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

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Rebecca Smith  
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Robin R. Runge

### INTRODUCTION: DOMESTIC VIOLENCE AND JOB LOSS

Domestic violence and sexual assault have employment consequences. Victims of domestic violence are often forced to resign employment either to escape future assault or because they are unable to perform as a consequence of the violence. Moreover, domestic violence and sexual assault survivors are often fired from their jobs because of harassment at the workplace by their batterers or because of their status as victims of violence. In recent years, welfare advocates, labor activists, and domestic violence victim advocates have increasingly turned to unemployment insurance (UI) benefits as a potential source of income support for victims of domestic violence and sexual assault during periods of unemployment caused by abuse. In some states, domestic violence advocates, women's rights advocates, unions, other workers' rights advocates, and welfare advocates have formed coalitions to lobby for passage of legislation making domestic violence and sexual assault victims who become separated from work because of the abuse eligible for UI benefits.<sup>1</sup> In eighteen states in the last six years, these efforts have led to passage of UI legislation addressing the UI needs of victims of domestic violence, sexual assault, or stalking.<sup>2</sup>

This paper will provide a history of UI legislation and describe how battered women and their advocates have used this legislation as a tool to maintain economic security and escape violent relationships. This paper will also analyze 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 some of the domestic violence unemployment insurance bills that have been proposed and passed in the last six years. Finally, in the fourth section, we build upon this history to propose model legislation and suggestions for advocates to increase the chances that states will pass and provide stronger UI coverage to more domestic violence victims.

## I. THE LINK BETWEEN DOMESTIC VIOLENCE AND UNEMPLOYMENT

Domestic violence is an epidemic in America. Estimates are that 2.1 million women are physically or sexually assaulted by an intimate partner each year.<sup>3</sup> Often women who are victims of this violence are employed but, burdened with the effects of the abuse, face a difficult struggle to maintain their employment.

Domestic violence is not confined to the home. It often follows the victim to work. A perpetrator may stalk a victim at her workplace because it may be the only place he knows that he can find her.<sup>4</sup> Batterers have been known to make twenty phone calls a day to a victim, wait outside the victim's workplace, or enter the workplace to verbally or physically assault the victim. As a result, many women who are victims of domestic violence or sexual assault are fired from their jobs or forced to resign either because of the effects of the abuse, the presence of the abuser at or near the workplace, or both. Logically, this loss of income may force victims to return to their perpetrators because they have no place to live and no way to support themselves and their children. Job loss and the threat of job loss prevent many battered women from escaping violent relationships by hindering their ability to sustain themselves and their children.<sup>5</sup>

Studies have shown that 96% of employed domestic violence victims experience a diminished ability to perform work due to the domestic violence.<sup>6</sup> A recent study of domestic violence victims in Kentucky found that 81% of victims experienced difficulties concentrating at work.<sup>7</sup> 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.<sup>8</sup> In the Kentucky sample, women reported being stalked at work, missing workdays, being prevented from going to work, and having batterers call their supervisors.<sup>9</sup>

As noted above, these experiences may force a victim to leave employment to seek safety or to be fired from her job. In one study, one-quarter to one-half of employed domestic violence victims lost their jobs due in part to the abuse.<sup>10</sup> In the Kentucky sample, 97% of women were either fired or had to quit their jobs because of domestic violence.<sup>11</sup> Another recent study shows that direct work interference by the abuser significantly increases the probability that low-income women workers will have to seek welfare.<sup>12</sup>

These examples and statistics point to one unnerving reality: job loss and the threat of job loss without an alternative income source can push a victim back into a violent relationship, into poverty, or into homelessness by forcing her to quit her job or by creating circumstances under which she is fired.

## II. UNEMPLOYMENT INSURANCE REFORM AND DOMESTIC VIOLENCE

### A. *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.<sup>13</sup> The goals of UI are to provide income to jobless workers during periods of unemployment and to provide a measure of economic stability to the economy.<sup>14</sup>

State UI laws are enacted within a framework of two principal federal statutes, the Federal Unemployment Tax Act (FUTA) and the Social Security Act.<sup>15</sup> Unemployment insurance is financed through employers' payroll tax deductions. Federal law leaves most decisions under the control of participating states, including monetary earnings requirements, eligibility conditions for UI benefits, disqualification provisions and penalties, benefit levels and duration, and state tax levels.<sup>16</sup> As a result, state law controls most UI legal questions.

State UI eligibility rules normally require that UI claimants be able and available for work, and that they seek work. A claimant is typically disqualified from UI benefits for the following reasons: 1) leaving work voluntarily and without good cause; 2) having been discharged for reasons amounting to misconduct; or 3) refusing work without good cause.<sup>17</sup>

UI eligibility and disqualification provisions affect domestic violence survivors in specific ways. Three fundamental features of UI play a critical role in the utilization of UI as an income replacement safety net for survivors of domestic violence. First, UI is intended to address involuntary unemployment.<sup>18</sup> Most UI rules are designed to separate voluntarily unemployed workers from those involuntarily unemployed.<sup>19</sup> 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."<sup>20</sup> While UI rules sometimes stray from this focus, objections to broadening UI eligibility are often based upon this ground.

Second, UI eligibility is focused on work and labor market attachment.<sup>21</sup> As a practical matter, however, 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 tax deductions made by employers. This means employers generally view proposed expansions of UI benefits to domestic violence survivors as an increased UI payroll tax cost.<sup>22</sup> Except in rare cases, this view translates to

political opposition to the expansions of UI benefits that the authors advocate.<sup>23</sup>

In general, these UI rules were designed on the “male breadwinner” model, not with women workers or single heads of households in mind.<sup>24</sup> Predictably, the male breadwinner model of UI leads to numerous conflicts between the realities lived by working women and traditional UI rules.<sup>25</sup> 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.

As described above, domestic violence can provide a valid reason, in many circumstances, for leaving a job. But, if domestic violence has not directly affected 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 result arises because numerous valid reasons for leaving work are excluded as “personal” in the majority of states that restrict the categories of good cause that would excuse a quit and permit eligibility for benefits.

In states where broader “personal” reasons for leaving a job are considered good cause, domestic violence, if established, should qualify as good cause for leaving a job. 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 (as well as Puerto Rico and the U.S. Virgin Islands).<sup>26</sup> However, these states represent a minority, and even though domestic violence and sexual assault victims may be eligible for benefits in these states, they are most likely unaware of their eligibility and have not applied for benefits. When victims have applied for UI benefits, they have rarely informed the enforcing agency of the abuse because they are unaware of its significance in this context. Moreover, state enforcement agency representatives may not affirmatively inquire about the abuse because eligibility is not specifically mentioned in the state’s UI code. Thus, domestic violence victims and sexual

assault survivors who may have otherwise been eligible in these states have nonetheless failed to receive UI benefits.

### ***B. Early Attempts to Access UI benefits for Victims of Domestic Violence***

Domestic violence victims' advocates and workers' rights advocates initially attempted to secure UI benefits for unemployed domestic violence victims through administrative hearings under existing state laws. However, advocates ran into problems because, as noted above, workers are generally not able to qualify for UI when they leave work "voluntarily," unless they have "good cause," and the good cause is connected to work. This means a worker who quits a job because his or her wage rate has been lowered 30% would likely qualify for UI benefits, but a worker who must quit because she is unable to arrange for continued childcare would not qualify.

Nonetheless, in the 1980s some advocates, including one of the authors, began creatively using the good cause provisions, as well as other exceptions in their state's unemployment laws, to secure benefits for domestic violence survivors. In states without a broad definition of good cause, domestic violence victims who left their jobs to secure their safety from domestic violence were usually denied benefits.<sup>27</sup> The few reported cases involving a domestic violence victim seeking unemployment compensation benefits demonstrated the inadequacy of traditional unemployment law to respond to the actual experiences of working victims of domestic violence, sexual assault, and stalking who lose their jobs through no fault of their own. These cases illustrated the need for statutory amendments.

In a few states, where the cause of 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.<sup>28</sup>

One rare success was an administrative ruling in Connecticut where the UI 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 the employer is unable or unwilling to provide appropriate security.<sup>29</sup> In *Coleman*, the claimant was a battered woman who was forced to leave her job when she fled her husband. The claimant's husband had previously harassed her at work and her employer admitted that it could not provide her with adequate security and did not oppose awarding benefits.<sup>30</sup>

In addition, on rare occasions, courts have interpreted provisions allowing benefits to workers who quit because of a personal emergency to include a victim of domestic violence who demonstrated that she has been the victim of ongoing abuse.<sup>31</sup> For example, in an Arkansas case, an appellate court reversed the state employment security board decision and concluded that the claimant had quit because of a personal emergency and was entitled to benefits when she had been forced from her home the night before she left her job.<sup>32</sup>

Another example of a positive statutory interpretation was in Washington State. In an administrative hearing, benefits were granted where the court found that the long-term affect of domestic violence rendered the victim disabled as defined in the unemployment compensation code.<sup>33</sup> Similarly, 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.<sup>34</sup> Finally, in two cases from Alaska, domestic violence victims were awarded benefits because abuse qualified as good cause.<sup>35</sup> In one case, the claimant was subjected to continuing harassment and the threat of physical harm from her ex-husband and her fear was well founded.<sup>36</sup> In the second case, the claimant pursued reasonable alternatives to "alleviate the situation."<sup>37</sup>

Despite a few successes, by the late 1990s, advocates acknowledged that obtaining UI coverage through existing laws was a difficult, and often unsuccessful task. Unless domestic violence victims were from a state with a broad good cause exemption that allowed personal reasons to justify leaving a job and were able to find a zealous advocate who understood the UI system, domestic violence victims usually did not qualify for benefits. The need for legislative change became critical if advocates were going to be able to effectively assist domestic violence victims to escape violent relationships.



### III. THE LEGISLATIVE APPROACH: MAINE, CALIFORNIA, NORTH CAROLINA AND CONNECTICUT LEAD THE WAY

In the last six years, eighteen states have passed legislation providing that domestic violence victims who lose their job because of violence are eligible for unemployment insurance. These states 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.<sup>38</sup> In some cases, the legislation was simply clarification of existing law. In others, new laws recast the treatment of domestic violence and sexual assault survivors under UI programs.<sup>39</sup>

Passage of these laws overcame a stereotypical presumption that battered women do not work, and raised awareness that they should be eligible for UI benefits when they are fired or forced to quit a job because of abuse. Despite this legislative progress, advocates found the new laws disappointing. Although statutory reform increased eligibility to an extent, amendments or new laws often were so narrowly written that it remained extremely difficult for battered women to qualify for benefits. 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 satisfy.<sup>40</sup> In addition, despite the effort of legislative advocates, these initial laws did not include basic outreach and education tools necessary to inform victims and employees of the administering agencies about battered women's UI eligibility. Without such training and education provisions, many legislative changes are substantially underutilized.

#### A. MAINE: *The First Effort*

In 1996, Maine was the first state to pass legislation amending its good cause requirement to include domestic violence.<sup>41</sup> Maine's unemployment law states that if an employee must leave work to protect herself from domestic abuse and she made all reasonable efforts to preserve the employ-

ment, she is eligible for benefits.<sup>42</sup> Maine's law also addressed discharges of domestic violence victims.<sup>43</sup>

The law in Maine was a breakthrough. It was a phenomenal achievement to convince legislators that domestic violence victims worked, that domestic violence negatively affected their ability to work, and that domestic violence victims who lost their jobs in such circumstances should be eligible for benefits.

One of the most successful arguments made in support of the bill's passage was comparing the amendment to an existing good cause exception. In Maine, as is the case in many other states, there is a good cause exception under which claimants can qualify for benefits when a worker quits because a spouse has taken a new job in another part of the state or country that requires the family to move.<sup>44</sup> Citing the fact that such claimants were deemed to have good cause for quitting their jobs and were eligible for benefits, advocates argued that it was outrageous that women fleeing with their children from batterers were disqualified from receiving benefits.<sup>45</sup>

For the first time, domestic violence victims were identified as potential UI claimants. However, access was difficult because the statute placed a heavy burden of proof on claimants. The Maine law requires victims to prove that they made all reasonable efforts to keep their jobs.<sup>46</sup> After the experience in Maine, many advocates acknowledged the need to collaborate with related advocacy groups to make UI benefits more accessible to battered women.

### ***B. CALIFORNIA: Coalition-Building and Compromise***

California passed its amendment to the state unemployment insurance code that covers domestic violence victims in 1998.<sup>47</sup> State Senator Hilda Solis (D-LA) drafted and introduced SB 165 on January 16, 1997, with sponsorship from the California Alliance Against Domestic Violence (CAADV), one of two statewide domestic violence coalitions in California.<sup>48</sup> During 1997 and 1998, attorneys and advocates affiliated with CAADV built a broad coalition of supporters that included the California Labor Federation, the American Federation of State, County, and Municipal Employees, the

California Teachers Association, and the American Association of University Women. Representatives of CAADV and the California Labor Federation testified in support of the legislation. In addition, an attorney who represented domestic violence victims seeking unemployment insurance benefits testified in committee hearings about the experiences of her clients who lost their jobs because of domestic violence and then were denied benefits.<sup>49</sup> The state enforcement agency maintained a formally neutral position during the debate, but many interpreted its testimony as supportive of the measure.<sup>50</sup> Under the proposed amendment, individual employer accounts would not be charged if a former employee qualified for benefits. This was critical to limit business opposition to the legislation.

Even with this broad coalition and no enforcement agency opposition, compromises were made with representatives of business interests to ensure passage of the legislation. For example, mandatory training for the staff of the Employment Development Department, the enforcement agency, and a record-keeping requirement were eliminated because of costs.

Similar to Maine's statute, the final California amendment 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."<sup>51</sup>

### ***C. NORTH CAROLINA: Academic Research Without Full Implementation***

North Carolina passed its legislation addressing domestic violence victim eligibility for UI in 1999.<sup>52</sup> 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 addressing battered women's need to access UI benefits.<sup>53</sup> This report was the first in the country to thoroughly analyze the issues facing domestic violence victims who access UI benefits.

The authors of the report drafted an employment survey and distributed it to residents of domestic violence shelters.<sup>54</sup> In addition to the information

collected from the survey, students conducted research on 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. A combination of student research and survey data formed the basis of an array 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.<sup>55</sup> Second, the report recommended that the definitions of "misconduct" and "substantial fault" in the Employment Security Law exclude "conduct resulting from domestic violence."<sup>56</sup> This recommendation would provide further protections for battered women by prohibiting employers from claiming that the separation from work was because of disqualifying conduct. Third, the report recommended the adoption of a flexible base period that would allow unemployment insurance claimants to qualify for benefits based on their most recent earnings.<sup>57</sup> Fourth, the report recommended a requirement that domestic violence victims make reasonable efforts to retain employment.<sup>58</sup> Finally, the report recommended that the Economic Security Commission educate and train its staff so that it could "properly handle unemployment insurance claims involving domestic violence" and that such trainings be publicized in the community.<sup>59</sup>

Unfortunately, the legislation passed in 1999 did not include all of the recommendations made by the Terry Sanford Center report. The legislation provided only that domestic violence qualified as a good cause exception, both for quits and for discharges, and that employer accounts would not be charged for such benefits.<sup>60</sup> Cost estimates to provide benefits to domestic violence victims in these circumstances in North Carolina were approximately \$300,000 annually.<sup>61</sup> Reported costs to date have been minimal.<sup>62</sup>

#### ***D. CONNECTICUT: Strong Advocacy Advances Efforts***

Connecticut also passed legislation regarding this issue in 1999. Connecticut's amendment provides 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.<sup>63</sup> The Connecticut legislation was introduced and supported by a broad coalition including welfare, legal aid, and domestic violence victim advocates. It was part of a larger UI reform package of which only the domestic violence and a dependent care benefit increase passed.

The most effective arguments that contributed to passage of the Connecticut legislation were made in the broader context of welfare to work discussions.<sup>64</sup> 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. Advocates argued that taxpayers would not experience an increase in cost because UI payments simply replace welfare costs.<sup>65</sup>

The Connecticut business community, which opposed the legislation, argued that there was another remedy available to domestic violence victims—the crime victim compensation program.<sup>66</sup> However, coalition partners, including Connecticut Coalition Against Domestic Violence, the Permanent Commission on the Status of Women, and Connecticut Legal Services, effectively testified that domestic violence victims who lose their jobs in these circumstances do not automatically qualify for crime victims compensation. They argued that coverage for domestic violence victims is an issue about temporary wage replacement for workers who lose their jobs through no fault of their own.<sup>67</sup>

### ***E. Federal Legislative Response***

Learning from the experiences of state advocates over the previous five 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.<sup>68</sup> VESSA includes provisions that amend the federal unemployment compensation law to permit states to pass laws

that enable victims of domestic violence, sexual assault, and stalking to be eligible for benefits if they are separated from their employment as a result of domestic violence, dating violence, sexual assault, or stalking.<sup>69</sup> The bill also proposes ways that domestic violence victims can meet state requirements and prohibits states from considering any work “suitable work” unless such work reasonably accommodates the individual’s need to address the violence.<sup>70</sup> VESSA also requires training for unemployment compensation claim reviewers and hearings personnel on the dynamics of domestic violence, dating violence, sexual assault, and stalking, as well as training on how to keep information about domestic violence or sexual assault confidential.<sup>71</sup>

#### IV. WHAT HAVE WE LEARNED?

In only seven state legislative sessions, from 1996 through 2002, eighteen states passed new laws explicitly allowing survivors of domestic violence to leave their jobs and receive unemployment compensation. The most effective new laws and proposals include victims of domestic violence, sexual assault, and stalking. The laws are more specific and inclusive in their treatment of proof issues and requirements for work search to make benefits more realistically accessible to domestic violence victims. They also require training for UI administrators regarding the relationship between domestic violence and unemployment. And, finally, they address confidentiality issues. The statutes passed in Massachusetts and Washington, in 2001 and 2002 respectively, are the two strongest models in this respect.<sup>72</sup>

##### ***A. The Importance of Coalition Building***

Good domestic violence unemployment insurance legislation is virtually impossible to pass without a broad coalition that includes both domestic violence survivor advocates and labor advocates. Domestic violence survivor advocates generally know the reasons that people stay in or flee abusive relationships, as well as the kinds of fears and pressures they face in trying to leave. Labor advocates, on the other hand, know about unemployment insurance, but have little knowledge about domestic violence. The two groups

working together create a powerful coalition. They can tailor proposals to address survivors' needs, make accurate cost assessments, provide powerful testimony, and exploit knowledge of state politics around the issues.

In Massachusetts, where the broadest bill in the country was passed in 2001, employers also formed an important part of the coalition.<sup>73</sup> Employers joined the Massachusetts reform coalition as a response in part to the argument that it is good business practice to allow survivors of domestic violence access to unemployment compensation.<sup>74</sup>

Building a broad, vocal, and well-led coalition is critical to ensuring passage of legislation providing for unemployment insurance benefits for domestic violence victims. This is because the business lobby who opposes this legislation is both big in numbers and strength for financial reasons. However, even the business lobby cannot overcome a large coalition representing labor, welfare, women, domestic violence, legal services, and criminal justice communities. Moreover, the broader the coalition, the larger the amount of skills and knowledge that the coalition will possess to overcome challenges. This is not to say that a large coalition will ensure that this legislation will pass—however in California, Connecticut, and Washington state, it was a necessary ingredient.

### ***B. Cost Issues***

As those experienced in advocating for legislation on a local, state or national level will tell you, a fiscal note can doom legislation. It is critical to reach out to those on the committees and those in the enforcing agency to ensure that they produce reasonable and realistic cost assessments that reflect the reality that UI/DV legislation is not costly, will not increase employers' costs, and will not require a fiscal note.

One reason 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 unemployment compensation benefits without significant cost to the state. States that have passed domestic violence unemployment legislation have found that the amount of money they spend

on claims is far less than they originally predicted.<sup>75</sup> Most states do not keep data on the number of claims decided yearly under their domestic violence unemployment statute, but the relevant agencies describe this number as “insignificant,” and the cost as “minimal.”<sup>76</sup> The authors’ believe, however, that it is a mistake for advocates to argue too strongly that the cost of domestic violence unemployment insurance is negligible. Instead, advocates should focus on broadening eligibility and thus covering more domestic violence victims.

In fall and winter of 2000-2001, advocates in Washington State telephoned state unemployment agencies throughout the country to get data on numbers of domestic violence unemployment claims in each state.<sup>77</sup> The following is a sample of the estimated information provided to the Washington advocates: Minnesota had 21 claims over four years, Nebraska had five in 2000, and Oregon had about 20 claims per year.<sup>78</sup> Administrative personnel in Colorado told legal services interviewers in Washington that they had denied 58 claims and granted 63 claims between the passage of that state’s law in 1999, and the time of their interview in January 2001.<sup>79</sup>

In June 2001, the National Association of Unemployment Insurance Appeals Boards (NAUIAB) conducted a survey of states with regard to domestic violence and unemployment insurance.<sup>80</sup> This survey showed that only one state, Connecticut, formally tracked its domestic violence unemployment cases.<sup>81</sup> Statistics on the usage of the domestic violence unemployment legislation in Connecticut have been kept since the October 1999 effective date of the legislation.<sup>82</sup> 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 at an approximate total cost of \$169,850 over that time period.<sup>83</sup> By contrast, Massachusetts had estimated that one million to one and a half million dollars would be paid annually to survivors of domestic violence under its amendments.<sup>84</sup> This is still an insignificant cost in a state system that paid out \$835 million in UI benefits in 2000.<sup>85</sup>



The minimal cost of unemployment benefits to domestic violence victims raises two contradictory issues for advocates. First, it makes the program more attractive to legislators who are mindful of tight funds. At the same time, the low number of claims raises significant concerns about the scope of coverage of existing domestic violence unemployment laws, and additional steps that must be taken to make such laws relevant to this group of workers. Advocates should consider some of the measures mentioned in this article to help ensure domestic violence survivors have adequate access to benefits. A meaningful measure of the success of a state law should include the numbers of victims that receive benefits.

### *C. Scope of Coverage*

Advocates and legislators have struggled with the scope of protection offered under the domestic violence UI laws of their respective states. Many of the earlier laws simply said that a person who is a victim of domestic violence has good cause to leave her job without further defining domestic violence. Since then, states have further debated the scope of domestic violence. For example, should sexual assault and stalking victims be included in addition to domestic violence victims? Must a victim 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 someone that she did not know at all? Is only the victim protected, or is protection also offered to children or co-workers?

Most early statutes on domestic violence and unemployment insurance did not define domestic violence. Instead, the definition of domestic violence was simply left to the agencies administering the unemployment system. A problem arises with this approach because the determination of what constitutes domestic violence falls within the discretion of UI staff or adjudicative personnel who have little experience with domestic violence in the context of UI eligibility. More recent legislation, and the better approach, includes a definition of domestic violence in the statute or refers to state criminal statutes to define the term.<sup>86</sup>

Additionally, state statutes' coverage varies widely. Coverage in some states may be narrow and protect only the survivor of domestic violence. Other states include coverage for victims of sexual assault, children of violent homes, or other family members. Specifically, statutes in California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Montana, and North Carolina explicitly cover a survivor who attempts to protect her children or her immediate family against domestic abuse.<sup>87</sup> In 2002, Washington became the first state to explicitly protect victims of stalking, as well as victims of domestic violence.<sup>88</sup> 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.<sup>89</sup>

#### ***D. Statutory Content***

##### **1. Revised or non-traditional good cause.**

The early UI statutes covering victims of domestic violence simply provided that a person would not be disqualified from benefits if he or she quit work because of domestic violence. Many of the more recent proposals have included specific language defining fears and actions that will constitute good cause for leaving work.<sup>90</sup> The statutory definitions adopted in Rhode Island, Connecticut, and Delaware include several elements that offer broad coverage for victims seeking UI benefits.<sup>91</sup> Effective definitions of good cause to leave employment due to circumstances resulting from domestic violence include: (i) reasonably feared future domestic abuse at or en route to or from the individual's place of employment; (ii) wished to relocate to another geographic area to avoid future abuse against the individual or the individual's family; (iii) reasonably believed that leaving work was necessary for the future safety of the individual, the individual's family, or co-workers; or (iv) was 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.<sup>92</sup>

## 2. Discharge for misconduct

Typically, a worker discharged from employment qualified for UI unless he or she was discharged for misconduct. States define misconduct in a variety of ways. In some states misconduct can be found based on minor instances of absenteeism or failure to follow insignificant company rules.<sup>93</sup>

The standard in *Boynton Cab Co. v. Neubeck* is the most generous to workers.<sup>94</sup> In *Boynton Cab*, the Wisconsin Supreme Court held that misconduct was limited to conduct:

[E]vincing such willful or wanton disregard of employer's interests as is found in deliberate violations or disregard of standards of behavior which the 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.<sup>95</sup>

States vary in whether they follow the *Boynton Cab* rule or more stringent ones.<sup>96</sup>

Given the variation in state law and state administrative and judicial decisions, advocates have struggled with the problems faced by women who are discharged where their discharge is based on absenteeism related to domestic violence. Where advocates have not been certain of the handling of such issues under state law, where politically possible, some recent state laws explicitly cover both "voluntary" quits and discharges for "misconduct" on account of domestic violence.<sup>97</sup> The very first law in Maine provides that "misconduct" may not be founded solely on actions taken by an employee that were reasonably necessary to protect him or herself against domestic violence.<sup>98</sup>

## 3. Proof Issues

Many domestic violence survivors do not seek protection from the police or the legal system.<sup>99</sup> A survivor's failure to file a formal complaint may lead to proof issues under domestic violence and sexual assault unemployment insurance amendments. Survivors may choose not to file formal

complaints for numerous reasons. For example, a survivor may have the perception that police are hesitant to respond to domestic complaints. Additionally, filing a formal complaint may increase his or her risk of violence at the hands of a retaliatory batterer. Survivors also understand that legal documents, although helpful to the courts, do not always effectively stop abuse.

(i) No proof requirement

Proposed laws should exhibit an understanding of why survivors may not have proof of abuse. In states where domestic violence coalitions have been more successful in educating legislators, no particular level of proof that the claimant is a domestic violence survivor is required.<sup>100</sup> This is consistent with the general approach to good cause in most state unemployment compensation laws, which may allow a voluntary separation to be justified, for example, by a reduction in hours or earnings, by sexual harassment, or by compelling personal circumstances. In these states, the level of proof required to convince the state agency of the claim's accuracy is not specified. Ordinarily, these and other separation issues under unemployment insurance laws are decided by the "preponderance of the evidence," with no statutorily required burden of proof.

In other states, however, domestic violence is an exception to the usual proof requirement.<sup>101</sup> In those states, legislators seem unusually concerned that victims and survivors may manufacture claims in order to get benefits. Some of those states require proof of domestic violence through police records, court records, statements of shelter workers, attorneys, members of the clergy, or medical or other professionals from whom assistance has been sought.<sup>102</sup> The most restrictive laws in this respect are in Colorado, Montana, and Wisconsin. Colorado requires both documentation of abuse, and that the survivor be in counseling at the time he or she receives benefits.<sup>103</sup> Montana legislation, passed in 2001, requires evidence of domestic violence and renders a survivor who returns to his or her abuser ineligible for benefits.<sup>104</sup> Wisconsin law requires that the survivor be the beneficiary of a restraining order, and it also requires a finding that the order

will likely be violated unless he or she leaves or quits the job.<sup>105</sup> Also, North Carolina requires that the survivor be an “aggrieved party” within the meaning of the state’s criminal domestic abuse law.<sup>106</sup>

(ii) Reasonable steps to preserve job

Some states also include provisions in their domestic violence unemployment insurance laws that are traditionally found in voluntary quit provisions. Thus, state laws covering good cause for voluntary termination often include a provision that a person who quits his or her job take all “reasonable steps” to preserve employment. Interpretations of these provisions vary with respect to whether, in the case of domestic violence victims, reasonable steps necessarily includes reporting the problem to the employer, or asking for the employer’s protection or accommodation. Laws in Connecticut, Maine, Nebraska, New Hampshire, and Oregon specifically require the state agency to examine what “reasonable steps” were taken to preserve employment.<sup>107</sup>

For some survivors, reporting violence or a threat thereof to his or her employer is a reasonable step that might well preserve their jobs. For others, however, it may be yet another insurmountable barrier to safety and economic stability.

In the earlier cited Kentucky study, a marked difference was found between the reporting rates of rural and urban women.<sup>108</sup> Eleven out of the 15 rural women in the study did not disclose the violence to either their employer or co-workers. However, 11 out of the 17 urban women did make this disclosure.<sup>109</sup> The most frequently cited reason for disclosure was that the batterer had appeared at work.<sup>110</sup> The most frequently cited reasons for non-disclosure were shame and fears about job security.<sup>111</sup>

The most effective state laws do not include exact proof requirements or “reasonable steps” provisions.<sup>112</sup> In crafting legislation, advocates should look closely at the best examples, with the most liberal allowances for proof, to ensure that victims are not precluded from receiving benefits because of arcane proof issues, or worries about confidentiality.

#### **4. Work Search and Domestic Violence**

In all states, a person must be able and available for work to be considered eligible for unemployment compensation. Despite the requirement's legitimacy in most situations, this requirement may interfere with a domestic violence survivor's safety and access to resources.

In 2000, advocates consulted the U.S. Department of Labor (DOL) regarding potential restrictions that federal law might impose on states wishing to consider a domestic violence survivor's limited ability to comply with work search and suitability criteria.<sup>113</sup> In a letter to the National Employment Law Project, the DOL agreed that states could modify their laws to liberalize worksearch requirements for domestic violence survivors.<sup>114</sup> Accordingly, states may be able to require that domestic violence survivors simply register for work, without demanding that they engage in an extensive work search. In this scenario, the claimants may refuse job offers that interfere with their safety.

A number of states have since proposed or adopted changes to their work search requirements, or to the criteria they use to measure whether a job offer is suitable. These states include Hawaii, Massachusetts, North Dakota, Oregon, Tennessee, and Washington.<sup>115</sup> For example, Oregon legislation, adopted in 2001, continued a state practice of exempting domestic violence survivors from the requirement that individuals accept suitable work.<sup>116</sup> Washington and Massachusetts statutes provide that suitability requirements must reasonably accommodate the survivor's need to address the physical, psychological, and legal ramifications of domestic violence.<sup>117</sup> Maryland and Hawaii legislatures are considering similar proposals.<sup>118</sup>

#### **5. Who Pays the Cost?**

Normally, when an employee receives benefits, the employer's account is charged and its unemployment insurance payroll tax rate, or experience rate, is adjusted, similar to an adjustment of automobile insurance rates after an accident.

In many states, under certain circumstances unemployment insurance benefits are non-charged, and the costs of benefits are borne equally by all contributing employers.<sup>119</sup> Employer groups, who often oppose the implementation of domestic violence UI laws, are typically concerned with the increased cost they will have to bear.<sup>120</sup> The “non-charging” of unemployment insurance benefits is generally popular with employer groups. The rationale is that it is unfair to impose a tax burden on an employer in domestic violence situations since the employer is not responsible for the domestic violence survivor’s unemployment. In California and North Carolina, the domestic violence amendments to the unemployment code included a provision that benefits paid to individuals generally would not be chargeable to an employer’s account.<sup>121</sup> Advocates are experiencing increasing success by inserting similar non-charging provisions into proposed legislation. This is the case in Colorado, Connecticut, Montana, New Jersey, New York, Washington, and Wisconsin.

In Washington State, however, the extent of non-charging for several categories of unemployment insurance benefits has been a source of divisiveness among employers.<sup>122</sup> The proposal in Washington to add a non-charge provision as to benefits met opposition, even though cost estimates showed that the additional non-charged benefits were a miniscule amount of the total benefits paid.<sup>123</sup>

## **6. Equipping Agencies to Provide Benefits: Training Provisions**

As noted above, unemployment insurance claim adjudicators are often poorly equipped to make determinations of the effect of domestic violence on a claimant’s entitlement to benefits. This may be partly due to the low volume of claims associated with domestic violence in states that have passed domestic violence unemployment insurance laws. A study in New York found that women were unlikely to cite domestic violence as a reason for leaving their jobs.<sup>124</sup> To address the need for more awareness among adjudicators, advocates in California included a training provision in their proposed

law.<sup>125</sup> This proposal was abandoned, however, in response to employers' cost concerns.

The difficulty people face in disclosing that they are victims of domestic violence for unemployment purposes is also present in the context of applying for public benefits, such as Temporary Assistance for Needy Families (TANF). To address this joint concern, a partnership in Washington between the state agency administering TANF and the Washington State Coalition Against Domestic Violence recently developed a screening tool for use by the UI agency, training provisions for agency personnel, and co-location of domestic violence advocates in the state agency intake offices.<sup>126</sup>

In Massachusetts, unemployment insurance personnel are required to attend domestic violence training.<sup>127</sup> The ongoing training program is mandatory for all employees who interact with claimants. Its stated goal is to ensure that job separations that result from domestic violence are reliably screened and adjudicated so that domestic violence survivors can take full advantage of the range of job services provided by the department.<sup>128</sup>

## **7. Confidentiality Provisions**

Existing federal law imposes stringent guidelines with respect to the confidentiality of information submitted in connection with unemployment compensation claims.<sup>129</sup> Most states have parallel confidentiality provisions. Under these laws, a batterer generally cannot obtain information about the claimant, such as a current address, from the state agency.<sup>130</sup> However, employers that contest a claim might obtain access to personal information in the context of the administrative hearing. Once the employer has such information, the batterer may more easily gain access to it.

Delaware and Rhode Island have provisions that require state agencies to keep any information disclosed in connection with a domestic violence claim confidential.<sup>131</sup> Advocates need to make certain that existing state law confidentiality provisions are adequate. Model language for this purpose is as follows:



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 employ[er], 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:

- a) The claimant must be notified prior to any release of information;
- b) Any disclosure is subject to redaction of unnecessary identifying information such as the claimant's address;
- c) Further dissemination of any information disclosed to the employer is prohibited;
- d) 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.<sup>132</sup>

## V. CONCLUSION

The unemployment insurance 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 domestic violence. The number of states that have passed legislation to cover victims of domestic violence under unemployment insurance laws, over a very short time, is a testament to the strength of this idea.

In the 2001 and 2002 legislative sessions, bills were introduced in Arizona, Georgia, Hawaii, Iowa, Maryland, New Mexico, North Dakota, Tennessee, Vermont, and West Virginia.<sup>133</sup> Among the most recent laws to

pass, Washington's domestic violence unemployment statute is one of the country's most comprehensive and generous.<sup>134</sup> While state legislatures across the country are struggling with huge budget deficits, an infusion of eight billion dollars into the states' unemployment insurance trust funds that occurred in March 2002, can be used to finance DVUI and other reforms to state unemployment insurance systems.

As more states pass legislation, others are likely encouraged to do the same. Future legislation may include broader categories of domestic violence such as victims of sexual assault and stalking. In addition, more states may consider training provisions. Domestic violence advocates, together with unemployment compensation advocates, can 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 to obtain reliable studies regarding domestic violence and work, and presents ideas for drafting legislation that will fully open the door to UI benefits tailored to the needs of domestic violence victims.

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<sup>1</sup> See discussion *infra* Part IV.A.

<sup>2</sup> NAT'L EMPLOYMENT LAW PROJECT, UNEMPLOYMENT INSURANCE FOR SURVIVORS OF DOMESTIC VIOLENCE 2 (May 2002), available at <http://www.nelp.org/pub135.pdf>.

<sup>3</sup> PATRICIA TJADEN & NANCY THOENNES, DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 9 (2000), available at <http://www.ncjrs.org/txtfiles1/nij/183781.txt>.

<sup>4</sup> Although domestic violence victims may be either men or women and perpetrators may be either men or women, the vast majority of abuse occurs by men against women. Throughout this article, the authors will refer to batterers as males and victims as females.

<sup>5</sup> Robin R. Runge & Marcellene Hearn, *Employment Rights Advocacy for Domestic Violence Victims*, 5 DOMESTIC VIOLENCE REP. 17, 17 (2000).

<sup>6</sup> CONNIE STANLEY, Abstract, DOMESTIC VIOLENCE INTERVENTION SERVICES, DOMESTIC VIOLENCE: AN OCCUPATIONAL IMPACT STUDY (1992).

<sup>7</sup> JENNIFER SWANBERG, INTIMATE VIOLENCE, WORKPLACE SUPPORTS AND LABOR FORCE PARTICIPATION: EXPERIENCES OF WOMEN LIVING IN RURAL AND URBAN KENTUCKY 4 (prepared for the Trapped by Poverty/Trapped by Abuse Third Research Conference, Univ. of Mich., Oct. 2001).

<sup>8</sup> U.S. GEN. ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998).

<sup>9</sup> SWANBERG, *supra* note 7, at 4.

<sup>10</sup> Melanie Shepard & Ellen Pence, *The Effect of Battering on the Employment Status of Women*, 3 AFFILIA 55, 57-58 (1988).

<sup>11</sup> SWANBERG, *supra* note 7, at 5.

<sup>12</sup> YUNJU NAM & RICHARD TOLMAN, Abstract, PARTNER ABUSE AND WELFARE RECEIPT AMONG AFRICAN AMERICAN AND LATINA WOMEN LIVING IN A LOW-INCOME NEIGHBORHOOD (prepared for the Trapped by Poverty/Trapped by Abuse Third Research Conference, Univ. of Mich., Oct. 2001).

<sup>13</sup> See generally WILLIAM HABER & MERRILL G. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY (1966); MICHAEL J. GRAETZ & JERRY L. MASHAW, TRUE SECURITY: RETHINKING AMERICAN SOCIAL INSURANCE (1999).

<sup>14</sup> ADVISORY COUNCIL ON UNEMPLOYMENT COMP., UNEMPLOYMENT INSURANCE IN THE UNITED STATES: BENEFITS, FINANCING, COVERAGE 3 (1995); COMM. ON WAYS AND MEANS, BACKGROUND MATERIALS ON PROGRAMS UNDER THE JURISDICTION OF THE WAYS AND MEANS COMMITTEE, H.R. 105-7, at 327 (1998).

<sup>15</sup> Federal Unemployment Tax Act, 26 U.S.C. § 3301 (2002); Social Security Act, 42 U.S.C. § 501 (1991).

<sup>16</sup> *Wimberly v. Labor & Indus. Relations Comm'n*, 479 U.S. 511, 515 (1987).

<sup>17</sup> ADVISORY COUNCIL ON UNEMPLOYMENT COMP., *supra* note 14, at 110–116; COMM. ON WAYS AND MEANS, *supra* note 14, at 327.

<sup>18</sup> Eveline M. Burns, *Unemployment Compensation and Socio-Economic Objectives*, 55 YALE L.J. 1, 3 (1945).

<sup>19</sup> HABER & MURRAY, *supra* note 13, at 281.

<sup>20</sup> ADVISORY COUNCIL ON UNEMPLOYMENT COMP., *supra* note 14, at 101.

<sup>21</sup> HABER & MURRAY, *supra* note 13, at 249–250; Louise F. Freeman, *Able to Work and Available for Work*, 55 YALE L.J. 123, 123–124 (1945).

<sup>22</sup> HABER & MURRAY, *supra* note 13, at 134.

<sup>23</sup> *Id.*

<sup>24</sup> Richard W. McHugh & Ingrid Kock, *Women and Unemployment Insurance*, 27 CLEARINGHOUSE REV. 1422, 1422 (1994).

<sup>25</sup> Deborah Maranville, *Feminist Theory and Legal Practice: a Case Study on Unemployment Compensation Benefits and the Male Norm*, 47 HASTINGS L.J. 1081, 1086–1087 (1992).

<sup>26</sup> U.S. DEP'T OF LABOR, COMPARISON OF STATE UI LAWS, Table 401.1 (2000), available at <http://ows.doleta.gov/unemploy/uilaws.asp>.

<sup>27</sup> *Hall v. Fla. Unemployment Appeals Comm'n*, 697 So.2d 541 (Fla. Dist. Ct. App. 1997); *Pagan v. Bd. of Review*, 687 A.2d 328 (N.J. Super. Ct. App. Div. 1997).

<sup>28</sup> See *Lee Hosp. v. Unemployment Comp. Bd. of Review*, 637 A.2d 695 (Pa. 1994); *Bacon v. Commonwealth of Pa.*, 491 A.2d 944 (Pa. 1985) (case remanded for a factual determination of the reasonableness of the claimant's choice given her emotional status and personal problems).

<sup>29</sup> *Gaynor A. Coleman*, Bd. Case No. 585-BR-99 (Conn. Dep't of Labor Mar. 26, 1999).

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., *Rivers v. Stiles*, 697 S.W.2d 938 (Ark. App. 1985).

<sup>32</sup> *Id.* at 938–939.

<sup>33</sup> *Middleton v. Econ. Sec. Dep't*, No. 95-2-02078-7 (Thurston Co., Wash. July 1, 1996).

<sup>34</sup> See *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 No. 98-16 (Sept. 29, 1998); see also Catherine Ruckelshaus, *Unemployment Compensation for Victims of Domestic Violence: An Important Link to Economic and Employment Security*, 30 CLEARINGHOUSE REV. SPECIAL ISSUE 209, 215 (1996).

<sup>35</sup> *Marjorie Stackhouse*, Docket No. 97 1126 (Alaska Employment Sec. Div. May 23, 1997); *Deborah J. Hancock*, 1 C Unemp. Ins. Rprt. (CCH) ¶ 8142.11 (Alaska Mar. 25, 1988).

<sup>36</sup> Stackhouse, Docket No. 97 1126.

<sup>37</sup> Hancock, 1 C Unemp. Ins. Rprt. (CCH) ¶ 8142.11.

<sup>38</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 2.

<sup>39</sup> *Id.*

<sup>40</sup> *See, e.g.*, ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (West 2002) (requiring domestic violence victim to show that she had made "all reasonable efforts" to preserve her job).

<sup>41</sup> ME. REV. STAT. ANN. tit. 26, § 1193(1)(A)(4) (West 2002).

<sup>42</sup> *Id.*

<sup>43</sup> ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (West 2002).

<sup>44</sup> Tit. 26, § 1193(1)(A)(2).

<sup>45</sup> *See, e.g.*, Short Paper, Nat'l Employment Law Project, et al., Domestic Violence: A Workplace Issue (2001) (on file with the Seattle Journal for Social Justice).

<sup>46</sup> Tit. 26, § 1193(1)(A)(4).

<sup>47</sup> *See* CAL. UNEMP. INS. CODE § 1256 (West 2002).

<sup>48</sup> S. 165, 1997–1998 Reg. Sess. (Cal. 1997) (Senate Comm. on Industrial Relations, as amended Apr. 21, 1997).

<sup>49</sup> These hearings were not recorded, but Robin Runge, one of the authors, was present and testified to this effect.

<sup>50</sup> Cal. S. 165.

<sup>51</sup> CAL. UNEMP. INS. CODE §§ 1030, 1032, 1256 (West 2002).

<sup>52</sup> *See* N.C. GEN. STAT. § 96-14(1)(b)(1f) (2002).

<sup>53</sup> ROBERT D. FAGGART, ET AL., TERRY SANFORD INSTITUTE OF PUBLIC POLICY, DUKE UNIVERSITY, DOMESTIC VIOLENCE AND UNEMPLOYMENT INSURANCE IN NORTH CAROLINA (1998) (on file with the Seattle Journal for Social Justice).

<sup>54</sup> *Id.* at 37, 45.

<sup>55</sup> *Id.* at i.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at ii.

<sup>59</sup> *Id.*

<sup>60</sup> N.C. GEN. STAT. § 96-14(1)(b)(1f) (2002).

<sup>61</sup> FAGGART, *supra* note 53, at 33–34.

<sup>62</sup> REBECCA SMITH, NAT'L EMPLOYMENT LAW PROJECT, STATES THAT HAVE ENACTED DOMESTIC VIOLENCE UNEMPLOYMENT INSURANCE – IMPACTS ON THE UI SYSTEM (2001), at <http://www.nelp.org/pub67.pdf> (last visited Nov. 5, 2002) (on file with the Seattle Journal for Social Justice).

<sup>63</sup> CONN. GEN. STAT. § 31-236(a)(2)(A)(iv) (2002); CONN. GEN. STAT. § 17b-112a(a)(1) (2002).

<sup>64</sup> *An Act Extending Unemployment Compensation Benefits to Domestic Abuse Victims: Hearing on H.B. 6788 and S.B. 1162 Before the Joint Comm. On Labor and Public Employees*, 1999 Leg., Reg. Sess. (Conn. 1999) (Statements of Barbara Potopowitz, Permanent Commission on the Status of Women; Lind Cimino, Connecticut Coalition Against Domestic Violence; Sharon Langer, Connecticut Legal Services).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Victims' Economic Security & Safety Act, S. 1249, 107th Cong. (2001); H.R. 2670, 107th Cong. (2001).

<sup>69</sup> S. 1249, § 202(a)(1); H.R. 2670, § 202(a)(1).

<sup>70</sup> S. 1249, § 202(a)(2); H.R. 2670, § 202(a)(2).

<sup>71</sup> S. 1249, § 202(b); H.R. 2670, § 202(b).

<sup>72</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 2–3.

<sup>73</sup> See Jennifer Lucarelli, *Domestic Violence Job-loss Legislation on the Fast Track*, SUNDAY TELEGRAM, Sept. 2, 2001, at A1; Press Release, Jane Doe, Inc., Senate Approves Measure to Extend Unemployment Insurance to Victims of Domestic Violence (Aug. 23, 2001), available at <http://www.janedoe.org/about.htm>; Diane E. Lewis, *Out in the Field/ Employers; Firms Advocate for Battered Employees*, BOSTON GLOBE, Nov. 3, 2002, at G2; Policy statement, Employers Against Domestic Violence (Description of EADV's work including the forwarding of Massachusetts legislation providing unemployment insurance for victims of domestic violence), at <http://www.mintz.com/communty/communty.htm> (last visited Jan. 3, 2003).

<sup>74</sup> Lucarelli, *supra* note 73; Jane Doe, Inc., *supra* note 73.

<sup>75</sup> SMITH, *supra* note 62.

<sup>76</sup> *Id.*

<sup>77</sup> Short Paper, Nat'l Employment Law Project, et al., *The Cost of Providing Unemployment Insurance to Workers Impacted by Domestic Violence—the Experience of Other States* (2001) (on file with the Seattle Journal for Social Justice).

<sup>78</sup> Telephone Interview with Minnesota Department of Economic Security (July 31, 1998); Telephone Interview with Bob King, Nebraska Unemployment Insurance Field Representative (Dec. 8, 2000); Telephone Interview with Don Brockhaus, Administrative Office of Unemployment Insurance Technicians (Dec. 9, 2000).

<sup>79</sup> Interview by Bruce Neas, Columbia Legal Services, with Don Pietersen, Colorado Department of Labor & Employment (Jan. 12, 2001). Colorado has a particularly restrictive domestic violence employment insurance statute, mandating both documentation of abuse, and that the survivor of abuse show that he or she is receiving counseling at the time of application for unemployment benefits. Individuals were denied benefits in Colorado primarily because the individual did not have the necessary level of proof required under the Colorado statute.

<sup>80</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 3.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Telephone Interview with Monica Halas, Greater Boston Legal Services, and Chris Bowman, Massachusetts Division of Employment and Training (Sept. 25, 2001).

<sup>85</sup> U.S. Dep't of Labor, UI Data Summary—State UI Benefits Data (1st Quarter 2001), available at [http://ows.doleta.gov/unemploy/content/data\\_stats/datasum01/1stqtr/benefits.asp#Massachusetts](http://ows.doleta.gov/unemploy/content/data_stats/datasum01/1stqtr/benefits.asp#Massachusetts).

<sup>86</sup> See, e.g., COLO. REV. STAT. ANN. § 8-73-108(4)(r) (West 2002); CONN. GEN. STAT. § 31-236(a)(2)(A) (2002); DEL. CODE ANN. tit. 19, § 3315(1) (2001); NEB. REV. STAT. § 48-628(1)(a) (2001); R.I. GEN. LAWS § 28-44-17.1 (2001); N.C. GEN. STAT. § 96-14(1)(b)(1)(f) (2002); OR. REV. STAT. § 657.176(12)(a) (2001); MASS. GEN. LAWS ANN. ch. 151A, § 1 (West 2002); WIS. STAT. § 108.04(7)(s) (2001).

<sup>87</sup> CAL. UNEMP. INS. CODE § 1256 (West 2002); CONN. GEN. STAT. § 31-236(a)(2)(A)(iv) (2002); DEL. CODE ANN. tit. 19, § 3315(1) (2001); ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (West 2002); MASS. GEN. LAWS ANN. ch. 151A, § 1 (West 2002); MINN. STAT. ANN. § 268.095.1(8) (West 2002); MONT. CODE ANN. § 39-51-2111 (2002); N.C. GEN. STAT. § 96-14(1)(b)(1f) (2002).

<sup>88</sup> 2002 Wash. Laws Ch. 8 (to be codified as RCW 50.20.020, 050, 100, and 240).

<sup>89</sup> See H.R. 2123, 21st Leg., Reg. Sess. (Haw. 2002); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2002); H.R. 1476, 57th Leg., Reg. Sess. (N.D. 2001).

<sup>90</sup> See, e.g., H.R. 2123, 21st Leg., Reg. Sess. (Haw. 2002); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2002); H.R. 1476, 57th Leg., Reg. Sess. (N.D. 2001); H.R. 713, 101st Gen. Assem., Reg. Sess. (Tenn. 2001); H.R. 211, 66th Bienn. Sess. (Vt. 2001).

<sup>91</sup> DEL. CODE ANN. tit. 19, § 3315(1) (2001); R.I. GEN. LAWS § 28-44-17.1 (2001); CONN. GEN. STAT. § 17b-112a(a)(1) (2002).

<sup>92</sup> See H.R. 2123, 21st Leg., Reg. Sess. (Haw. 2002); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2002); H.R. 1476, 57th Leg., Reg. Sess. (N.D. 2001); H.R. 713, 101st Gen. Assem., Reg. Sess. (Tenn. 2001); H.R. 211, 66th Bienn. Sess. (Vt. 2001).

<sup>93</sup> See, e.g., ME. REV. STAT. ANN. tit. 26, § 1043(23)(A) (West 2002); MINN. STAT. ANN. § 268.095(6) (West 2002).

<sup>94</sup> *Boynton Cab Co. v. Neubeck*, 296 N.W. 636 (Wis. 1941).

<sup>95</sup> *Id.* at 640.

<sup>96</sup> DISCHARGE FOR MISCONDUCT, CCH-ANNO, UI-FED ¶ 1970; see also *Smith v. Sampson*, 816 P.2d 902, 905 (Alaska 1991) (citing *Boynton Cab* for general definition of misconduct); *Davis v. Unemployment Ins. Appeals Bd.*, 117 Cal. Rptr. 463, 465 (Cal. Ct. App. 1974) (citing *Boynton Cab* for definition of misconduct); *Dep't of Labor, Licensing & Regulation v. Hider*, 706 A.2d 1073, 1079 (Md. 1997) (distinguishing *Boynton Cab* in holding that misconduct does not have to be intentional).

<sup>97</sup> N.J. REV. STAT. 43:21-5(j) (2002); CAL. UNEMP. INS. CODE § 1256 (West 2002); MONT. CODE ANN. § 39-51-2111 (2002).

<sup>98</sup> ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (West 2002).

<sup>99</sup> U.S. GEN. ACCOUNTING OFFICE, *supra* note 8, at 4.

<sup>100</sup> See CAL. UNEMP. INS. CODE § 1256 (West 2002); ME. REV. STAT. ANN. tit. 26, § 1043(23) (West 2002); N.Y. LAB. LAW § 593(1) (McKinney 2002); MASS. GEN. LAWS ANN. ch. 151A, § 1 (West 2002); OR. REV. STAT. § 657.176 (2001); WASH. REV. CODE ANN. § 50.20.050(2)(d) (West 2002).

<sup>101</sup> COLO. REV. STAT. ANN. § 8-73-108(4)(r) (West 2002); DEL. CODE ANN. tit. 19, § 3315(1) (2001); MONT. CODE ANN. § 39-51-2111 (2002); WIS. STAT. ANN. § 108.04(7)(s) (West 2002); N.C. GEN. STAT. § 96-14(1f) (2001).

<sup>102</sup> See, e.g., COLO. REV. STAT. ANN. § 8-73-108(4)(r) (West 2002); DEL. CODE ANN. tit. 19, § 3315(1) (2001).

<sup>103</sup> COLO. REV. STAT. ANN. § 8-73-108(4)(r)(A)–(B) (West 2002).

<sup>104</sup> MONT. CODE ANN. § 39-51-2111 (2002).

<sup>105</sup> WIS. STAT. ANN. § 108.04(7)(s) (West 2002).

<sup>106</sup> N.C. GEN. STAT. § 96-14(1f) (2001).

<sup>107</sup> CONN. GEN. STAT. § 31-236(a)(2)(A) (2002); ME. REV. STAT. ANN. tit. 26, § 1193(1)(A)(4) (West 2002); NEB. REV. STAT. § 48-628(1)(a) (2001); OR. REV. STAT. § 657.176(12)(a) (2001); N.H. REV. STAT. ANN. § 282-A:32(I)(a)(3) (2002).

<sup>108</sup> SWANBERG, *supra* note 7, at 6–7.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 7.

<sup>112</sup> *In re Loney*, 731 N.Y.S.2d 279 (N.Y. App. Div. 2001).

<sup>113</sup> Letter from Rebecca Smith, Staff Attorney, National Employment Law Project, to Grace Kilbane, Administrator, Office of Workforce Security, United States Department of Labor (Oct. 23, 2000) (on file with the Seattle Journal for Social Justice).

<sup>114</sup> Letter from Grace Kilbane, Administrator, Office of Workforce Security, United States Department of Labor, to Rebecca Smith (Oct. 26, 2000) (on file with the Seattle Journal for Social Justice).

<sup>115</sup> H.R. 2123, 21st Leg., Reg. Sess. (Haw. 2002); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2002); H.R. 1476, 57th Leg., Reg. Sess. (N.D. 2001), H.R. 713, 101st Gen. Assem., Reg. Sess. (Tenn. 2001); OR. REV. STAT. § 657.176 (2001); 2001 Mass. Acts. 69; WASH. REV. CODE ANN. § 50.20.100 (West 2002).

<sup>116</sup> OR. REV. STAT. § 657.176 (2001).

<sup>117</sup> 2001 Mass. Acts. 69; WASH. REV. CODE ANN. § 50.20.100 (West 2002).

<sup>118</sup> H.R. 2123, 21st Leg., Reg. Sess. (Haw. 2001); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2001); H.R. 541, 2001 Leg., Reg. Sess. (Md. 2002).

<sup>119</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 3.

<sup>120</sup> *Id.*

<sup>121</sup> CAL. UNEMP. INS. CODE § 1032 (West 2002); N.C. GEN. STAT. § 96-14(1)(b)(1f) (2002).

<sup>122</sup> SMITH, *supra* note 62, at 9.

<sup>123</sup> *Id.*

<sup>124</sup> NEW YORK STATE DEP'T OF LABOR, REPORT TO THE NEW YORK STATE LEGISLATURE ON EMPLOYEES SEPARATED FROM EMPLOYMENT DUE TO DOMESTIC VIOLENCE 5 (1996) (on file with the Seattle Journal for Social Justice).

<sup>125</sup> One of the authors was involved in the coalition proposing the law, but the training provision was abandoned in negotiations and prior to introduction; the version including the provision is not publicly available.

<sup>126</sup> See TYRA LINDQUIST, WASH. STATE COALITION AGAINST DOMESTIC VIOLENCE, WELFARE ON WORKFIRST: SERVING DOMESTIC VIOLENCE VICTIMS ON PUBLIC ASSISTANCE IN WASHINGTON STATE (2001), available at [http://www.wscadv.org/projects/EJP/ejp\\_report\\_2001.pdf](http://www.wscadv.org/projects/EJP/ejp_report_2001.pdf).

<sup>127</sup> See 2001 Mass. Acts. 69.

<sup>128</sup> *Id.*

<sup>129</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 5.

<sup>130</sup> *Id.*

<sup>131</sup> DEL. CODE ANN. tit. 19, § 3315 (2001); R.I. GEN. LAWS § 28-44-17.1(c) (2001).

<sup>132</sup> NAT'L EMPLOYMENT LAW PROJECT, *supra* note 2, at 5–6.

<sup>133</sup> S.B. 1058, 45th Leg., 1st Reg. Sess. (Ariz. 2001); S.B. 508, 146th Gen. Assem., Reg. Sess. (Ga. 2001); S.B. 2438, 21st Leg., Reg. Sess. (Haw. 2002); H. F. 2250, 79th Gen. Assem., 2nd Sess. (Iowa 2002); H.B. 541, 416th Gen. Assem., Reg. Sess. (Md. 2002); H.B. 348, 45th Leg., 2nd Reg. Sess. (N.M. 2002); H.B. 1476, 57th Leg. Assem., Reg. Sess. (N.D. 2001); H.B. 713, 102nd Gen. Assem., Reg. Sess. (Tenn. 2001); S.B. 282, Adj. Sess. 2001–2002 (Vt. 2002); H.B. 2466, 77th Leg., Reg. Sess. (W. Va. 2002).

<sup>134</sup> WASH. REV. CODE ANN. § 50.20.050(2)(d) (West 2002).