

Model Policy on Employer Responses to Domestic Violence, Sexual Violence, Dating Violence and Stalking

Your employee may, at some time, obtain a protection order to protect himself or herself from violence or one of your employees may be subject to a protection order for perpetrating violence. What does this mean to you as an employer?

I. Purpose

[Employer] institutes this policy as part of its commitment to a healthy, safe organizational climate and to the prevention and reduction of the incidence and effects of domestic violence, sexual violence, dating violence and stalking [hereinafter “violence”]. [Employer] recognizes that domestic violence, sexual violence, dating violence and stalking present unique issues for the workforce.

Incidents of domestic violence, sexual violence, dating violence and stalking are workplace issues even if the incidents occur elsewhere. These incidents cross economic, educational, cultural, age, gender, racial, and religious lines and occur in a wide variety of contexts. Therefore, the organization will take every appropriate measure to prevent and/or address such violence in the context of subordinate/superior relationships; heterosexual and same sex intimate partner relationships, including marital, cohabiting, or dating; heterosexual or same sex non-intimate partner relationships, such as between coworkers or perpetrated by supervisors; parent/child relationships; and the violent acts of strangers that potentially could occur within the organization’s workplace.

The purposes and goals of this policy are to:

1. Support a comprehensive workplace education and training program to prevent violence and promote healthy relationships for employees and their families;
2. Create a healthy, supportive, organizational work environment that helps employees to avoid the use of violence in any context;
3. Provide assistance to employees who are perpetrators of violence and take disciplinary action to hold them accountable for violent behavior;
4. Institutionalize responsive policies and procedures to assist employees who are impacted by violence, including the provision of training on this policy to employees and management; and
5. Provide immediate assistance and support to victims of violence, especially information and referrals to community resources, to ensure safety and support for victims and fellow employees.

II. Definitions

1. Survivor or victim

An individual who is currently subject to, or has in the past been subjected to, domestic or sexual violence, dating violence, stalking or other forms of violence.

2. Perpetrator

An individual who commits or threatens to commit an act of domestic violence, sexual violence, dating violence, stalking and/or unwarranted violence against animals.

3. Domestic Violence

Domestic violence is a pattern of coercive behavior, including acts or threatened acts, that is used by a perpetrator to gain power and control over a current or former spouse, family member, intimate partner, or person with whom the perpetrator shares a child in common. Domestic violence includes, but is not limited to, physical violence, injury, or intimidation, sexual violence or abuse, emotional and/or psychological intimidation, verbal abuse, threats, or harassment, stalking, or economic control.

4. Sexual Violence

Sexual violence is a range of behaviors, including but not limited to, sexual harassment, a completed nonconsensual sex act (i.e., rape), an attempted nonconsensual sex act, abusive sexual contact (i.e., unwanted touching), and non-contact sexual abuse (e.g., threatened sexual violence, exhibitionism, verbal harassment). Some or all of these acts may also be addressed in [Employer]'s Sexual Harassment Policy. Sexual violence is any sexual act or behavior that is perpetrated against someone's will when someone does not or cannot consent. Victims of sexual violence may know the perpetrator(s), such as a coworker or a supervisor, and/or may be involved in a dating or marital relationship with the perpetrator, or the perpetrator may be unknown to the victim. Consent is not given when a perpetrator uses force, harassment, threat of force, threat of adverse personnel action, coercion, or when the victim is asleep, incapacitated, or unconscious.

5. Dating Violence

Dating violence is an act of violence threatened or committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a "romantic or intimate" relationship is determined based upon the victim's perspective and in consideration of the following factors: the

length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

6. Stalking

Stalking refers to harassing, unwanted or threatening conduct that causes the victim to fear for his or her safety or the safety of a family member, or would cause a reasonable person in a similar situation to fear for his or her safety. Stalking conduct includes, but is not limited to: following or spying on a person, appearing at a person's home or work, showing up at a place where the perpetrator has no reason to be, waiting at places in order to make unwanted contact with the victim or to monitor the victim, leaving unwanted items, presents, or flowers for the victim, and posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth. Stalking may occur through use of technology including, but not limited to e-mail, voice-mail, text messaging, and use of GPS and social networking sites.

7. Protection or Restraining Order

Protection orders, sometimes called restraining orders or stay away orders, are a mechanism where a victim can petition the court for protection from a perpetrator, as well as establish custody and visitation guidelines and provide for other forms of economic security, like rent or mortgage payments, which last for the duration of the order. Protection orders may also issue in criminal cases as a condition of probation or condition of release particularly in a domestic violence, sexual violence, dating violence, or stalking related crime.

8. Workplace-Related Incidents

Workplace-related incidents of domestic violence, sexual violence, dating violence, and stalking include acts, attempted acts, or threatened acts by or against employees, the families of employees, and/or their property, that imperil the safety or well-being of any person associated with an employee of [Employer], regardless of whether the act occurred in or outside the organization's physical workplace. An employee is considered to be in the workplace while in, or utilizing the resources of the employer, including but not limited to facilities, work sites, equipment, or vehicles, or while on work related travel.

9. Non-Workplace Incidents

Non-workplace incidents of domestic violence, sexual violence, dating violence, and stalking include acts, attempted acts, or threatened acts by or against any person or animal that occur anywhere outside a company physical workplace.

10. Workplace Safety Plan

A strategy developed in collaboration with a victim to implement workplace safety options, including but not limited to: handling of court protection orders, procedures for alerting security personnel, temporary or permanent adjustments to work schedules and locations, change in parking spots, and requests for escorts to and from workplace facilities.

III. Persons Covered by this Policy

Persons covered by this policy include full and part time employees, interns, contractors, volunteers, or temporary workers of the [Employer] and family members or others deemed associated with an employee of the organization.

IV. Statement of Confidentiality

[Employer] recognizes and respects an employee's right to privacy and the need for confidentiality and autonomy. [Employer] shall maintain the confidentiality of an employee's disclosure regarding violence to the extent allowed by law and unless to do so would result in physical harm to any person and/or jeopardize safety within the workplace. When information must be disclosed to protect the safety of individuals within the workplace, [Employer] shall limit the breadth and content of such disclosure to information reasonably necessary to protect the safety of the disclosing employee and others and to comply with the law. [Employer] shall provide advance notice to the employee who disclosed information if the disclosure must be shared with other parties in order to maintain safety in the workplace or elsewhere. [Employer] shall also provide the employee with the name and title of the person to whom [Employer] intends to share the employee's statements, and shall explain the necessity and purpose regarding said disclosure.

V. Employer Responses to Violence

A. Responses to Victims

i. Nondiscrimination and Non-Retaliation

[Employer] will not discharge or in any manner discriminate or retaliate against an employee because of the employee's status as a victim of domestic violence, sexual violence, dating violence, or stalking, if the victim provides notice to the organization of the status or the organization has actual knowledge of the status.

[Employer] will not retaliate against a victim of domestic violence, sexual assault, dating violence, or stalking for requesting leave or a reasonable accommodation (see Section 5(A)(ii)), regardless of whether the request was granted.

ii. Leave and Other Reasonable Accommodations and Assistance

[Employer] recognizes that victims of domestic violence, sexual assault, stalking and dating violence may need time off to obtain or attempt to obtain a restraining order or any other legal assistance to help ensure his or her health, safety, or welfare or that of his or her child. [Employer] will work in collaboration with the employee to provide reasonable and flexible leave options when an employee or his or her child is a victim of domestic violence, sexual assault, dating violence and/or stalking. [Employer] will work with employee to provide paid leave first before requiring an employee to utilize unpaid leave.

An employee must provide reasonable advance notice to the employer of the need to take time off unless advance notice is not feasible. [Employer] may require the employee to provide documentation or other certification verifying that the employee was a victim of violence. To request Leave, employee should contact [person].

[Employer] will maintain the confidentiality of a person who requests leave under this policy, to the extent allowed by law.

[Employer] will also provide reasonable accommodations for a victim of domestic violence, sexual violence or stalking who requests an accommodation for the safety of the victim or to maintain his or her work performance while at work. Reasonable accommodations may include the implementation of safety measures, include a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting the violence that occurs in the workplace, an implemented safety procedure, another adjustment to a job structure, workplace facility, or work requirement in response to the violence, or referral to a victim assistance organization. [Employer] will assist an employee to enforce his or her protection order, if applicable.

iii. Access to Unemployment Insurance Benefits

[Employer] recognizes that in certain situations it is no longer feasible for an employee who is a victim of violence to continue working for [Employer]. In such circumstance, [Employer] shall provide to employee information regarding access to unemployment insurance benefits. [Employer] has

designated [person] to provide accurate information regarding unemployment benefits for victims of violence.

iv. Work Performance

[Employer] recognizes that employees who are victims of violence may experience temporary difficulty fulfilling job responsibilities. If [Employer] becomes aware that an employee's work performance or conduct has been impacted by domestic violence, sexual assault, stalking and dating violence, [Employer] will offer support to the employee and work in collaboration with the employee to address the issues, in accordance with established policies within the workplace. [Employer] may develop a work plan with employee, provide leave and other accommodations as specified in Section 5(A)(ii), provide referrals to support or advocacy agencies, advise employee of his or her rights regarding unemployment insurance as specified in Section 5(A)(iii), and maintain a separate and confidential record of employee's status as a victim of domestic violence, sexual assault, stalking and dating violence to ensure to victim that his or her rights and privileges of employment are not impacted or compromised as a result of the violence.

v. Protection and Restraining Orders

[Employer] recognizes that a victim of violence may seek an order of protection, or may receive a restraining order, as part of his or her efforts to become safe and as part of his or her workplace safety plan. [Employer] recognizes that the workplace may or may not be included on an order as a location from which a perpetrator must remain away. If an employee chooses to disclose the existence of a protection or restraining order to [Employer], [Employer] may, wherever possible, assist the employee to enforce his or her order, shall archive said order in a confidential and separate file from employee's personnel file, and, if applicable, may assist employee to gather documentation from the workplace, such as emails or voice messages, that could support the employee's efforts in the justice system or otherwise to obtain or maintain safety from a perpetrator.

B. Reporting by Employees with Information About Violence

Employees who have information about or witness an act of violence perpetrated by an employee, or who have information about or witness violence against an employee, are required to report all information to the designated person in [Employer] organization.

[Employer] will not retaliate against, terminate, or discipline any employee for reporting information about alleged incidents of violence, as defined in this policy that may have been committed by any other employee, including a member of

management. Prohibited acts of retaliation include, but are not limited to, demotion or withholding of earned pay, as well as acts of personal retaliation, such as those related to an employee's immigration status or sexual orientation, for example.

Any employee who believes he or she has been subjected to adverse action as a result of making a report pursuant to this policy should contact [person]. See Section 7 regarding reporting of violations of this policy.

C. Responses to Workers Who Commit Violence

If [Employer] receives information that alleges or suggests that an employee has committed an incident of workplace-related or non-workplace violence, as defined in this Policy, or if any manager receives information that any employee has engaged in any incident of workplace-related or non-workplace violence, then the matter shall be referred to the designated executive for the purpose of investigating the information or allegation. [Employer] shall conduct an immediate investigation of the information or allegation, which investigation shall be completed within 45 days of receipt of the information or allegation concerning the alleged incident of violence.

Every employee shall have a duty to cooperate with the investigation, and failure to do so will result in disciplinary action being taken against the uncooperative employee up to and including termination. Additionally, every employee has the duty to be truthful and must disclose all information known to the employee when requested to do so by an appropriate person in the organization or the person designated by the organization to investigate an alleged incident of violence. Any employee who fails to be completely truthful or who withholds information shall be subject to disciplinary action up to and including termination.

At the conclusion of the investigation conducted by [Employer], the investigator shall report her or his findings to the designated official. If the investigator concludes, by a preponderance of the evidence, that the employee has engaged in a workplace-related incident or non-workplace incident, as defined in this Policy, then that employee shall be subject to disciplinary action up to and including termination. The employee might also be required to participate in counseling or other remedial measures. Employees are prohibited from utilizing any workplace resources, such as work time, phones, email, computers, fax machines or other means to threaten, harass, intimidate, embarrass or otherwise harm another person.

An employee who is subject to a protection or restraining order, or a named defendant in a criminal action as a result of a threat or act of domestic violence, sexual violence, dating violence, or stalking must notify the [Employer] Human Resources Department immediately regarding the existence of such criminal or civil action. Failure to disclose the existence of such criminal or civil actions in these circumstances will result in disciplinary action, up to and including termination from employment.

VI. Reporting by Employees Who are Victims

Employees who are victims of domestic violence, sexual assault, stalking and dating violence, and employees who are concerned about coworkers who might be victims are encouraged to provide a report to [Employer]. [Employer] has designated [person] as the person to whom such reports should be made. [Employer's] designated employee shall provide community referrals and resources to employees in order to assist employees with their concerns or experiences regarding violence.

VII. Reporting Violation of Policy

A person who wishes to report a violation of this policy should also contact [person]. [Employer] will not subject employees who report violence or report a violation of this policy to work related or personal retaliation, as described in Section 5(B). Any allegations of violations of this policy will be immediately investigated in accordance with the timeline and procedure outlined in Section 5(C).

Other Policies

Insert or reference additional, related policies here, e.g.:

List education/training resources here, such as local domestic and sexual violence service provide.

Other Matters to Consider

Please also consider these issues which may affect your policy; it may need further revision.

- Does your organization conduct business or have employees in more than one state?

- Different states and localities have different laws and workplace protections for victims of violence, and you may need to adapt your policy accordingly.
- Is your organization covered by the Family Medical Leave Act (FMLA)?
 - If so, how will your existing policy about requesting and taking FMLA leave affect violence-related leave in this policy?
- Many states have laws that excuse an employee's absence from work if the employee (or their family member) is a victim of a crime and needs to miss work to meet with a prosecutor or police, to testify, or to respond to a subpoena, etc. These laws vary considerably from state to state.
 - How will these laws affect any provisions for violence-related leave in your policy?
- Does your organization have a sexual harassment policy?
 - If so, how will your existing sexual harassment policy and procedure for investigating complaints take into account sexual harassment, sexual violence or sexual assault that may occur and implicate this policy?
- Is your workplace unionized?
 - If so, have you spoken to the union officers or steward about this policy? How will this policy work with provisions of the collective bargaining agreement?
- What if an employee who is a victim has a disability?
 - How will you incorporate the requirements of federal and state disability law?
- Who are the relevant people in your organization who should be involved with finalizing and implementing this policy?

Human Resources
Legal
Employee Assistance Program
Security
Union
Law enforcement

- Who are the local sexual assault, stalking and domestic violence service providers and shelters in your area? (you can contact your state or tribe's domestic violence and sexual violence coalitions, and the Stalking Resource Center, to get this information)