

January 2,  
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## Domestic Violence in the Workplace and Fair Employment Laws

By Bethany C. McCurdy

We all have heard the tragic stories about domestic violence, an issue that continues to make headlines around the country. While the term includes the description "domestic," its impact is hardly limited to that, extending to all aspects of life - including the workplace. While employers should rightfully be concerned about domestic violence and its personal impact on their employees, the issue also has a legal component for employers, who have to deal with the interaction of these issues with employment discrimination laws.

While no employment discrimination law specifically addresses employees who may be the victim of domestic violence or stalking, this past November the United States Equal Employment Opportunities Commission (EEOC) provided some [guidance](#) for employers on these issues. Specifically, the guidance considers how domestic violence issues may implicate fair employment laws, such as Title VII, which prohibits sex-based discrimination, and the Americans with Disabilities Act (ADA), which could apply to certain domestic violence/employment situations.

The EEOC's guidance asked employers to consider the following possible scenarios:

- An employer terminates the employment of an employee after learning that she had been subjected to domestic violence due to a fear of potential "drama battered women bring to the workplace."
- A male employee is attacked by a stranger in a bar fight and asks his boss for time off to testify in court. The boss allows it. Similarly, a female employee is assaulted by her husband and asks for time off to testify against him at trial. The boss denies her request because it is "just a marital problem" and that "women think everything is

domestic violence." He also feels that the stranger attack on the male employee was the only "real crime."

- If during an interview a male applicant mentions he has obtained a restraining order against his domestic partner, the hiring manager refuses to hire him because he believes that men should be able to protect themselves and that only women can be true victims of domestic violence.

The EEOC cautions that Title VII prohibits disparate treatment based on sex, which can include treatment based on sex-based stereotypes.

The EEOC noted that these scenarios are not limited to Title VII, however. Domestic violence also raises potential issues under the ADA:

- A new employee is attacked by her ex-boyfriend and as a result has anxiety and depression. Although she doesn't qualify for FMLA and she doesn't have any vacation or sick leave, she asks her boss if she could have time off for treatment. He tells her the company applies the attendance policy the same to everyone and denies her the time off. This could violate the ADA, as the time off could be considered a reasonable accommodation.
- The same employee asks for a transfer to a different shift so she can seek treatment. The boss tells her she must work for the company for at least six months before she can apply for a transfer and denies her request. This again could violate the ADA as modification of the transfer policy could be a reasonable accommodation.

The guidance reminds employers that the ADA may require employers to provide reasonable accommodation for an actual disability or a "record of" a disability. What is reasonable depends on the facts of the situation, and common examples include reassignment to an available vacant position, time off for treatment, or a modified work schedule.

Yet another situation not contemplated by the EEOC's guidance is a scenario where an employee who interfaces with clients comes to work with a black eye and bruises. Can this boss tell the employee that he or she is not to deal with customers until the injuries have healed? Consider further if a written policy is in place that requires that all employees who deal with customers maintain a certain professional appearance.

While there are no simple solutions to dealing with domestic violence issues, employers should always be aware when actions they take can be found to be discriminatory. This may be especially important with an issue like domestic violence, where issues of gender and disability may play an important part. Employers should also note that various states have laws that provide for protected leave for victims of domestic violence. Employers are encouraged to review their practices and policies and consider whether the ADA, Title VII, or any other fair employment law could be at issue if the company were faced with any of the scenarios similar to the ones described above.

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