



Know Your Rights

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER DOMESTIC VIOLENCE SURVIVORS

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Abused women and/or men in same-gender relationships face unique barriers to asserting their rights to be free from domestic violence including homophobia and misconceptions about domestic violence in same-gender relationships.

Consider the following:

- *Research indicates that the rate of domestic violence in the lesbian, gay, bisexual, and transgender community is similar to the rate among heterosexuals.*
- *Many lesbian, gay, bisexual, and transgender individuals do not identify themselves as victims of domestic violence because of the myth that battering does not occur in the lesbian, gay, bisexual, and transgender community, or the myth that same-gender violence is “mutual battering.”*
- *Many cases of domestic violence go unreported because of fear of homophobia, biphobia, and transphobia by friends and family, as well as by the police and judicial system. Others don't come forward because of their fear of being “outed.”*

If you are lesbian, gay, bisexual, or transgender, you may face the possibility of double discrimination based on your sexual orientation or gender identity and your status as a domestic violence survivor when you seek assistance from the police, the judicial system, a service provider, or your employer.

This is especially true in the workplace, where homophobia and stereotyping about domestic violence survivors often prevent abused women and/or men in same-gender relationships from asserting their employment rights. For example, a lesbian may be fearful of talking to her employer to develop a safety plan or to ask for job-protected medical leave for injuries from abuse. Victims of sexual assault by persons of the same sex may face similar challenges.

EMPLOYMENT RIGHTS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SURVIVORS OF DOMESTIC VIOLENCE

If you are a lesbian, gay, bisexual, or transgender survivor of domestic violence, it may affect your job or your ability to keep your job. For example:

- You may need to miss days of work to address medical or legal needs arising from the domestic violence
- An abuser may be calling you repeatedly or stalking you at work, which may affect your job performance and may make you fearful of losing your job

As a survivor of domestic violence, there are steps you can take to help protect yourself and your job. Some of these steps may not require you to disclose your sexual orientation or gender identity. However, if you choose to disclose your sexual orientation in your workplace, or you are already “out” at your job, and you believe your employer has treated you differently because of your sexual orientation or gender identity, you may be entitled to protections under anti-discrimination laws in some cities and states (see “Employment Discrimination” section on the next page).

Employment and Housing Rights for Survivors of Abuse is a project of Legal Momentum. See the last page of this guide for further information.

SAFETY PLANNING AT YOUR JOB

A key to your ability to keep your job may be to prevent the abuser from harassing you or placing you in danger at your workplace. There are steps you can take to increase your safety at work so that you can better keep your focus on your job. If you are not “out” at work, it may not be necessary for you to disclose your sexual orientation or gender identity to your employer to protect yourself from the abuser at your job. Only you can be the judge of how best to protect your safety. The following is a partial list of steps to consider taking at work. See the **Employment and Housing Rights for Survivors of Abuse** guide, *“Safety Planning in the Workplace: Protecting Yourself and Your Job”* for more information about this issue.

Consider telling someone at your job about the domestic violence: If you haven't already informed someone at your job, try to find someone you trust and ask them to keep the information confidential. This may be especially difficult if you are not “out” at work, but a coworker may be able to help you by keeping a look out for the abuser or providing you with support. You may ask the person you have confided in to call the police if the abuser threatens or harasses you at work.

Security: The abuser may know where you work and may stalk you at your job. Even if the abuser has never come to your job before and you don't think he or she will, it is important to take steps to ensure your safety at work. If the abuser has threatened to come to your job, you may choose to tell building security and provide them with a copy of any restraining order you have, as well as a photo of the abuser. You can ask security to call the police if they see the abuser. Have someone escort you to your car or to public transportation, try to leave your office during daylight hours, or see if you can change your work hours. Consider car pooling or informing a security guard in the parking lot about your need for safety from the abuser.

Workplace Restraining Order: If the abuser has already threatened you at work – in person or over the phone – you may want to approach your employer about getting a temporary restraining/protective order and injunction on your behalf. In some states, including California, New York, and New Jersey, a workplace can obtain a restraining order against the abuser for the safety of the workplace.

EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY

Sexual orientation discrimination in employment occurs when an employer harasses or treats an employee unfairly or differently because of his or her real or perceived sexual orientation. Many states (including California, Connecticut, Hawaii, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin) and many cities (including New York City, San Francisco, and Washington, D.C.) prohibit such discrimination, making it illegal for an employer to fire or otherwise penalize you because of your sexual orientation.

California's Fair Employment and Housing Act, for example, prohibits discrimination or different treatment in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation. Similarly, several cities including San Francisco and New York City have passed ordinances prohibiting employment discrimination based on sexual orientation. San Francisco's ordinance also prohibits employment discrimination based on gender identification.

If you believe you have been discriminated against because of your sexual orientation or gender identity, you may have a cause of action against your employer. It is important to contact the agency in your state or city that enforces employment discrimination laws to find out if sexual orientation or gender identity discrimination in employment is prohibited where you live. You may want to contact organizations such as the Lambda Legal Defense and Education Fund (212-809-8585), the ACLU Lesbian and Gay Rights Project (212-549-2627), or the National Center for Lesbian Rights in San Francisco (415-392-6257) for information about anti-discrimination laws in your area. In certain circumstances, other anti-discrimination laws such as sex discrimination laws may apply. Contact **Legal Momentum** for more information about whether you may have other claims against your employer.

DOMESTIC VIOLENCE RESTRAINING/PROTECTIVE ORDERS

Domestic violence restraining/protective orders prohibit someone from abusing you, and can also order him or her to stay away from your place of employment. In some states, victims of domestic violence in same-gender relationships may be unable to obtain a restraining/protective order against the abuser. As of 2001, relevant state laws include:

- In 40 states and the District of Columbia, a domestic violence victim in a same-gender relationship can get a civil restraining/protective order against an abuser.
- In 7 states, civil domestic violence restraining/protective orders (obtained in civil or family court) are available for victims of abuse by an opposite-gender partner, but are more limited or unavailable for victims of same-gender abuse (Arizona, Delaware, Louisiana, Montana, New York, South Carolina, and Virginia). In some of these states, you may be able to get a protective order in criminal court. Contact your local domestic violence service provider, lesbian/gay/bisexual/transgender rights advocacy organization, or anti-violence project for information about how to get protection in your state.
- In 3 states – Florida, Maryland, and Mississippi – the law is unclear as to whether victims of same-gender domestic violence can get civil restraining/protection orders.

In addition to domestic violence restraining/protective orders, some state laws provide other civil protection orders which apply to specific crimes such as battery, harassment, and stalking. You may also be able to obtain a criminal restraining/protective order if there are criminal charges against the abuser. Ask a local domestic violence program or lesbian anti-violence project about the options in your state. Contact the Lambda Legal Defense and Education Fund (212-809-8585), the New York City Gay and Lesbian Anti-violence Project (212-714-1141; 24 hours), or your local lesbian/gay/bisexual/transgender rights advocacy or anti-violence project for additional information about these laws.

CONSULT THE APPROPRIATE AGENCY OR ATTORNEY ABOUT YOUR RIGHTS

This guide is intended to provide accurate, general information regarding legal rights relating to employment. Yet, because laws and legal procedures are subject to frequent change and differing interpretations, Legal Momentum cannot ensure the information in this guide is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your particular situation. If you need

assistance in finding a lawyer, contact Legal Momentum, the bar association in your state, or your local legal services office, domestic violence coalition, sexual assault coalition, or service provider.

For more information or assistance, please contact 212-925-6635 or ehrsa@legalmomentum.org.

This guide is available for downloading at www.legalmomentum.org.

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