days a month; and employers lose at least thirteen billion dollars annually in costs related to domestic violence. The report indicated that domestic violence contributed to a women's job loss, but that victims of violence fail to mention the violence as a reason they lost their jobs. The report also stated that no data had ever been kept to track domestic violence cases in the unemployment compensation system in New York State, a problem that would continue to plague advocates attempting to ascertain the number of battered women seeking and obtaining unemployment compensation benefits.

At about the same time New York State issued its report, Jody Raphael and Richard Tolman completed some groundbreaking work on the intersection between domestic violence and welfare. In 1997, Raphael and Tolman released a report analyzing the impact of domestic violence on women recipients of welfare. Their work framed future discussions on this issue and continues to influence state and federal policy-making. In this study, Raphael and Tolman found that between 15% and 30% of welfare recipients were currently being physically abused and 34% to 65% of welfare recipients had been abused as adults. *Raphael & Tolman, Trapped by Poverty/Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare, Taylor Institute and University of Michigan Research Development Center on Poverty, Risk and Mental Health (April 1997).*

These studies reiterated what domestic violence victim advocates had been saying for years: domestic violence has a negative impact on a victim's ability to obtain and maintain employment. The harder question was how to provide battered women who are forced to leave their jobs through no fault of their own with the temporary income necessary to leave violent relationships and stay out of them.

III. The Legislative Approach: Maine, California, New York, North Carolina and Connecticut Lead the Way

In the last four years, seventeen states have passed legislation providing that domestic violence victims who lose their job because of violence are eligible for unemployment insurance. In some cases, these laws were nothing more than clarifications of existing law. In others, new laws recast the treatment of domestic violence and sexual assault survivors under UI programs.

Passage of these additional laws overcame a stereotypical presumption that battered women do not work and raised awareness that they were eligible for benefits when forced to leave their jobs because of the abuse. For a variety of reasons, initial efforts fell short of the goal – while they may have made inroads into eligibility, often they were so narrowly written or construed as to make it impossible for battered women to qualify. For example, the first few laws passed placed a heavy burden of proof on the claimant-survivor of violence that was difficult, if not impossible, for many domestic violence victims to overcome. In addition, these laws did not overcome the basic problem of educating domestic violence victims, or, on the other side, employees of the administering agency, about each other and how to enable battered women to access benefits. Without such training and education, these legislative changes have been substantially underutilized.

However, as will be shown in Part IV, as coalitions drafting these pieces of legislation became broader and more sophisticated, these laws contained increasing detail regarding when and how a domestic violence victim may qualify for benefits and attempted to include training provisions for agency staff regarding domestic violence.

MAINE: The First Effort

In 1996, Maine was the first state to pass legislation amending its “good cause” requirement to include domestic violence. Maine’s unemployment law states that if an employee must leave work in order to protect herself from domestic abuse and she made all reasonable efforts to preserve the employment,

she is eligible for benefits. Maine's law also addressed discharges, and protected domestic violence victims fired for reasonable actions taken to protect the individual from domestic violence. *Me. Rev. Stat. Ann. Tit. 26. Section 1043(23)(B)(3)*. Although this law specifically identified domestic violence victims as potential claimants, it placed a heavy burden of proof on violence victims, by requiring them to prove that they had made all reasonable efforts to keep their jobs.

The law in Maine was a breakthrough, however, in many ways, opening the eyes of many advocates to the need for collaboration to make UI benefits more accessible to battered women.

CALIFORNIA: Coalition-Building and Compromise

California was one of the first states to pass unemployment legislation addressing the needs of domestic violence victims. SB 165 was drafted and introduced by Senator Hilda Solis (D-LA) on January 16, 1997, with sponsorship from the California Alliance Against Domestic Violence (CAADV), one of two statewide domestic violence coalitions in California. During 1997-1998, attorney-advocates affiliated with CAADV built a broad coalition of supporters that included the California Labor Federation, AFSCME, California Teachers Association, and the American Association of University Women. CAADV members, including an attorney who had represented battered women attempting to obtain unemployment compensation benefits under the existing system, testified during hearings about the need for the legislation. Moreover, the state enforcement agency maintained a formally neutral position, but their testimony was interpreted by many as supportive of the measure.

The bill was similar to the legislation in effect in Maine, in that it focused on the good cause requirement. California did not have a "connected to work" requirement in its law. The language states that "an employee may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence." *SB 165 (Solis); Cal. Unemp. Ins. Code §§ 1030, 1032, 1256 (2001)*.

Compromises were made in order to ensure passage of the legislation in California. A training requirement and a record-keeping requirement were eliminated as too costly. Information on the number of domestic violence victims who might qualify under the new statute was not available; a fact, which made it difficult to calculate cost both in California and in other states that have, since considered changes to their unemployment laws to favor domestic violence victims.

NORTH CAROLINA: Academic Research Without Full Implementation

One of the next states to pass legislation on this issue was North Carolina. Prior to passage of the legislation, students at the Terry Sanford Institute of Public Policy at Duke University prepared a report for the Employment Security Commission of North Carolina about the need for access to unemployment compensation benefits in North Carolina. The report produced was the first to conduct thorough analysis of both the needs and issues facing domestic violence victims and the status of unemployment compensation law in the state. *Faggart, Robert, D., Lauback, Jacob P., Raslevich, Amy C., Shin, Silvia, A., "Domestic Violence and Unemployment Insurance In North Carolina," A Report Prepared for the Employment Security Commission of North Carolina, Terry Sanford Institute of Public Policy, Duke University (May 1998)(on file with authors).*

As a part of the report, the authors drafted a survey on employment for residents of domestic violence shelters in North Carolina. The survey was distributed to shelter-based programs to get a sense of the employment experiences of domestic violence victims in North Carolina. The information collected from the survey, in combination with research about the existing unemployment compensation law in North Carolina, the effects of domestic violence on a victim's ability to work, and efforts in other states to address the link between domestic violence and unemployment, formed the basis of a list of legislative recommendations.

First, the report recommended that the North Carolina Employment Security Law be amended to permit domestic violence to qualify as "good cause attributable to the employer." Second, the report

recommended that the definitions of “misconduct” and “substantial fault” in the Employment Security Law exclude “conduct resulting from domestic violence.” This recommendation would provide further protections for battered women by prohibiting employers from claiming that their separation from work was because of disqualifying conduct. Third, the report recommended the adoption of a flexible base period, which would allow unemployment insurance claimants to qualify for benefits based on their most recent earnings. Fourth, the study recommended a requirement that domestic violence victims make reasonable efforts to retain employment. Finally, the report recommended that the Economic Security Commission education and train its staff so that it could “properly handle unemployment insurance claims involving domestic violence” and have such trainings publicized in the community.

Unfortunately, the legislation passed in 1999 in North Carolina did not include all of the recommendations made by the Terry Sanford Center report. In fact, the legislation only included domestic violence as a “good cause” exception, both for quits and for discharges, and a provision that does not charge employer accounts for such benefits. *N.C. Gen. Stat. § 94-14(1f)*. Although cost estimates in North Carolina were approximately \$300,000 annually for providing benefits to domestic violence victims in these circumstances, to date the costs have been reported as minimal.

CONNECTICUT: Strong Advocacy Advances Efforts

Also in 1999, Connecticut passed legislation stating that domestic violence victims who are forced to leave work to protect themselves or a child living with them from “becoming or remaining a victim of domestic violence,” and who have made reasonable efforts to preserve their jobs, are eligible for benefits as an exception to the voluntary quit disqualification. *Conn. Gen. 73-108(1)(r)(West. 2000)*. The definition of domestic violence is listed in the statute. The legislation was a part of larger UI reform package, but only the domestic violence and dependent care benefit increases passed.

The arguments that were most effective in getting the Connecticut legislation passed were as part of the welfare to work discussions. As expiring welfare time limits were approaching, and large numbers of

former welfare recipients were going to be employed, advocates were concerned that problems at work related to domestic violence would lead to loss of work and income. They also argued that covering domestic violence under UI would not be costly because not very many people would use it, so it was not a "fund buster." Advocates also argued that taxpayers would be paying to support low income one way or the other - through welfare to work or through unemployment compensation, so it really wasn't an increase in cost.

The Connecticut Coalition Against Domestic Violence testified at the hearings and was very effective. Business opposed it saying there was another remedy available through the crime victim compensation program. The coalition did research to show that there were a lot of hurdles to accessing that money, including the necessity of showing compensable injury. Coalition members included Connecticut Coalition Against Domestic Violence, Permanent Commission on the Status of Women, and Connecticut Legal Services.

FEDERAL LEGISLATIVE RESPONSE

Learning from the experiences of advocates in the states over the last 5 years, the Victims' Economic Security and Safety Act (VESSA) was introduced in July 2001 in the U.S. Senate and U.S. House of Representatives as S. 1249 and H.R. 2670 respectively. VESSA includes provisions that amend the federal unemployment compensation law to require permit victims of domestic violence, sexual assault and stalking to be eligible for benefits if they are separated from their employment due to circumstances resulting from the individual's experience of domestic violence, dating violence, sexual assault, or stalking. The bill also proposes examples of ways that domestic violence victims can meet state requirements and prohibits states from considering any work "suitable work" unless such opportunity reasonably accommodates the individual's needs to address the violence. VESSA also requires training for unemployment compensation claims reviewers and hearing personnel on the dynamics of domestic

violence, dating violence, and sexual assault and stalking as well as training on how to keep information about domestic violence or sexual assault confidential.

IV. What Have We Learned About Crafting UI Laws?

Since these early efforts in 1998, eighteen states have passed new laws that explicitly allow survivors of domestic violence to leave their jobs due to the violence. These are California, Colorado, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Washington, Wisconsin and Wyoming. *National Employment Law Project, Unemployment Insurance for Survivors of Domestic Violence (May 2001)*.

The best new laws and proposals are broader in coverage, more generous in their treatment of proof issues and requirements for work search, as well as more mindful of needed training for UI administrators and confidentiality. The next section of this paper reviews the best components of existing legislation, and the best components of a successful strategy for passing and implementing domestic violence UI legislation.

Since states began consideration of laws protecting victims of domestic violence, advocates have puzzled over ways to make the laws more meaningful and relevant, and cover more survivors. These issues include the scope of coverage and levels of proof required to establish a claim. Analysis has also included consideration of the special problems of domestic violence survivors when it comes to meeting work search requirements, and confidentiality and training provisions that would partially offset the discomfort that many survivors feel when disclosing detailed personal information to state agencies. This section reviews the best as well as less than ideal provisions of the UI amendments to date, and suggests model legislative language in these areas.

- A. Scope of Coverage: What is DV? Does it include stalking? Who is Covered? What Acts of the victim are protected? Does the law cover quits and discharges?**

Advocates and legislators have struggled with a number of questions around the scope of protection offered under their domestic violence UI laws. Most of the first laws simply said that a person who is a victim of domestic violence has “good cause” to leave her job, without further defining what is domestic violence. Since then, states have further debated these “scope” issues, including: Should sexual assault and stalking victims, be included in addition to domestic violence victims? Must a survivor be one who has been physically abused? Is coverage limited only to those abused by a family member, or may it include persons with whom the victim had a dating relationship, or even that she did not know at all? Is only the victim protected, or is protection also offered to children or co-workers?

What is “domestic violence?”

Most of the first statutes on domestic violence and unemployment insurance did not define “domestic violence” but left that to the agencies administering the unemployment system. These agencies are more experienced with determinations of whether a person was laid off or quit a job than they are to defining what constitutes domestic violence. The better trend is to insert a definition of “domestic violence” into the statute or to refer to state criminal statutes defining the term. *See e.g., Colo. Rev. Stat. Ann. § 8-73-108(1)(r)(West 2000); Conn. Gen. Stat. § 31-236(a)(2)(A); Del. Code Ann. tit. 19, § 3315(1)(2001); Neb. Rev. Stat. § 48-628(1)(a) (2000); R.I. Gen. Laws Section 28-44-17.1; N.C. G.S. 96-14(1)(b)(1)(f); ORS 657.176-12(a) (inserted in the statute); Mass Acts 2001, Chapter 69 (inserted into the statute); Wis. Stat. Section 108.04(7)(s).*

Who is protected by the law?

State statutes vary, as well, in whether they protect only the survivor of domestic violence, survivors of sexual assault, children of violent homes or other family members. Statutes in California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Montana and North Carolina explicitly cover a survivor who is making attempts to protect her children or her “immediate family” against domestic abuse.

In 2002, Washington became the first state to explicitly protect victims of stalking, as well as victims of domestic violence. *2002 Wash. Laws ch. 8 (to be codified as RCW 50.20.020, 050, 100, and 240)*.

Proposals put forth in 2001 in Hawaii and North Dakota would have extended protection to victims who leave work in order to protect co-workers. See *Hawaii, H.B. 2123, and S.B. 2438 (2002)*; *North Dakota, H.B. 1476 (2001)*

What is “good cause?”

While the first statutes that covered victims of domestic violence simply stated that a person would not be disqualified from benefits because she quit work because of domestic violence, many of the more recent proposals have included specific language about what particular fears and actions will constitute “good cause” for leaving work. These are modeled on language adopted in Rhode Island, Connecticut and Delaware and include several elements:

There is “good cause” if an individual voluntarily left employment due to circumstances resulting from domestic violence if the individual: (i) reasonably fears future domestic abuse at or en route to or from the individual’s place of employment; (ii) wishes to relocate to another geographic area in order to avoid future abuse against the individual or the individual’s family; (iii) reasonably believes that leaving work is necessary for the future safety of the individual, the individual’s family, or co-workers; (iv) is required to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence and sexual assault. See *Proposed Statutes in Hawaii, S.B. 2438 and H.B. 2123, 21st Leg. (2002)*; *North Dakota, H.B. 1476, 57th Leg. Assemb. (2001)*; *Tennessee, H.B. 713, 102^d Gen Assemb. (2001)*, and *Vermont, H.B. 211, 66th Bienn. Sess. (2001)*.

What about DV victims who are discharged from work?

Typically, a worker who is discharged from employment qualified for UI unless she is discharged for “misconduct.” Each state is free to define “misconduct” in any way it sees fit: in some states

“misconduct” can be found based on minor instances of absenteeism or failure to follow insignificant company rules.

The standard most generous to workers in that laid down in a 1941 decision by the Supreme Court of Wisconsin. In *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, (1941), the Wisconsin court said “misconduct” is limited to conduct “evinced such willful or wanton disregard of employer's interests as is found in deliberate violations or disregard of standards of behavior which employer has the right to expect, or in negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show intentional and substantial disregard of employer's interests or of employee's duties.” States vary in whether they follow the *Boynton Cab* rule or more stringent ones.

Given the variation in state law and state administrative and judicial decisions, some advocates have struggled with questions such as, “what about women who are discharged, for ‘misconduct,’ associated with absences related to domestic violence?” Where advocates have not been certain of the handling of such cases under state law, and where politically possible, state laws have been passed that explicitly cover both “voluntary” quits, and discharges for “misconduct” on account of domestic violence. See e.g., *N.J. Rev. Stat. 43:21-5(j)*; *Cal. Unemp. Ins. Code Section 1256.*; *2001 Mont. Laws, Chapter 520.*

The very first law, in Maine, provides that “misconduct” may not solely be founded on actions taken by an employee that were reasonably necessary to protect herself against domestic violence. *Me. Rev. Stat. Ann. tit. 26 Section 1043(23)(B)(3).*

B. Proof issues: How Does a DV survivor prove her case?

Many victims never seek the assistance of the police or a the courts when in a violent relationship, in part because their own experience is that the police won't come when called or that a piece of paper won't stop him from hitting her. Even more critical, she may know that if she does reach out to the police or the legal system, the batterer will become more violent or she may be murdered. This reluctance or

inability of some domestic violence or sexual assault victims to formally complain leads to proof or documentation issues under UI amendments addressing domestic violence and sexual assault.

Some state laws, in states where active coalitions against domestic violence have been able to more thoroughly educate legislators, exhibit better understandings of these dynamics. In California, Maine, New York, Massachusetts, Oregon, and Washington, no particular level of proof that the unemployment claimant is a victim of domestic violence has been required. This is consistent with the overall approach to "good cause" in most states' unemployment compensation laws, which may allow for a voluntary separation to be justified, for example, by a reduction in hours or earnings, by sexual harassment, *See e.g., California, Illinois, Kansas, Massachusetts, Minnesota, Rhode Island, Wisconsin*) or compelling personal circumstances (*Arizona, Arkansas, Colorado, Pennsylvania, Virginia*). In these states, the exact level of proof required to convince the state agency of the accuracy of the claim is not specified. Ordinarily, these and other separation issues under UI laws are decided by the "preponderance of the evidence," and no particular kinds of proof are statutorily required.

Domestic violence is an exception and legislators seem unusually concerned that victims and survivors will manufacture claims in order to get UI benefits. A number of states require some level of proof of domestic violence. Many require police records, court records, statements of shelter workers, attorneys, members of the clergy, or medical or other professionals from whom the woman has sought assistance. The most restrictive laws are in Colorado, Montana and Wisconsin. Colorado both requires documentation of abuse, and that the survivor be in counseling at the time she receives benefits. *See Colo. Rev. St. Ann. § 8-73-108(l)(r)*. The Montana law, passed in 2001, requires evidence of domestic violence and renders a survivor ineligible for benefits if she returns to her abuser. *See 2001 Mont. Laws Chap 520*. The Wisconsin law requires that the survivor be the beneficiary of a restraining order and that there be a finding that the order is likely to be violated unless she quits her job. *See Wis. Stat. 108.04(7)(s)*. North Carolina

also requires that the woman have been formally held to be an “aggrieved party” within the meaning of the state’s criminal domestic abuse law. See *N. C. Gen. Stat. Sec. 96-14*.

Some states have also grafted onto their domestic violence UI laws provisions that are traditionally found in many states’ “voluntary quit” provisions. Often state laws covering good cause for voluntary termination of employment include a provision that the person who quits a job takes “all reasonable steps to preserve employment.” State interpretations of the laws vary with respect to whether “reasonable steps” must necessarily include reporting the problem to the employer, asking for protection or accommodation from the employer. Connecticut, Maine, Nebraska, New Hampshire and Oregon laws specifically require the state agency to measure what “reasonable steps” were taken to preserve employment.

For some women and some employers, reporting violence or a threat of violence to an employer is a reasonable step that might well preserve a job. For others, it may become yet another insurmountable barrier to getting safe and getting economically stable. In the Kentucky study cited earlier in this paper, there was a marked difference between rural and urban women regarding whether or not they reported the violence to their employer. In the rural area, 11 out of 15 women did not disclose to either their employer or a co-worker. In the urban sample, 11 of 17 did make this disclosure. The most frequent reason that disclosure was made was that the batterer had appeared at work. Those that did not disclose the violence to their employer most frequently cited fears for job security and shame as the reason they did not tell their employer about the violence. (*Swanberg, Intimate Violence*)

The best state laws do not include stiff proof requirements or include these “reasonable steps” provisions. In New York, a recent Court of Appeals decision establishes that under the state’s domestic violence unemployment law, it is not necessary to prove “reasonable steps” were taken to preserve employment. See *Petra Loney v. Commissioner of Labor*, (No. 89193, NY Supreme Court, Appellate Division, 3rd Dep. October 18, 2001)

C. Work search: What if the “work search” requirement interferes with a woman’s ability to protect herself?

In all states, a person must be “able and available” for work in order to be considered eligible for unemployment compensation. State laws often include work search requirements that may interfere with a survivor’s ability to get medical or legal help or find a safe place to live.

In 2000, advocates consulted the U.S. Department of Labor (DOL) over potential restrictions that federal law might impose on states wishing to take into consideration a domestic violence victim’s limited ability to comply with overly burdensome work search and suitability criteria. In a letter to the National Employment Law Project, DOL agreed that states could change their laws to liberalize their work-search requirements for survivors of domestic violence. *See Letter to Rebecca Smith from Grace Kilbane, Administrator, Office of Workforce Security, US Department of Labor, dated October 26, 2000, available from the authors.* As a result, states can simply require survivors of domestic violence to register for work, without engaging in extensive work search, and the claimants may safely refuse job offers that interfere with their ability to get safe.

A number of states have since proposed or adopted changes either to their work search requirements or to the criteria they use to measure whether a job offer is “suitable.” These include Hawaii, Massachusetts, North Dakota, Oregon, Tennessee and Washington. *See Hawaii, H.B. 2123 and S.B. 2438, North Dakota, H.B. 1476; Tennessee, N.B. 713.*

Oregon’s law, adopted in 2001, continued a state practice of exempting DV victims from a requirement that the individual accept suitable work. *See ORS 657.176-12(a)*

Washington and Massachusetts’ statutes provide that suitability requirements must reasonable accommodate the individual’s need to address the physical, psychological and legal effects of domestic violence. *See Mass. Acts 2001 Chapter 69, Sec. 7; Wash. Laws Ch. 8 (to be codified as RCW 50.20.100)*

Proposals in Maryland and Hawaii provide for similar accommodation. *Hawaii, H.B. 2123 and S.B. 2438 (2002) and Maryland, H.B. 531 (2002)*

D. Who pays the cost?

Normally, when an employee of a particular employer receives UI benefits, the employer's account is charged and the employer's UI payroll tax rate is adjusted. In the unemployment insurance system, this is called "experience rating," and means nothing more than that the tax rate may rise because of usage of the system, somewhat like automobile insurance rates that rise after a driver has an accident.

In many states, under certain circumstances UI benefits are "non-charged;" that is, the costs of certain benefits are borne equally by all employers who contribute to the system. In California, to address the concerns of the California Taxpayers Association, California Chamber of Commerce, and the California Manufacturers Association, a provision was included in their amendments that stated that the unemployment compensation benefits paid to that individual would not be chargeable to the account of the employer except as specified. The same was done in North Carolina. Increasingly, advocates are inserting similar non-charging provisions in their proposals with respect to domestic violence and unemployment compensation that would explicitly "non-charge" these benefits. This is the case in California, Colorado, Connecticut, Montana, New Jersey, New York, North Carolina, Washington and Wisconsin.

The "non-charging" of UI benefits is usually a popular measure with employer groups, who believe that it is unfair to impose a tax on an employer who did not cause the unemployment. In Washington State, where the extent of "non-charging" of several categories of unemployment insurance benefits has been a source of divisiveness in the employer community, the proposal to non-charge benefits met with opposition, even though cost estimates meant that the additional non-charged benefits were a miniscule amount of total benefits paid. See, "*States That have enacted domestic violence UI – Impacts on the UI system,*" at www.nelp.org/pub67.pdf

E. Equipping Agencies to Provide Benefits: Training Provisions

As noted above, unemployment insurance claims adjudicators are ill equipped to make determinations with respect to domestic violence, perhaps contributing to the fact that claims in the states that have passed domestic violence UI laws are so low. The New York study mentioned above found that women were unlikely to cite domestic violence as a reason that they left their jobs. Advocates in California and several other states attempted to include a training provision in their law, one of the first in the nation to gain passage, but had to abandon the provision to address employers' cost concerns.

Concerns regarding the difficulties that women face disclosing that they are victims of domestic violence are similar in the UI and TANF contexts. Recently in Washington State, a partnership between the state agency administering TANF and the Washington State Coalition Against Domestic Violence resulted in development of a screening tool for use by the state agency, training provisions for agency personnel, and co-location of DV advocates in the state agency intake offices. See *"Welfare on Workfirst: Serving Domestic Violence Victims on Public Assistance in Washington State,"* (June 2001) at http://www.wscadv.org/projects/EJP/ejp_report_2001.pdf.

In 2001, Massachusetts became the first state to require training of unemployment insurance personnel on the nature and dynamics of domestic violence. The training program is ongoing, and applies to all employees who interact with claimants. Its stated goal is to ensure that job separations stemming from domestic violence are reliably screened and adjudicated, so that domestic violence victims can take advantage of the full range of job services provided by the department. See *Mass. Acts 2001, Chapter 69, Sec. 7*.

F. How do we Ensure the Information in her file is kept secret from the batterer? Confidentiality provisions.

Existing federal law with respect to confidentiality of information submitted in connection with unemployment compensation claims is quite stringent. Parallel state UI confidentiality provisions also exist

in most states. UI Claimants generally need not fear that a batterer would be able to get information about them directly from the agency. However, employers who contest an unemployment compensation claim might have access to personal information in the context of the administrative fair hearing.

Two states, Delaware and Rhode Island, have included provisions that require state agencies to keep any information disclosed in connection with a domestic violence claim confidential. *See Del. Code Ann. tit. 19, 3315(1); R.I. Gen. Laws 28-44-17.1* Although a law specifically addressing domestic violence UI claims may not be necessary advocates should make certain that the existing confidentiality provisions of state law are adequate.

This is model language for a confidentiality provision:

Domestic violence and sexual assault raise critical needs for safety and privacy regarding information furnished to *[state agency]* by the claimant. While claims information is routinely classified as confidential, employers typically gain access to files for their employees in contested cases. For this reason, any information furnished by the claimant or her agents to the UI agency for the purposes of verifying a claim of domestic violence or sexual assault shall be kept confidential in accordance with federal law. In addition, this information shall be kept confidential from the employer, unless the employer can establish that it has a legitimate need to question the veracity of the information, that the employer's need to see the information outweighs the claimant's personal privacy interests, and that the information is not available through other means. Disclosure shall be subject to the following additional restrictions;

- (1) The claimant must be notified prior to any release of information,
- (2) Any disclosure is subject to redaction of unnecessary identifying information such as the claimant's address;
- (3) Further dissemination of any information disclosed to the employer is prohibited;
- (4) Any further restrictions upon the employer's access, copying, as determined by *[state agency]* or the administrative law judge to whom the request for access is directed.

V. What Have we Learned about Passing Domestic Violence UI Laws?

There is no one magic formula for advocates to follow in order to get their state to pass domestic violence UI legislation, since the particular politics of each state will often dictate whether a bill passes and

what it provides. There are, however, some lessons to be learned from the experiences of the states that have successfully, and unsuccessfully, attempted to pass domestic violence UI legislation. In addition, all of the authors have experiences with UI legislation. This section will review some recommendations:

A. The Importance of Coalition Building.

It is axiomatic that it takes a coalition to pass any piece of legislation. Good domestic violence UI legislation is almost impossible to pass without a broad coalition that includes both domestic violence victim advocates and labor advocates. Domestic violence victim advocates generally know a lot about the reasons that women stay in, and flee, abusive relationships, and the kinds of fears and pressures that women face as they try to leave, but they often don't know about the intricacies of UI law. On the other hand, labor advocates often know a lot about UI, and have very little knowledge about domestic violence. The two groups working in concert can create the basis of a powerful coalition supporting domestic violence UI, including tailoring state UI law to address victim's needs, accurate cost assessments, knowledge of state politics around UI and DV issues, and powerful testimony.

In Massachusetts, where the broadest bill in the country became law in 2001, employers formed an important part of the coalition. Employers joined the Massachusetts reform coalition, responding at least in part to the argument that it was good business practice to allow victims of domestic violence access to unemployment compensation, for their own protection, the protection of co-workers, and the business itself.

B. Push for broad content.

As has been outlined above, more victims are covered when statutes are broader, and there are good studies that outline the specific needs of domestic violence victims that are met by broader statutes. Advocates need to look closely at the best examples in order to ensure that victims are not tripped up by arcane proof issues, or worries about confidentiality.

C. Cost issues.

Perhaps one of reason that so many politically diverse states have been able to pass domestic violence unemployment insurance statutes in such a short time is that the provisions offer states the opportunity to slightly expand the unemployment compensation benefits without significant cost to the state. States that have passed domestic violence UI legislation find that the amount of money they spend on claims is far less than their original fiscal notes predicted. Most do not keep data on the numbers of claims decided yearly under their domestic violence UI statute, but describe this number as “insignificant,” and the cost as “minimal.” This section of this paper will suggest that it is a mistake to argue too strongly that the cost of domestic violence UI is negligible, and that instead advocates should focus on the language suggested here that might broaden eligibility.

In fall and winter of 2000-2001, advocates in Washington State telephoned unemployment agencies around the country to get data on numbers of domestic violence UI claims in each state. Along with the adjectives reported above, some states gave estimated numbers of claims. Under its state policy of providing unemployment compensation to domestic violence survivors, Minnesota had 21 claims over a course of four years; Nebraska had five in the year 2000. Oregon estimated it had about twenty claims per year. See *“The Cost of Providing Unemployment Insurance to Workers Impacted by Domestic Violence – the Experience of Other States,”* available from the authors.

For a conference held in June 2001, the National Association of Unemployment Insurance Appeals Boards (NAUIAB) conducted a survey of the states with regard to domestic violence and unemployment insurance. Their survey showed that only one state, Connecticut, formally tracked its domestic violence UI cases above.

Thanks in large part to the activism of legal aid attorneys in Connecticut; statistics as to the usage of the legislation in Connecticut have been kept since its effective date in October 1999. Between October 1, 1999 and April 1, 2001, 47 domestic violence cases were handled by the Connecticut Department of Labor with an average weekly benefit amount of \$397.00 and approximate total cost of \$169,850 over that

time period. The Connecticut Department of Labor is also using a questionnaire entitled "Quit to Escape Domestic Violence" which provides some basic information to domestic violence victims who may have lost a job due to abuse. The form also contains questions intended to provide the agency with the information necessary to determine if an individual qualifies under the new law.

Massachusetts, which in 2001 passed the most progressive domestic violence UI law in the country, incorporating all of the best examples to be noted here, estimated that one to one and a half million dollars would be paid annually to survivors of domestic violence under its amendments. *Telephone conversation between Monica Halas, Greater Boston Legal Services, and Chris Bowman, Massachusetts Division of Employment and Training, September 25, 2001.* This is still an insignificant cost in a state system that paid out \$835 million in UI benefits in 2000. *U.S. Department of Labor, UI Data Summary, 1st Quarter 2001.*

By contrast, administrative personnel in Colorado told legal services interviewers that they had denied 58 claims and granted 63 claims from passage of the law in 1999 and the time of their interview in January 2001. *Telephone conversation between Bruce Neas, Columbia Legal Services, and Don Pietersen, Colorado Department of Labor and Employment, January 12, 2001.* Colorado has one of the more restrictive domestic violence UI laws, which mandates both documentation of abuse and that the survivor of abuse show that she is receiving counseling at the time she applies for UI benefits. Applications that were denied were reportedly because the individual did not have the necessary level of proof required under the Colorado statute.

The fact that paying UI benefits to domestic violence victims costs so little means two contradictory things for advocates. First, it makes the program more attractive to legislators who are mindful of tight UI funds, but who want to see their states recognize domestic violence as a workplace issue, while expanding access to the UI program for women and others traditionally left out of the system. At the same time, the low number of claims raises significant concerns about the scope of coverage of existing domestic violence

UI laws, and additional steps that must be taken to make the UI laws relevant to this group of workers. Advocates should consider some of the measures mentioned in this paper that help ensure domestic violence survivors have meaningful access to benefits in meaningful numbers, and a meaningful measure of the success of a state law should include the numbers of victims that receive benefits.

CONCLUSION

The number of states that have passed legislation to cover victims of domestic violence under UI laws, over a very short time, is a testament to the strength of this idea. The UI system, which provides benefits to workers unemployed “through no fault of their own,” can and should address the needs of domestic violence victims who must leave work because of violence.

More is needed and more is coming. As more states pass legislation, more are encouraged to pass legislation. More states will pass broader legislation that covers more victims, as well as sexual assault and stalking victims. More states will consider training provisions and specific statutory language that helps more victims qualify for UI benefits.

Domestic violence advocates can, together with unemployment compensation advocates, create strong coalitions that can shape state laws to respond to the real needs of domestic violence victims. It is hoped that this paper addresses the need of the advocacy community for reliable studies regarding domestic violence and work, and to present ideas for drafting legislation that will broadly cover many victims and guarantee that they have real access to these benefits.