

WOMEN'S WORK: ECONOMIC SECURITY IN THE DOMESTIC VIOLENCE CONTEXT

*"[O]ur work . . . provides us with the wherewithal to sustain ourselves, economically and socially, so that we may enter into intimate relationships with the security that permits us to love (and leave) freely, without need of recompense."*¹

I. INTRODUCTION

Women who escape to domestic violence shelters are making the decision to leave their abusers, right? In my experience working at a domestic violence shelter in college, I saw women come to the shelter who were taking the steps necessary to live a life free from their abusive husbands or intimate partners. However, a select few ultimately returned to their abusive environments. One egregious situation involved a woman who had lost function in her right eye because her husband threw a wrench at her face. This woman was in and out of the hospital and was put on suicide watch. To say that she was extremely vulnerable was an understatement. The person whom she loved and who was supposed to love her, not only physically crippled her, but mentally and emotionally paralyzed her with violence.

After being at the shelter for a few days, it came to my attention that she was talking to her husband on the phone, promising that she would return to him. Her husband told her he would not pay for her medical bills unless she agreed to come home to him. I was initially shocked by this woman's decision to return to her abuser, but it became apparent that this woman's behavior was not an aberration.

Victims of domestic violence often return to their abusers for a multitude of reasons.² This woman had taken the steps to leave her abuser, but was still experiencing abuse outside the domestic relationship in the form of economic abuse. Without her husband's support, she was unable to pay her medical bills. Economic abuse

1. Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1883 (2000).

2. See Michael A. Anderson et al., "Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety, 18 J. FAM. VIOLENCE 151, 152 (2003); Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. No. 10/19 (Oct. 1999).

prevents women from obtaining economic security by preventing them from working or if they do work, by restricting their control over their finances.

This paper strives to paint the economic picture of victims of domestic violence by examining their status of economic security with a focus on work. Considering the laws affecting the workforce as well as the deficiencies in the law aiding women who enter the workplace will contribute to the analysis. Part II will define domestic violence, document its prevalence, and describe the particular problem of economic abuse. The reasons for examining domestic violence through the economic and employment law lens will also be addressed in regards to the social problem victims of domestic violence face in their ability to obtain economic security and the likelihood that they will be able to leave their abusers. Part III will examine the ways in which domestic violence and economic security are linked and will examine the points of legal conflict. The first point of conflict is in the employment context, specifically focusing on state employment laws that are modeled on Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Family and Medical Leave Act (“FMLA”). The second point of conflict is the barriers to economic liberation such as credit card debt, taxes, unemployment insurance, and property. Part IV will discuss how the law has made positive strides to help women who have experienced domestic violence, but argues that it needs to be expanded. The law has neglected a whole area of conflict related to domestic violence: women who are not in the workforce and who are forced to stay with their abusers because they cannot afford to leave. Women who do not work are not recognized by the law as a protected class. The law needs to facilitate women’s transition into the workplace by bolstering their economic security. Possible solutions include passing a federal law protecting victims of domestic violence and creating programs to make women more economically literate by providing them with the financial education and the skills necessary to obtain employment and to leave their abusers for good.

II. DOMESTIC VIOLENCE, ECONOMIC ABUSE, AND ITS EFFECT ON ECONOMIC SECURITY

Domestic violence is violence that occurs in an intimate partner relationship in which one partner attempts and is often successful in

gaining power and control over the other partner.³ Victims of domestic violence do not just experience physical violence, but also experience other forms of domestic violence such as sexual abuse, emotional abuse, psychological abuse, and economic abuse.⁴ One out of four women will experience some form of domestic violence in her lifetime.⁵ Women make up eighty-five percent of domestic violence victims.⁶ The crime of domestic violence is one of the most unreported crimes.⁷ Some of the reasons victims do not report incidents of domestic violence include fear that the violence will worsen or, as Deborah M. Weissman argues, fear that reporting will impede on her partner's ability to maintain or obtain a steady job.⁸ Studies show that women will leave and return to their abusers before they will leave the relationship permanently between five to seven times.⁹ Researchers say that one of the main reasons women return to their abusers is out of need, specifically financial need.¹⁰ Due to the abuser's exercise of power and control over her through economic abuse, she is not economically sufficient and, therefore, is forced to return to her abusive environment.¹¹

A. What is economic abuse?

In the domestic violence context, economic abuse is still misunderstood; a fact evidenced by a recent poll which found that most people thought economic abuse was referring to the financial crisis.¹² Economic abuse occurs just as frequently as physical abuse, most of the time going hand in hand.¹³ Economic abuse involves the use of various

3. See *Domestic Violence*, U.S. DEP'T OF JUST., <http://www.ovv.usdoj.gov/domviolence.htm> (last updated Mar. 2013) [hereinafter *Domestic Violence*].

4. See *id.*

5. See *Domestic Violence Facts*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf> (last updated July 2007).

6. See *id.*

7. See *id.*

8. See Deborah M. Weissman, *The Personal Is Political – and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 435 (2007).

9. See Kristen Ann Lester, *Returning to the Abuser: The Cycle of Violence Continues* (May 2007) (published Masters dissertation, University of Texas at Arlington), at 2, available at <https://dspace.uta.edu/bitstream/handle/10106/301/umi-uta-1646.pdf?sequence=1>.

10. See Weissman, *supra* note 8, at 434.

11. See *id.*

12. See Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 412 (2012)

13. See Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST

tactics by the abuser to establish power and control over her:

[W]ith the goal of forcing her to become dependent on him and him alone . . . by making his partner economically dependent, the abuser controls her ability to become self-sufficient. This is accomplished by maintaining complete control over her money and other economic resources by making all financial decisions, reducing her ability to acquire, use, and maintain money, and/or forcing her to rely on him for all financial needs.¹⁴

One of the ways in which the abuser reduces his victim's ability to acquire money is to discourage and keep her from entering the workforce or from receiving an education.¹⁵ Unemployment has been shown to lower a woman's level of confidence and to make her feel discouraged, as well as to make it difficult for her to reenter the workforce in the future.¹⁶ For those who do work, the abuse often interferes with the woman's ability to keep her job and may eventually cause her to lose a job due to the abuse.¹⁷ The abuse could affect her financially by forcing her to obtain a credit card and then run up her debt as well as spend recklessly, gamble, or ruin her credit scores on purpose in order to maintain her dependency on him.¹⁸ Other examples of economic abuse include preventing her from having a bank account, depriving her of necessities, stealing from her, and disallowing her to spend money without his consent and with good justification.¹⁹

Economic self-sufficiency is "the ability to maintain long-term employment with wages that keep individuals out of poverty and off of welfare rolls."²⁰ Without a doubt, economic abuse "exacerbate[s] the[] barriers" already in place for victims of domestic violence in regards to obtaining economic security in the employment context such as a poor labor market, workplace discrimination, and inadequate training.²¹ In

WOMEN 563, 580 (2008).

14. Postmus, *supra* note 12, at 413.

15. *See id.*; *Economic Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, http://www.uncfsp.org/projects/userfiles/File/DCE-STOP-NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf (last visited Oct. 15, 2012).

16. *See* Schultz, *supra* note 1, at 1889.

17. *See* Postmus, *supra* note 12, at 413.

18. *See id.* at 414.

19. *See Economic Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, http://www.uncfsp.org/projects/userfiles/File/DCE-STOP-NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf (last visited Oct. 15, 2012).

20. Postmus, *supra* note 12, at 414.

21. *Id.* at 414-15.

addition, economic insecurity, which is the result of economic abuse:

[I]s one of the largest obstacles for survivors seeking safety and one of the reasons that survivors most often give for why they stay or have returned to their abuser. The ability to survive financially without the abuser presents challenges, whether it be due to loss of income, a place to live, childcare, healthcare or other money issues, including access to credit.²²

Victims assessing their options do a balancing test and often choose to return to their abusers rather than risk the financial consequences of leaving.²³ The problem with victims' seeking safety is that the shelters to which they escape are not equipped to address economic security.²⁴ Shelters are in place to provide emergency short-term help to escape a dangerous situation.²⁵ The ability to provide economic education requires long term assistance, something shelters and organizations lack the resources to provide for victims of economic abuse.²⁶ Because of the shortfalls of the programs in place for victims, more needs to be done to combat economic abuse.

B. *Domestic Violence Through an Employment Law and Economics Lens*

Domestic violence is a public health issue that is multifaceted and is addressed by both employment law and welfare reform.²⁷ Compared to the latter part of the twentieth century, there are now more women in the labor force.²⁸ Thus, there has been a natural spillover of problems posed by domestic violence into the employment realm.²⁹ Because economic security is such an important factor when women decide to leave or stay with their abusive partner, her ability to obtain work or maintain her employment is vital in addressing the social problem of

22. *Economic Justice Initiative*, FLA. COAL. AGAINST DOMESTIC VIOLENCE, <http://www.fcadv.org/projects-programs/economic-justice-initiative> (last visited Feb. 4, 2014).

23. See Postmus, *supra* note 12, at 414.

24. *Id.* at 415.

25. *Id.*

26. *Id.*

27. See Jennifer E. Swanberg et al., *State Employment Protection Statutes for Victims of Domestic Violence: Public Policy's Response to Domestic Violence as an Employment Matter*, 27 J. INTERPERSONAL VIOLENCE 587, 609-10 (2012).

28. See *id.* at 609; Sarah Shea Crowne et al., *Concurrent and Long-Term Impact of Intimate Partner Violence on Employment Stability*, 26 J. INTERPERSONAL VIOLENCE 1282, 1283 (2011).

29. See Swanberg et al., *supra* note 27, at 609; Crowne et al., *supra* note 28, at 1283.

domestic violence.³⁰ Among the one in four women who do experience domestic violence, almost half have felt the effects of that abuse in their ability to obtain a job or keep a job because her abuser discourages education, employment, or job training.³¹ Domestic violence has a short term impact, as well as long lasting effects on a women's ability to keep a job or obtain a job in the future.³² The long lasting effects can span up to six years which can have a deleterious effect on a woman's ability to be economically secure and achieve economic sufficiency on her own.³³

1. Welfare Reform v. Employment

Analyzing and seeking to help victims of domestic violence through a welfare lens does not work. As Vicki Schultz said, our laws and policies need "to create a world in which everyone has the right to participate in the public world of work, with all the social support that that entails."³⁴ Schultz continues by arguing that "people must have access to all the services that facilitate finding and keeping employment."³⁵ Examining domestic violence through an employment lens will promote an understanding of not just how victims can obtain and maintain their jobs, but also how these women can best leave their abusers and leave them for good. A welfare analysis provides temporary solutions to domestic violence, especially violence that involves economic abuse. In order to fully understand economic abuse and how victims can become economically self-sufficient, employment is the proper field of study.

Another reason it is important to examine domestic violence through the employment lens is because women on welfare are more likely to experience abuse than those who are not.³⁶ Analyzing and addressing the issue of domestic violence through welfare reform is problematic because:

30. Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669, 672 (2008).

31. See *id.*; HEALTH, EDUC., & HUMAN SERVS., U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-99-12, DOMESTIC VIOLENCE PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998) [hereinafter HEALTH, EDUC., & HUMAN SERVS.], <http://www.gao.gov/archive/1999/he99012.pdf>.

32. See Crowne, *supra* note 28, at 1293.

33. See *id.*

34. Schultz, *supra* note 1, at 1885.

35. *Id.* at 1936.

36. See HEALTH, EDUC., & HUMAN SERVS., *supra* note 31, at 19.

[B]y paying women to stay home with their children rather than providing real support for parents (especially single parents) to work at paid jobs, welfare strategies still encourage women to invest in homemaking and caregiving to the exclusion of their job skills—which may harm women and their families in the long run.³⁷

In addition, depending on the welfare system, to provide assistance in order to escape an abusive relationship only provides short-term economic support and will not fix a victim's long-term employment barriers.³⁸

One noteworthy welfare program is Temporary Assistance to Needy Families (“TANF”)³⁹ which stems from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).⁴⁰ However, the program has not been successful in transitioning victims of domestic violence into the workforce.

The first problem with TANF is that on average, women and their families are only given \$400 per month, an insufficient amount to render a victim and her children economically secure enough that she can be economically independent.⁴¹ A second problem is that TANF recipients are only guaranteed benefits for five years.⁴² Welfare benefits will not render these women economically secure.⁴³ Many victims sustain long lasting effects to obtaining the employment necessary to be free of welfare benefits and will ultimately find themselves back in the abusive relationship they ran away from because of economic need.⁴⁴

A third problem with TANF is that it imposes financial sanctions on recipients who do not meet its requirements, one requirement being that most recipients must participate in work related activity thirty hours

37. Schultz, *supra* note 1, at 1915.

38. Richard M. Tolman & Hui-Chen Wang, *Domestic Violence and Women's Employment: Fixed Effects Models of Three Waves of Women's Employment Study Data*, 36 AM. J. COMMUNITY PSYCHOL. 147, 156 (Sept. 2005).

39. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 607 (2006) (TANF is a welfare block grant program which seeks to ultimately place recipients into jobs and provide welfare benefits as a temporary solution); *Temporary Assistance for Needy Families (TANF) Overview*, HHS.GOV (Nov. 10, 2012) [hereinafter *Temporary Assistance for Needy Families*], <http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html>.

40. *Temporary Assistance for Needy Families*, *supra* note 39.

41. Patricia Cole & Sarah M. Buel, *Safety and Financial Security for Battered Women: Necessary Steps for Transitioning from Welfare to Work*, 7 GEO. J. ON POVERTY L. & POL'Y 307, 320 (2000).

42. Cole, *supra* note 41, at 310; *see also* 42 U.S.C. § 608(a)(7) (2006).

43. *See generally* Crowne et al., *supra* note 28, at 1293.

44. *See id.* at 1293-95.

per week.⁴⁵ Recognizing that many victims of domestic violence are unable to meet the work requirement under TANF, PRWORA allows states to adopt the Family Violence Option (“FVO”), a federal policy enacted to address this problem.⁴⁶ In addition to exemptions from the work requirement, FVO provides exemptions to the amount of time victims can receive TANF benefits, child support requirements, and caps concerning the number of family members who can receive benefits.⁴⁷

Despite the exemptions provided by the FVO under TANF, many victims of domestic violence are still unable to “go to work safely, or are sabotaged in their efforts to work. Efforts to promote women’s eventual safe entry into the work place would still be necessary to promote their economic security.”⁴⁸ Additionally, many welfare recipients are hesitant to reveal their victim status and, thus, do not reap the benefits of the federal policy.⁴⁹ Victims sometimes feel that they will be “penalized” for their status as a domestic violence survivor and are therefore not inclined to reveal their victim status.⁵⁰ Of the victims who do reveal their status as victims of domestic violence, many do not opt into the exemptions under the FVO because of this fear.⁵¹ Furthermore, victims in this group generally do not participate in domestic violence services after welfare agencies provide referrals.⁵²

The FVO is also problematic because the exemptions are only temporary.⁵³ With respect to the work requirement, many victims of domestic violence face obstacles to obtaining employment.⁵⁴ Indigent women who experience domestic violence are more likely than other welfare recipients to endure high rates of depression and other forms of emotional distress.⁵⁵ They also have higher incidences of alcohol and drug use accompanied by health problems due to their addictions.⁵⁶

45. OFFICE OF PLAN., RES. & EVALUATION, BRIEF NO. 5, TANF WORK REQUIREMENTS & STATE STRATEGIES TO FULFILL THEM, at 2 (2012), available at <http://www.acf.hhs.gov/programs/opre/resource/tanf-work-requirements-and-state-strategies-to-fulfill-them>.

46. 45 C.F.R. § 260.52 (2012); Cole, *supra* note 41, at 312; Tolman, *supra* note 38, at 147; Swanberg et al., *supra* note 27, at 591.

47. See Swanberg et al., *supra* note 27, at 591-92.

48. Tolman, *supra* note 38, at 156.

49. Cole, *supra* note 41, at 320.

50. *Id.*

51. *Id.*

52. *Id.*

53. Tolman, *supra* note 38, at 147.

54. Cole, *supra* note 41, at 313.

55. *Id.*

56. *Id.*

These conditions, when combined with domestic violence, make obtaining a job a difficult task.⁵⁷ Other obstacles to employment that directly result from economic abuse and that limit a victim's ability to obtain employment include "limited education and work experience, limited job skills, lack of personal transportation, and perceived discrimination in the workplace."⁵⁸

Because victims of domestic violence face many employment obstacles inherent in the abuse they have endured, these women will likely be subject to TANF financial sanctions after the FVO exemptions have expired and may be denied benefits in the future.⁵⁹ This result will leave victims of domestic violence with less money than they had previously and will give them fewer options in their quest to leave their abusive environments and become economically secure.⁶⁰

2. Money and Economics

Employment is important because it guarantees victims some form of income that allows them to be economically secure and self-sufficient. With income in mind, economic abuse must be analyzed around money. "[T]he role that financial issues and economic circumstances play in women's experiences with [domestic violence] constitutes a critical dimension."⁶¹ Money is one of the main reasons that keep women from leaving their abusive partners in that economic dependency can predict whether or not she will be able to leave permanently.⁶² Understanding how domestic violence affects the economic realities and money can provide a glimpse into what a victim experiences when she endures economic abuse.

Tactics that make up economic abuse include preventing women's resource acquisition, preventing women's resource use, and exploiting women's resources.⁶³ In the study conducted by Postmus et al., the researchers showed the different kinds of economic exploitation tactics used by abusive partners against their victims and their percentages.⁶⁴

57. *Id.* at 313-14.

58. *Id.* at 314.

59. *Id.*

60. *Id.*

61. Terri L. Weaver et al., *Development and Preliminary Psychometric Evaluation of the Domestic Violence –Related Financial Issues Scare (DV-FI)*, 24 J. INTERPERSONAL VIOLENCE 569, 569-70 (2009).

62. *Id.* at 570.

63. Adams et al., *supra* note 13, at 565-67.

64. Postmus et al., *supra* note 12, at 419-20.

Tactics include:

[P]aying bills late (71%) or spending money needed for rent or bills (69%) . . . [P]artner demanded to know how money was spent (88%), and partner made important financial decisions without talking to them about it first (83%). Employment sabotage tactics experienced the most included having a partner do things to keep them from going to work (68%) and demanding that they quit their job (59%).⁶⁵

Other tactics that fit into the three categories posited by Adams et al. are hiding money earned by both spouses, prohibiting her from opening her own bank account or having access to their joint bank account, and lying and concealing information related to their finances and assets.⁶⁶

Abusive partner schemes might also include “generating debt [in her name] by obtaining credit cards” and using them carelessly.⁶⁷ In addition, abusive partners exploit their victim’s resources by implicating them in their own tax fraud or causing the victim to go bankrupt.⁶⁸ According to the 2007 Consumer Bankruptcy Project, 17.8% of married or women in intimate relationships experienced domestic violence before they filed for bankruptcy.⁶⁹ Other ways that abusers assert power over their victims is by coercing them to obtain loans on their behalf or deceiving them by having them agree to sign quitclaim deeds in order to purchase property.⁷⁰ The debt that results from these coercive tactics is felt even after victims leave their abusers because “[t]hey face liabilities that absorb income needed for starting a new household.”⁷¹ By the time victims learn of their accrued debt, it will already have affected their credit score, which makes it difficult for them to obtain housing and jobs.⁷²

Abusers use money as a means to maintain control over their victims.⁷³ Control and power is central to economic abuse and limiting a

65. *Id.*

66. Adams et al., *supra* note 13, at 566.

67. *Id.* at 567.

68. *Id.* at 567-68.

69. Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 962 (2012) [hereinafter *Coerced Debt*].

70. *Id.* at 954.

71. *Id.* at 955.

72. *Id.*

73. Weaver et al., *supra* note 61, at 570.

woman's access to resources will often preclude her from leaving.⁷⁴ Analyzing the way in which money is used against victims of domestic violence helps address their barriers to economic liberation and will better assess the way in which the law is attempting to solve the problem.

III. EMPLOYMENT LAW AND ECONOMIC SECURITY: POINTS OF CONFLICT

Given the importance of examining domestic violence through the lens of employment law and economic security, it is necessary to showcase the laws in place in each realm and examine how they are working and their points of conflict.

A. Federal and State Employment Law

Currently, there is no federal law that explicitly treats victims of domestic violence as a protected class. "Domestic violence victim status" is not a personal characteristic" that is defined and present in federal law, but is a status that describes the controlling and violent behavior a woman has experienced.⁷⁵ Having the status of a domestic violence victim is not a fixed characteristic since many women will eventually become domestic violence survivors.⁷⁶ Since Title VII of the Civil Rights Act of 1964 is based on personal characteristics, employment protections are limited to those characteristics under the law.⁷⁷

1. Title VII

Title VII, the main federal employment discrimination law, states that:

It shall be an unlawful employment practice for an employer—to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion,

74. *Id.*

75. Widiss, *supra* note 30, at 707.

76. *Id.*

77. *Id.*

sex, or national origin[.]⁷⁸

Title VII has been expanded to protect against sexual harassment by a supervisor or a coworker as causing a hostile work environment, viewing the behavior as a form of sex discrimination.⁷⁹ Because some forms of domestic violence are sexual, harassing, and violent in nature, these expansions and revised protections could protect women who experience domestic violence in the workplace who have intimate relationships with their coworkers or supervisors. However, most victims of domestic violence experience the abuse through third party perpetrators, who are beyond an employer's purview.⁸⁰

In October 2012, the Equal Employment Opportunity Commission ("EEOC") published a fact sheet called, *Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*.⁸¹ Although Title VII does not expressly protect victims of domestic violence as a protected class, the fact sheet provides some examples as to how victims may have a claim under sex-based discrimination.⁸² Title VII prohibits discrimination based on sex stereotypes.⁸³ The EEOC gives examples such as: "[A]n employer terminates an employee after learning she has been subjected

78. 42 U.S.C.A. § 2000e-2(a)(1) (2012). Title VII further states that "the terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work . . ." 42 U.S.C. § 2000e(k) (2012).

79. Robin Runge, *The Legal Response to the Employment Needs of Domestic Violence Victims*, 37 HUM. RTS. MAG., No. 3, Summer 2010, http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol37_2010/summer2010/the_legal_response_to_the_employment_needs_of_domestic_violence_victims_an_update.html; see *Meritor Sav.-Bank v. Vinson*, 477 U.S. 57, 64-65 (1986) (holding that when a supervisor harasses an employee because of that employee's sex, the supervisor is violating Title VII because he or she is discriminating based on sex); see *Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1012 (8th Cir. 1988) (opining that the constructive discharge of female employees was a result of the campaign of harassment by their male coworkers which violated Title VII). The Supreme Court in *Meritor* relied on Guidelines set forth by the U.S. Equal Employment Opportunity Commission issued in 1986 which defined sexual harassment and demonstrated the situations in which employers may be held liable for not mitigating the hostile work environment. *Meritor*, 477 U.S. at 65-66; 29 C.F.R. § 1604.11 (2013).

80. Widiss, *supra* note 30, at 717.

81. EEOC, *Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*, available at http://www1.eeoc.gov/eeoc/publications/upload/qa_domestic_violence.pdf (last modified Oct. 12, 2012) [hereinafter EEOC Fact Sheet].

82. *Id.*

83. *Id.*

to domestic violence, saying he fears the potential ‘drama battered women bring to the workplace.’⁸⁴ In this situation, the victim is discriminated against because of her being a “battered woman,” which is sex stereotyping that could fall under the “because of sex” classification under Title VII. Another example given in the fact sheet is when “an employer allows a male employee to use unpaid leave for a court appearance in the criminal prosecution of an assault, but does not allow a similarly situated female employee to use equivalent leave to testify in the criminal prosecution of domestic violence she experienced.”⁸⁵ The employer views “domestic violence [as] ‘just a marital problem’ and ‘women think everything is domestic violence.’”⁸⁶ Again, this situation could implicate a Title VII violation because the employer is discriminating against the victim by not giving her unpaid leave because of her “sex” and sex-stereotyping.

The fact sheet was published after the EEOC released its 2012-2016 Strategic Plan in September 2012, which highlighted its primary goals of targeting outreach to vulnerable workers.⁸⁷ The EEOC is not changing Title VII or its effect, but is seeking to “reiterate[] its commitment to ensuring justice for vulnerable individuals[,]” to remind employers of anti-discrimination policies, and to be cognizant of the ever present issue of domestic violence in the employment context.⁸⁸ Even though the EEOC identifies specialized situations in which victims of domestic violence may have a claim under Title VII, most victims are still left without protection because there are no federal equal employment opportunity laws that expressly protect and prohibit discrimination against victims of domestic violence.⁸⁹

84. *Id.*; see also Chelsia Rose Marcius & Daniel Beekman, *Chipotle sued by woman who says she was fired for taking time off after attack by abusive boyfriend*, N.Y. DAILY NEWS (Apr. 14, 2014, 10:36 PM), <http://www.nydailynews.com/new-york/chipotle-fired-time-heal-lawsuit-article-1.1756395>.

85. See EEOC Fact Sheet, *supra* note 81.

86. *Id.*

87. See generally EEOC, *United States Equal Employment Opportunity Commission Draft Strategic Plan For Fiscal Years 2012 – 2016* (2012), available at http://www.eeoc.gov/eeoc/plan/strategic_plan_12to16_DRAFT.cfm.

88. *EEOC Issues Domestic Violence Guidance, Reminds Employers to Consider Title VII and ADA*, JACKSON LEWIS (Nov. 5, 2012), <http://www.jacksonlewis.com/resources.php?NewsID=4244> [hereinafter *EEOC Issues*]; see also Cathleen Flahardy, *EEOC Issues Domestic Violence Guidance*, INSIDE COUNSEL (Nov. 7, 2012), <http://www.insidecounsel.com/2012/11/07/eeoc-issues-domestic-violence-guidance>.

89. See *EEOC Issues*, *supra* note 88; see also Flahardy, *supra* note 88.

a. Title VII influence on state antidiscrimination law

In recent years, there has been an influx of state laws to protect victims of domestic violence from employment discrimination.⁹⁰ These laws are designed to make up for the shortfalls of Title VII with the goal to enhance society's awareness of domestic violence as a social problem in American society.⁹¹ States such as Illinois have made it illegal to discriminate against employees who are victims of domestic violence.⁹² Under Illinois law:

An employer shall not fail to hire, refuse to hire, discharge, or harass any individual, otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, or retaliate against an individual in any form or manner . . . because: (1) the individual involved: (A) is or is perceived to be a victim of domestic or sexual violence.⁹³

The Illinois antidiscrimination law is a section of the Victims' Economic Security and Safety Act, which was passed in 2003.⁹⁴ During the gubernatorial election in 2002, Illinois labor leaders identified domestic violence as an issue facing many women and one that governor-elect Rod Blagojevich would seek to combat.⁹⁵ According to Kim Wells, executive director of the Corporate Alliance to End Partnership Violence in Bloomington, Illinois, about half the incidents of workplace violence are attributed to domestic violence.⁹⁶ The Alliance is made up of eighty companies in Illinois seeking to fight domestic violence and help victims in the workplace.⁹⁷

With that foundation, Illinois House Representative Patricia Bailey introduced the bill in early February 2003, with politicians like Barack

90. Runge, *supra* note 79.

91. *Id.*

92. 820 ILL. COMP. STAT. ANN. 180/30(A) (West 2008).

93. *Id.* §§ (a)-(a)(1)(A).

94. *Id.*

95. See T. Shawn Taylor, *Labor likes chance for change under Blagojevich*, CHI. TRIB., Dec. 15, 2002, http://articles.chicagotribune.com/2002-12-15/business/0212150509_1_labor-rod-bлагоjevich-illinois-afl-cio.

96. Lisa Bertagnoli, *Out of the home, into the office: Employers cope with domestic violence, which often spills over into the workplace*, CHI. TRIB., Nov. 17, 2002, http://articles.chicagotribune.com/2002-11-17/business/0211170333_1_domestic-violence-fight-domestic-abuse-intimate-partner.

97. *Id.*

Obama co-sponsoring the bill.⁹⁸ The bill was introduced to prohibit discrimination against victims of domestic violence in the workplace as well as to allow victims to take leave to address their abusive situations.⁹⁹ The bill passed in August of 2003¹⁰⁰ and was one of the first state laws to identify victims of domestic violence as a protected class under employment antidiscrimination law.¹⁰¹

Several other states have followed in Illinois' footsteps in protecting victims of domestic violence by modeling their statutes on Title VII such as Arizona, New York, North Carolina, Oregon, and Rhode Island.¹⁰²

A case that demonstrates the effectiveness of state antidiscrimination laws that seek to protect victims of domestic violence in the employment context is *Reynolds v. Fraser*.¹⁰³ In *Reynolds*, the petitioner had been an employee at the New York City Department of Corrections and the mother of two young children.¹⁰⁴ At the time of her employment, the petitioner had been living with the father of her children, but because he subjected her to repeated abuse, she decided to move out.¹⁰⁵ She was able to find her own apartment, but was later evicted after less than two years.¹⁰⁶ Given that she was homeless and having difficulty finding a place to live, she asked the Health Management Division ("HMD") at her job for vacation time in order to find housing, which subsequently needed to be extended.¹⁰⁷ HMD decided to put her on sick leave due to her stress and then asked her for her address, which she needed to provide or else she would be fired.¹⁰⁸

98. *Bill Status of HB3486, 98th General Assembly, ILL. GEN. ASSEMB.*, <http://www.ilga.gov/legislation/BillStatus.asp?GA=98&DocTypeID=HB&DocNum=3486&GAID=3&SessionID=3&LegID=6117#actions> (last visited Mar. 18, 2013).

99. *Id.*

100. *Id.*

101. Wendy R. Weiser & Deborah A. Widiss, *Employment Protection for Domestic Violence Victims*, CLEARINGHOUSE REV. (May-June 2004), at 4, 8.

102. ARIZ. REV. STAT. ANN. § 13-4439 (West 2010); N.Y. EXEC. LAW § 296 (McKinney 2014); N.Y.C. ADMIN. CODE § 8-107.1 (2012); N.C. GEN. STAT. ANN. §§ 50B-5.5, 95-270 (West 2014); OR. REV. STAT. ANN. § 659A.290 (West 2013); R.I. GEN. LAWS § 12-28-10 (2003); WESTCHESTER CNTY. CODE §§ 700.02, 700.03 (2014).

103. 781 N.Y.S.2d 885 (N.Y. Sup. Ct. 2004); *see also* Quick v. Horn, No. 114839/06, 2008 WL 4615624, at *5 (N.Y. Sup. Ct. Sept. 9, 2008) (holding that an employee may not be terminated because of her domestic violence victim status).

104. *Reynolds*, 781 N.Y.S.2d at 886.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

Feeling pressure, she decided to give HMD her husband's address.¹⁰⁹

HMD made visits to the address, found that she was not there, and she was therefore forced to explain her unauthorized absence from home.¹¹⁰ Because of the inevitable abuse she would experience if she returned home, she remained homeless until she found stable housing at a domestic violence shelter.¹¹¹ Petitioner notified HMD of her new residence, but was not able to give them her exact address given the confidential nature of a domestic violence shelter.¹¹² Confidentiality prevents abusers from finding their victims.¹¹³ She disclosed the shelter's office address, and HMD attempted to visit her at the shelter, but was not able to do so because the monitor refused to sign the confidentiality agreement.¹¹⁴ After living at the shelter for over a month and after recovering from surgery that kept the petitioner from working, she finally returned to work, at which time she was fired for her unauthorized absence from her home while she was on sick leave.¹¹⁵

The petitioner brought suit under New York City Human Rights Law which makes it unlawful for an employer to discriminate against an employee for being a victim of domestic violence.¹¹⁶ Prior to this case, the City Council had made an amendment to the City's Human Rights Law to prevent employers from discriminating against victims of domestic violence.¹¹⁷ The amendment was enacted "to protect the economic viability of victims of domestic violence and to support their efforts to gain independence from their abusers' by 'enabl[ing] victims of domestic violence to speak with their employers without fear of reprisal, about a domestic violence incident or about possible steps that will enhance their ability to perform their job without causing undue hardship to the employer.'"¹¹⁸ Applying this amendment, the court found that the Department of Correction's sick leave policy was unlawful by requiring employees to provide an address and to stay at that residence during sick leave except for specified reasons.¹¹⁹ The sick leave policy failed to consider the petitioner's homelessness due to her

109. *Id.*

110. *Id.*

111. *Id.* at 887.

112. *Id.*

113. *See Sacharow v. Sacharow*, 826 A.2d 710, 713 (N.J. 2003).

114. *Reynolds*, 781 N.Y.S.2d at 887.

115. *Id.*

116. *Id.* at 886.

117. *Id.* at 890.

118. *Id.*

119. *Id.* at 891.

2014]

WOMEN'S WORK

487

status as a victim of domestic violence and failed to make accommodations for her.¹²⁰ Therefore, her employer violated the New York City law and the petitioner was entitled to relief.¹²¹

2. Family and Medical Leave Act (“FMLA”)

The discriminatory sick leave policy present in *Reynolds* was the spark that led states to mirror their sick leave policies to the FMLA.¹²² The FMLA states that:

[an] eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following: (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter. (B) Because of the placement of a son or daughter with the employee for adoption or foster care. (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition. (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.¹²³

However, the statute only applies to employers who employ 50 or more employees.¹²⁴ Second, unpaid, job protected leave is only available for employees with a “serious health condition.”¹²⁵ A “serious health condition” under the statute is an “illness, injury, impairment, or physical or mental condition that involves— (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.”¹²⁶

In theory, the FMLA should help victims of domestic violence in some situations. However, many physical injuries sustained by victims of domestic violence like a black eye or sprained wrist require short term

120. *Id.*

121. *Id.*

122. Goldscheid & Robin Runge, *Employment Law and Domestic Violence A Practitioner's Guide*, ABA COMMISSION ON DOMESTIC VIOLENCE 7-8 (2009), http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/PublicDocuments/ABA_CDV_Employ.authcheckdam.pdf

123. Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. §§ 2612 (a)(1)(A)-(a)(1)(D) (2009).

124. *Id.* § 2611 (4)(A)(i).

125. *Id.* § 2612 (a)(1)(D).

126. *Id.* §2611(11).

care and, thus, do not fit under the serious health condition requirement.¹²⁷ Additionally, domestic violence victims experience emotional and economic abuse that mentally keep them from executing their jobs efficiently and successfully, but this mental impairment may not rise to the level of needing continuing treatment by a health care provider.

Third, victims may need to take leave to participate in criminal proceedings or obtain an order of protection from their abusers.¹²⁸ Taking action to prevent the abuse from continuing is not an express or implied reason that the FMLA recognizes for electing to take job protected leave.¹²⁹ However, this does not mean that a victim will never meet the requirements under the FMLA as is evidenced by *Municipality of Anchorage v. Gregg*.¹³⁰

Ms. Gregg had been hired by the Anchorage Police Department and had a good employment record, gaining respect from her fellow coworkers.¹³¹ During her employment, she took leave for her experience with domestic violence in addition to her pregnancy and injuries she sustained from a car accident.¹³² Gregg subsequently asked for more leave, but her employer argued that it was not justified under the FMLA because she did not show that she was incapacitated due to failing to obtain a contemporaneous medical diagnosis.¹³³ The court stated that:

[W]hen an employee is actually incapacitated by illness, the failure to get a correct diagnosis cannot disqualify an employee from the Act's protection. To hold that a doctor must agree, contemporaneously and at all times, that the employee is unable to work, places a burden on the employee that we find nowhere in the plain text of the Act, and ignores the reality of debilitating illness.¹³⁴

The employer also asserted that because Ms. Gregg did not seek medical treatment later on when she asked for more leave, she did not fit under the confines of the statute.¹³⁵ However, the court held that she did

127. Widiss, *supra* note 30, at 699-700.

128. *Id.* at 700.

129. See Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. § 2612 (2009).

130. 101 P.3d 181 (Alaska 2004).

131. *Id.* at 184.

132. *Id.* at 184-85.

133. *Id.* at 185-88.

134. *Id.* at 188.

135. *Id.* at 190.

fit under the provisions of the FMLA when she received medical treatment at the time she first asked for leave because the same condition continued for several months, which thus satisfied the text of the statute.¹³⁶

a. State Leave Laws

Even though Ms. Gregg was successful in bringing suit against her employer under the FMLA, most victims of domestic violence are not protected because their injuries are not “serious health conditions[.]” they require short term care, or they need to take leave that is not covered by the statute such as leave to attend court or to do safety planning.¹³⁷ Due to the shortfalls of the FMLA in its ability to extend its protections to cover most victims of domestic violence, a large number of states have passed legislation modeled off the FMLA to target a majority of victims of domestic violence and their ability to take unpaid job protected leave.¹³⁸ States that have adopted domestic violence leave legislation include Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maine, Oregon, Washington and the District of Columbia.¹³⁹ The domestic violence leave legislation in California, for example, states that:

[A]n employer with 25 or more employees shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to attend to any of the following: (1) To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking. (2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking. (3) To obtain psychological counseling related to an experience of domestic violence, sexual assault or stalking. (4) To participate in safety planning and take other actions to increase safety from

136. *Id.* at 190-91.

137. Widiss, *supra* note 30, at 699-700.

138. *Id.* at 700.

139. See ARIZ. REV. STAT. ANN. § 13-4439 (West Supp. 2010); CAL. LAB. CODE §§ 230, 230.1 (West 2011); COLO. REV. STAT. Ann. § 24-34-402.7 (West 2008); Conn. Gen. Stat. Ann. § 31-51ss (West 2011); FLA. STAT. ANN. § 741.313 (West 2010); HAW. REV. STAT. § 378-72 (West 2007); 820 ILL. COMP. STAT. ANN. 180/1-180/45 (West 2008); KAN. STAT. ANN. § 44-1132 (West 2008); ME. REV. STAT. ANN. tit. 26, § 850 (2007); OR. REV. STAT. ANN. § 659A.277 (West 2013); WASH. REV. CODE ANN. § 49.76.030 (West Supp. 2014); D.C. CODE § 32-131.02 (West 2001).

future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.¹⁴⁰

Unlike the FMLA, under California law, victims of domestic violence can take advantage of unpaid job protected leave in a smaller office, her injuries or health condition do not need to be “serious” as defined by the FMLA, and she can take actions while on leave that will prevent her from experiencing abuse in the future like obtaining an order of protection.¹⁴¹

The first state to pass domestic violence leave legislation was Maine in 1999.¹⁴² According to Laura A. Fortman, a member of the Maine Women’s Lobby at the time of the bill passage, domestic violence made up over half of the homicides that occurred in Maine from 1990 to 2005.¹⁴³ Given the prevalence of domestic violence in the state, many women lost or quit their jobs because their employers did not have leave policies in place for victims.¹⁴⁴ Many of these women testified before the Legislature’s Labor Committee to demonstrate the need for leave legislation in the state.¹⁴⁵ Sue Jones McPhee of Sexual Assault Response Services of Southern Maine stated that “what this bill will do in a very public way is let [victims] know they can tell their employer and not worry about the stigma . . . People will often quit their jobs (rather) than face those difficulties.”¹⁴⁶ After the bill passage, victims could talk freely with their employers without the fear of losing their job in the process.

Maine’s domestic violence leave legislation was meant to protect victims whose abuse followed them out the door and into their place of work.¹⁴⁷ Many states followed its example.¹⁴⁸

140. Cal. Lab. Code §230.1 (West 2012).

141. *See Id.*

142. ME. REV. STAT. ANN. tit. 26, § 850 (2007); Jack Beaudoin, *Lawmakers Approve Groundbreaking Victims’ Leave Bill*, PORTLAND PRESS HERALD (Maine), May 25, 1999 at 1A.

143. *See Too Much Too Long?: Domestic Violence in the Workplace: Hearing on Examining Domestic Violence in the Workplace Before the S. Subcomm. On Emp’t & Workplace Safety*, 110th Cong. 21 (2007) (Testimony of Laura A. Fortman, Commissioner, State of Maine, Department of Labor).

144. Beaudoin, *supra* note 142, at 1A2.

145. *See Id.*

146. *Id.*

147. *See id.*

148. *See supra* note 138 and accompanying text.

B. *The Financial Aftermath: Protections under the Law*

To determine whether or not a victim of domestic violence is economically secure not only depends on whether she is employed, but whether she has the ability to leave her abuser without suffering catastrophic financial ramifications. Some of the other consequences of economic abuse are tax liability, consumer credit debt, loss of unemployment insurance, and lack of property rights.¹⁴⁹ The law has sought to carve out protections and exceptions for victims of domestic violence so they have a chance to escape their abusive relationships.¹⁵⁰ Recognizing that money is an important reason for why women stay in their abusive environments, the law has enacted protections as awareness has increased.

1. Taxation Law: Innocent Spouse

One way in which an abuser can assert his control over his victim is through filing a joint federal income tax return when the parties are married, thus making her jointly and severally liable for any tax liability that he might incur.¹⁵¹ The Internal Revenue Service ("IRS") can then collect taxes owed from either party, which makes her liable for his debt and puts her in debt or forces her to file for bankruptcy.¹⁵² However, under the Internal Revenue Code ("IRC") 26 U.S.C.A. sections 6015(b) and (c), a victim can claim innocent spouse and be relieved of the tax liability for the specific taxable year.¹⁵³ A victim is permitted to elect innocent spouse under section 6015(c) if:

149. See *supra* Part II.B.2.

150. See *infra* Part III.B.

151. I.R.C. § 6013(d)(3) (West 2006); see Jennifer Sarkees, *Phase Three of New York State Domestic Violence Law: The Financial Aftermath*, 14 BUFF. WOMEN'S L. J. 95, 114 (2005-06)

152. See Sarkees, *supra* note 151, at 114.

153. I.R.C. § 6015(b)(West 2006). To satisfy the criteria under the statute, victim must show:

- (A) a joint return has been made for a taxable year;
- (B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
- (C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;
- (D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and
- (E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

[A]t the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.¹⁵⁴

A victim must satisfy the criteria in order to be granted relief under subsections (b) and (c) of section 6015.¹⁵⁵ Given the circumstances of a domestic violence environment, especially one involving economic abuse, a victim may not know of the existence of a discrepancy or any liability well past the two year mark and, therefore, may be precluded from innocent spouse protection.¹⁵⁶

However, included in the statute is a catchall option under section 6015(f), which states that:

[I]f taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.¹⁵⁷

This third option for spousal relief attempts to treat claimant spouses fairly by taking into account a wide array of unfortunate circumstances, one being domestic violence.¹⁵⁸ Congress recognized that, in certain situations, it would be *unconscionable* to deny innocent spouse relief if a claimant was unable to satisfy the stringent requirements of sections (b) and (c).¹⁵⁹

Even though there are no guidelines determining *unconscionability* in the statute, there are non-codified guidelines in an IRS notice proposing a revenue procedure that helps the Secretary decide which factors should be taken into account in order to grant innocent spousal relief under subsection (f).¹⁶⁰ In the notice, *abuse not amounting to*

154. I.R.C. § 6015(c)(3)(A)(i)-(ii).

155. I.R.C. § 6015(b)-(c) (West 2006).

156. Sarkees, *supra* note 151, at 116.

157. I.R.C. § 6015(f)(1)-(2) (West 2006).

158. Gary Fleischman & Sean Valentine, *Professionals' Tax Liability Assessments and Ethical Evaluations in an Equitable Relief Innocent Spouse Case*, 42 J. BUS. ETHICS, 28-29 (2003).

159. *Id.* at 29.

160. I.R.S. Notice 2012-8, 2012-4 I.R.B. 309.

duress is an exception the Secretary will take into consideration in deciding whether to grant innocent spousal relief.¹⁶¹ Under the exception:

If the requesting spouse establishes that he or she was the victim of abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return, or question the payment of any balance due reported on the return, for fear of the nonrequesting spouse's retaliation, the Service will consider granting equitable relief even though the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.¹⁶²

Another factor is whether the spouse will experience economic hardship if she were made to satisfy the tax liability.¹⁶³ Economic hardship is judged by whether the spouse would be able to pay for her basic living expenses after satisfying the tax liability, her current income, and her assets.¹⁶⁴

Whether a spouse knew or had reason to know of the part of the tax return giving rise to the deficiency is another factor taken account.¹⁶⁵ The notice expressly considers that women who are abused may not know or have reason to know of any deficiencies because "the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information and, therefore, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation."¹⁶⁶ Thus, the notice takes into account many situations in which a victim of domestic violence should not be held liable under subsection (f) for her abuser's tax deficiencies and she should be granted relief especially when it would help her leave her abusive environment.¹⁶⁷

Subsection (f) of 6015 was tested in *Thomassen v. Commissioner of Internal Revenue*, in which a widow sought innocent spouse relief after

161. *Id.* at 312.

162. *Id.*

163. *Id.* at 313.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 314.

enduring years of abusive psychological abuse from her husband.¹⁶⁸ The court found that the abuse she experienced weighed heavily in her ability to challenge her husband on their joint tax returns as she was fearful of his retaliation.¹⁶⁹ Courts find that abuse does not necessarily have to be physical, but that it can also be psychological, emotional, and economic.¹⁷⁰ Because her husband's dealings with the IRS exacerbated his temper and made him more abusive towards her, Thomassen was essentially precluded from knowing or investigating their joint tax returns.¹⁷¹ The tax courts have been more accommodating for victims of domestic violence in recent cases and continue to carve out exceptions in order to prevent unconscionable results.¹⁷²

The IRS attempts to protect victims of domestic violence from retaliation when they make a claim of innocent spouse in its Form 8857 through confidentiality.¹⁷³ The form asks whether the taxpayer was a victim of domestic during the tax year she wants relief.¹⁷⁴ When an IRS employee receives a form indicating that the taxpayer was a victim of domestic violence during the tax year in question, the employee is

168. Thomassen v. Comm'r of Internal Revenue, 101 T.C.M. (CCH) 1397 (2011).

169. *Id.* at 1407.

170. See Nihiser v. C.I.R., 95 T.C.M. (CCH) 1531, 1538 (2008) (defining a psychologically abusive spouse as one who may: "(1) isolate the victim; (2) encourage exhaustion by, for example, intentionally limiting food or interrupting sleep; (3) behave in an obsessive or possessive manner; (4) threaten to commit suicide, to murder the requesting spouse, or to cause the death of family or friends; (5) use degrading language including humiliation, denial of victim's talents and abilities, and name calling; (6) abuse drugs or alcohol, including administering substances to the victim; (7) undermine the victim's ability to reason independently; or (8) occasionally indulge in positive behavior in order to keep hope alive that the abuse will cease"). These objective factors provide courts with a case by case analysis that could lead a court to conclude that the psychological abuse experienced by the spouse warrants equitable relief. *Id.*

171. See *id.* at 13.

172. See Stephenson v. C.I.R., 101 T.C.M. (CCH) 1048, 1054 (2011) (holding that victim of domestic abuse was entitled to innocent spouse relief given that her ex-husband kept their financial information under lock and key and, therefore, had no reason to know of their tax deficiencies); see also Kasner v. Department of Revenue, No. TC-MD 041037A, 2005 WL 1089172, at *1 (Or. Tax Magis. Div. 2005) (holding that a person's appeal right does not start to run the 90 days on the date of the conference decision letter, but rather when person's actual knowledge of the Department's decision). In the lower court, the victim was precluded from claiming innocent spouse because she appealed passed the 90 day deadline. However, the higher court interpreted the Oregon statute differently and found that the clock should start to run when the claimant learns of the Department's decision, not when she receives the letter. *Id.* at *2. The statute interpreted by the court reflects the legislature's 'generous' intent. Scott M. Edwards, *For Innocent Spouse Relief, Oregon Appeal Period Begins When Taxpayer Learns of Denial*, 16 J. MULTISTATE TAX. INCENTIVES 36, 37 (2006).

173. See I.R.S., *Form 8857, Request for Innocent Spouse Relief*, IRS.GOV, <http://www.irs.gov/pub/irs-pdf/f8857.pdf> (last updated Feb. 16, 2014).

174. *Id.*

directed not to release the claiming spouse's information including her name, address, phone number, and employer.¹⁷⁵ The Cincinnati Centralized Innocent Spouse Operation, the agency in charge of processing innocent spouse claims, will then contact the non-requesting spouse and give him an opportunity to participate, making sure not to divulge any information about his spouse.¹⁷⁶

According to an empirical study conducted by Stephanie Hunter McMahon, judges are increasingly cognizant of abuse when examining an innocent spouse claim.¹⁷⁷ This is evidenced by the fact that judges are increasingly recognizing and making note of whether or not there is abuse present in a given circumstance.¹⁷⁸ Even though abuse is not defined under the law, judges are willing to take into consideration all types of abuse and come up with the most equitable result.¹⁷⁹

In addition to innocent spouse relief, another way in which a victim can be relieved of tax liability under a joint federal tax return is to claim duress.¹⁸⁰ To show duress when a taxpayer signed a joint return, the claimant must show "that the taxpayer was unable to resist the demands of the taxpayer's spouse to sign the joint return and that the taxpayer would not have signed the joint return absent the constraint that the taxpayer's spouse applied to the taxpayer's will."¹⁸¹ In *Hiramanek v. C.I.R.*, the claimant argued that she signed the joint return under duress when her husband

grabbed petitioner's left arm and twisted it several times, resulting in bruising. He then struck petitioner on the back of the head with an open hand and pulled her hair with both hands. Finally, intervenor pushed petitioner on the jaw. Petitioner still refused to sign the return. Later that night, intervenor cornered petitioner in the bathroom and shoved her against the wall. He ordered her to the kitchen table and threatened her with physical harm and threatened that she would never see her children again if she did not sign the return. Petitioner, fearing for her safety,

175. KEITH FOGG, EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS 19.3.2 (American Bar Association 2011).

176. *Id.*

177. See Stephanie Hunter McMahon, *An Empirical Study of Innocent Spouse Relief: Do Courts Implement Congress's Legislative Intent?*, 12 FLA. TAX REV. 629, 695 (2012).

178. *Id.*

179. See *id.* at 694.

180. *Hiramanek v. Comm'r*, 2011 Tax Ct. Memo LEXIS 272, at *4 (U.S. Tax Ct. 2011)

181. *Id.*

placed a scribble in the signature line of the return.¹⁸²

This behavior was a reaction to the victim's refusal to sign the joint return.¹⁸³ A gun to the head is not the only circumstance in which a court will find duress.¹⁸⁴

In this case, due to the history of abuse the claimant endured which resulted in "mental intimidation," the court found that she had signed the joint return under duress and, therefore, found that the 2006 return was not in fact a joint return under section 6013.¹⁸⁵ Because she did not technically sign a joint return, she is not jointly and severally liable for tax liability arising from a deficiency in the return.¹⁸⁶

Another effort to protect victims of domestic violence in the context of tax law is the Taxpayer Advocate Service's 2011 training program that seeks to raise awareness on domestic violence among all its employees as well as IRS employees.¹⁸⁷ The video provides scenarios in order to demonstrate how IRS employees can identify and work with taxpayers who are victims of domestic violence in order to better interact with and help them.¹⁸⁸ The video is accompanied by written materials that inform employees of other resources as well as nonprofit organizations they can utilize in order to better understand the tax issues facing victims of domestic violence.¹⁸⁹

2. Consumer Credit

Another way an abuser can exercise control over his victim is by destroying her credit report by using her name and her money to force her into debt.¹⁹⁰ One way he can accomplish that is by using his victim's name to take out a credit card, by gaining control over banking and credit card accounts, and using that control to purchase things in the victim's name.¹⁹¹ Not only is the victim in debt, but her damaged credit

182. *Id.* at *1.

183. *Id.*

184. *See id.* at *3.

185. *Id.*

186. *Id.* at *4.

187. I.R.S. Taxpayer Advocate Service, *Introduction to Diversity Issues: The IRS Should Do More to Accommodate Changing Taxpayer Demographics*, IRS Ann. Rep. 273, 331 (2011).

188. *Id.*

189. *Id.*

190. *See supra* Part II.B.2; *See* Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 365 (2013) [hereinafter *Escaping Battered Credit*].

191. *Id.*

score is accessible by future employers, landlords, and utility companies who use these reports to screen people.¹⁹² Due to the availability of credit scores, victims of economic abuse are at a disadvantage in that they are financially insecure and there are obstacles to obtaining employment and new housing arrangements.¹⁹³

Victims can protect themselves from this fraudulent behavior by claiming identity theft through the Fair and Accurate Credit Transactions Act ("FACTA"), which amended the Fair Credit Reporting Act ("FCRA") in 2003.¹⁹⁴ Under the Act, "identity theft" is defined as "a fraud committed using the identifying information of another person."¹⁹⁵ Using this definition, victims of domestic violence can name their abuser as using her identifying information for fraudulent purposes.¹⁹⁶ By alleging identity theft through the FACTA, which adopted a new procedure that allows victims of identity theft to block fraudulent data from their credit scores, victims can help clear their credit scores of debt.¹⁹⁷

Regulations under the Equal Credit Opportunity Act ("ECOA") also contain possible relief for victims of domestic violence.¹⁹⁸ Under the regulations, "in evaluating an applicant's creditworthiness a creditor shall consider . . . [o]n the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness."¹⁹⁹ Angela Littwin argues that "coerced debt" is covered by the regulation in that a victim applicant can draw the creditor's attention to her credit history that does not reflect her creditworthiness, namely the debt that she is not responsible for.²⁰⁰ By taking into account her credit history that does not reflect her creditworthiness, the law grants victims latitude and makes it possible for them to gain employment, obtain new housing, and be attractive employment candidates.²⁰¹

192. *Escaping Battered Credit*, *supra* note 190, at 366-67.

193. *Id.* at 367.

194. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (codified as amended in scattered sections of 15 and 20 U.S.C.)

195. *Id.* at §1102, 117 Stat. at 1954.

196. *Identity Theft and Domestic Violence*, N.Y. DEP'T ST., DIV. CONSUMER PROTECTION, http://www.dos.ny.gov/consumerprotection/identity_theft/dealing_with_the_damage/domestic_violence.html (last visited Mar. 20, 2013).

197. *Escaping Battered Credit*, *supra* note 190, at 378.

198. See 12 C.F.R. §202.6(b)(6)(ii) (2012).

199. *Id.*

200. *Escaping Battered Credit*, *supra* note 190, at 371.

201. See *id.* at 371-72.

3. Property Law

Inherent in a domestic violence situation is that the victim lives with or has a cohabitating relationship with her abuser. What happens when a victim wants to leave the home or wants to terminate her lease early so her abuser cannot follow her or break into her home? Several states have laws that allow victims of domestic violence to terminate their leases without financial ramifications.²⁰² Massachusetts Governor, Deval Patrick, recently signed into law a bill that will allow victims of domestic violence as well as other victims of sex crimes to vacate their leases or rental agreements without financial penalties.²⁰³ Under the statute,

A tenant or co-tenant may terminate a rental agreement or tenancy and quit the premises upon written notification to the owner that a member of the household is a victim of domestic violence, rape, sexual assault or stalking, if such notification is made within 3 months of the most recent act of domestic violence, rape, sexual assault or stalking; or if a member of a tenant's household is reasonably in fear of imminent serious physical harm from domestic violence, rape, sexual assault or stalking. An owner shall have the right to request proof of the status as a victim of domestic violence, rape, sexual assault or stalking, including the name of the perpetrator, if known, as provided in subsection (e).²⁰⁴

Governor Patrick stated that “the new law will provide important protections to victims of domestic violence, sexual abuse and stalking by giving them the ability to choose whether to stay in their residences or move without having to weigh their personal safety against financial considerations.”²⁰⁵ Without early-termination lease laws, many victims will sacrifice their safety to avoid financial consequences inherent in

202. ARIZ. REV. STAT. ANN. § 33-1318 (Supp. 2013); COLO. REV. STAT. §38-12-402 (West 2007); MD. CODE ANN., REAL PROP. § 8-5A-03 (West 2012); MASS. GEN. LAWS ANN. ch.186 §24 (West 2013); N.C. GEN. STAT. §42-45.1 (2014); N.D. CENT. CODE ANN. § 47-16-17.1 (West Supp. 2013); N.J. STAT. ANN. § 46:8-9.5 (West Supp. 2013); N.Y. REAL PROP. LAW § 227-c (McKinney 2012); OR. REV. STAT. ANN. §90.453 (West 2012); WASH. REV. CODE ANN. §59.18.575 (West Supp. 2014).

203. Martin Finucane, *New Law Allows Domestic Violence, Sex Assault Victims to Vacate Leases Without Penalties*, THE B. GLOBE, Jan. 3, 2013.

204. MASS. GEN. LAWS ANN. ch. 186 §24(a) (2013).

205. Finucane, *supra* note 203, at 1.

terminating a lease early.²⁰⁶

In June 2013, New York Governor Cuomo put forth his Women's Equality Agenda and introduced the Women's Equality Act in the New York Assembly, enumerating his ten point plan towards women's equality.²⁰⁷ One of his ten points focuses on victims of domestic violence, specifically their ability to be safe from discrimination in obtaining housing.²⁰⁸ In the Act, Governor Cuomo seeks to add section 227-d to the real property law, which expressly forbids discrimination on the basis of domestic violence victim status in the housing context.²⁰⁹ The Act would also add section 744 to the real property law, which prohibits a landlord from evicting a tenant due to her domestic violence victim status.²¹⁰

In addition to early termination lease statutes and antidiscrimination laws in the housing context, protection orders obtained in many states such as California include provisions that allow victims to continue to use and possess any real or personal property and require the abuser must pay any outstanding or future payments on that property.²¹¹ A California family statute provides that a "court may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances due during the period the order is in effect."²¹² The statute updates the prior law by not only applying to married couples, but allowing a non-married victim to seek relief under the statute.²¹³

Under the New Jersey Prevention of Domestic Violence Act, protection orders may include provisions that the abuser must pay monetary relief to his victim for "loss of earnings or other support."²¹⁴ When an abuser is forced to vacate a residence, he should not be rewarded, but instead should be made to pay for his victim's support and expenses.²¹⁵

206. See Anne C. Johnson, *From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1862 (2006).

207. See Women's Equality Act, Assemb. B. 8070, 236th Legis. Sess. (N.Y. 2013), <http://assembly.state.ny.us/leg/?sh=printbill&bn=A08070&term=2013>.

208. *Id.*; See also *Ending Housing Discrimination Against Victims of Domestic Violence*, NYWOMENSEQUALITY.ORG, <http://nywomensequality.org/58-2/stop-housing-discrimination-for-victims-of-domestic-violence> (last visited June 25, 2013).

209. N.Y. Assemb. B. 8070 at 1.

210. *Id.* at 9.

211. Cal. Fam. Code § 6324 (West 2012).

212. *Id.*

213. *Id.* cmt.

214. N.J. STAT. ANN. § 2C:25-29 (West Supp. 2012).

215. See *Mugan v. Mugan*, 555 A.2d 2, 3 (N.J. Super. Ct. App. Div. 1989) (holding that when

Laws such as these reflect policy considerations of keeping the safety and security of women in their homes and are not made to choose between their safety in favor of financial considerations.²¹⁶ The law recognizes that economic interdependence and economic abuse is inherent in the power and control an abuser exercises over his victim.²¹⁷ This recognition gives women the opportunity to have a chance at escaping the abuse by giving her the chance to be economically stable while also escaping the abusive environment.²¹⁸

4. Unemployment Insurance

Before 1996, States administered unemployment insurance systems funded in part by the federal government that provided recipients partial-wage replacement who lost their job “through no fault of their own,” meaning that they left work voluntarily for a “good cause” or if there was no alleged “misconduct.”²¹⁹ Many states only allowed unemployment benefits to those who left work for a “good cause” relating to work.²²⁰ Leaving work due to domestic violence was not a “good cause” that was recognized.²²¹

However, in 1996, Maine amended its unemployment insurance law to allow victims of domestic violence to receive benefits when fired or when they voluntarily elect to leave their job.²²² Under the statute, “[a]ctions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment” is not considered misconduct for purposes of deciding whether the recipient qualifies for benefits.²²³ Since Maine amended its unemployment insurance law, thirty additional states and the District of Columbia have amended their unemployment insurance laws to better protect victims of

abuser is removed from the residence, he may be made to pay for his victim’s support); *see also* Christine Thomas, *Advancing The Economic Rights of Domestic Violence Survivors in Protection Order Proceedings*, at 6, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, available at <http://www.ncdsv.org/images/AdvancingEconomicRightsDVSurvivors.pdf> (last visited Feb. 4, 2014).

216. *See* Thomas, *supra* note 215, at 4.

217. *See id.* at 6-7.

218. *See id.* at 1.

219. Widiss, *supra* note 30, at 670, 711-12; *see generally* Federal Unemployment Tax Act, 26 U.S.C. §3301-3311 (2000).

220. Widiss, *supra* note 30, at 712.

221. *Id.*

222. *Id.* at 713; ME. REV. STAT. ANN. tit. 26 § 1043(23)(B)(3) (2012).

223. ME. REV. STAT. ANN. TIT. 26 § 1043(23)(B)(3) (2012).

domestic violence.²²⁴

By adding the new amendments, legislatures realize that without benefits after losing a job, most victims would choose to stay with their abusers because they do not want to become homeless or go hungry.²²⁵ As one legislator stated, “[W]e would not want to heighten a potential life threatening situation by forcing a victim to choose between their job and their life.”²²⁶ An employee who loses her job or is forced to leave her job because of the violence and the threat of violence she endures on a daily basis is now classified as leaving her job “through no fault of her own” because it is not her fault that she is a victim.²²⁷

IV. WHAT IS LEFT TO BE DONE?

State employment laws as well as state and federal laws regarding money and property have made strides to target domestic violence and recognize victims as a protected class. However, more needs to be done through legislation and policy to combat the social and economic problem of domestic violence.

A. *Victims of Domestic Violence currently in the workplace*

As was stated previously, there is no federal law that expressly protects victims of domestic violence as a protected class in the

224. ARIZ. REV. STAT. § 23-771 (2013); CAL. UNEMP. INS. CODE §§ 1030, 1032, 1256 (2013); COLO. REV. STAT. ANN. § 8-73-108(4)(f) (2013); Conn. Gen. Stat. Ann. § 31-236(a)(2)(A) (2011); DEL. CODE ANN. tit. 19, § 3314(1) (West 2006); D.C. Code §§ 51-131- 36 (2009); Haw. Rev. Stat. § 378-72 (Supp. 2007); 820 ILL. COMP. STAT. 405/601 (2012); 2014 Ind. Legis. Serv. P.L. 121-2014 (H.E.A. 1083) (West); 2014 Kansas Laws Ch. 9 (S.B. 371); LA. REV. STAT. ANN. § 46:460.9 (2010); ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (2012); MASS. GEN. LAWS ANN. ch. 151A, §§ 1, 14, 25, 30 (2013); 2014 Minn. Sess. Law Serv. Ch. 239 (H.F. 2536) (West); MONT. CODE ANN. § 39-51-2111 (2012); NEB. REV. STAT. ANN. § 48-628.01 (2012); N.H. REV. STAT. ANN. § 282-A:32(I)(a)(3) (2010); N.J. STAT. ANN. § 43:21-5(j) (West 2004); N.M. STAT. ANN. § 51-1-7 (A) (West Supp. 2013); N.Y. LAB. LAW § 593(1)(b) (McKinney Supp. 2013); N.C. GEN. STAT. § 96-14.8 (2013); N.D. CENT. CODE § 52-06-02 (Supp. 2013); 2014 Okla. Sess. Law Serv. Ch. 220 (H.B. 2505) (West); OR. REV. STAT. Ann. § 657.176(12) (West 2013); R.I. GEN. LAWS § 28-44-17.1 (2003); S.C. CODE ANN. §§ 41-35-125 (2012); 2014 South Dakota Laws Ch. 249 (SB 69); TEXAS LAB. CODE ANN. §§ 207.046 (2006); VT. STAT. ANN. § 1253 (West 2007) (Vermont’s law establishes a procedure separate from its standard unemployment insurance benefits funds for domestic violence victims); WASH. REV. CODE §§ 50.20.050, 50.20.100, 50.20.240, 50.29.020 (West 2012); Wis. Stat. Ann. § 108.04(7)(s) (West 2012); WYO. STAT. ANN. § 27-3-311 (2013).

225. Widiss, *supra* note 30, at 713.

226. N.Y. Bill Jacket, 1999 S.B. 827, Ch. 268 (Lexis).

227. Widiss, *supra* note 30, at 713.

employment context.²²⁸ Bills have been introduced over the years to amend already enacted federal laws such as the FMLA.²²⁹ One bill includes the Domestic Violence Leave Act (“DVLA”) which was first introduced in 2009 and reintroduced in 2011.²³⁰ Even though the plaintiff in *Gregg* received relief under the FMLA, most victims do not which would be remedied by the Act. The Act grants the employee 12 weeks of unpaid leave during any 12 month period “to care for such individual’s family member, if the family member is addressing domestic violence, sexual assault, or stalking and their effects; or because such individual is addressing such matters, he or she is unable to perform any of the functions of his or her position.”²³¹ Victims need assurances that they will be protected under the law and this law would clearly and expressly do so.

Even if the DVLA were to pass, domestic violence leave laws on the federal and state level still have shortfalls. First, the FMLA as well as many state leave laws only apply to employers with fifty or more employees.²³² Approximately forty percent of employees in the United States are foreclosed from protection under leave laws because they work at smaller companies or places of business.²³³ Reducing the threshold to twenty-five workers would extend protections to include over 8.5 million workers.²³⁴ Additionally, leave laws only apply to workers who have been employed at that particular workplace for more than twelve months.²³⁵ Given the nature of the economy and the uncertainty of a domestic violence situation, many victims are quitting or losing their jobs which, therefore, make them new hirers most of the time.²³⁶ Again, to relax the tenure requirement would further extend protections to more workers.²³⁷

Second, most leave laws provide for unpaid leave. Those seeking protections under the law, especially victims of domestic violence, need

228. *See supra* Part III.A.

229. *See e.g.* Domestic Violence Leave Act, H.R. 3151, 112th Cong. (2011).

230. *Id.*

231. *Id.*

232. Family and Medical Leave Act of 1993, 29 U.S.C. §2611 (2006).

233. *Updating the Family and Medical Leave Act*, NAT’L PARTNERSHIP FOR WOMEN & FAMILIES (Feb. 2013), http://www.nationalpartnership.org/site/DocServer/Updating_the_FMLA_Fact_Sheet.pdf?docID=11801.

234. *Id.*

235. *Id.*

236. *See Id.*

237. *Id.*

paid leave.²³⁸ Many victims of domestic violence are low-income women and, thus, cannot afford to take unpaid leave to address their abuse.²³⁹ The money received during paid leave could go towards paying medical costs or psychological services, needs necessary for a domestic violence victim.²⁴⁰ With paid leave, victims of domestic violence could maintain some sense of financial stability and security and continue working at their place of employment without risking their health and their safety.²⁴¹ Because leave is not paid, victims sacrifice their health and their safety in order to work, make money, and to stay employed.²⁴²

In addition to amendments to the FMLA, a federal law that specifically targets workplace responses and victims of domestic and sexual violence needs to be passed. A law that would target these vulnerable victims is the Security and Financial Empowerment Act (“SAFE”) which has been introduced in 2005 and reintroduced in 2011.²⁴³ SAFE would expressly provide leave for victims of domestic violence, list eligibility requirements for unemployment compensation, offer job protection, prohibit insurers and employers from discriminating against them because of their victim status in regards to employee benefits, and require confidentiality among insurers and employers concerning the abuse experienced and the location of the victim.²⁴⁴ The law would amend the Violence Against Women Act (“VAWA”) in order to provide grants to victim service organizations “including community based organizations, and tribal, State and territorial domestic violence or sexual assault coalitions to enable them to provide resource materials or other assistance to employers, labor organizations, or employees.”²⁴⁵ Other amendments to VAWA would include providing for emergency leave from work to address domestic violence,²⁴⁶ which is crucial considering domestic violence or abuse is not planned, but can happen at any time. Emergency leave would give victims flexibility without the fear and insecurity of losing their job.

238. *Survivors of Domestic and Sexual Violence Need Paid “Safe Days”*, NAT’L PARTNERSHIP FOR WOMEN & FAMILIES 1-2 (Aug. 2012), http://www.nationalpartnership.org/site/DocServer/PSD_Dom_Violence_FINAL.pdf?docID=7830.

239. *Id.* at 1.

240. *Id.*

241. *Id.* at 1-2.

242. *See id.*

243. Security and Financial Empowerment Act, H.R. 3271, 112th Cong. (2011).

244. *See id.*

245. *Id.*

246. *Id.*

B. *Victims who are unemployed, uneducated, and economically illiterate*

Despite state law efforts to provide more protection for victims of domestic violence against discrimination as well as providing for job protected leave, there are no federal or state laws targeting victims who are not currently in the workforce. Because there are no laws helping these women, most of them find themselves unable to leave their abusive environments because they do not possess the skills or education necessary to become economically independent.²⁴⁷ That is the definition of economic abuse: to make the victim so dependent on her abuser that she has no choice but to stay because he has not given her the opportunity to obtain the skills, the education, or the money to leave him.²⁴⁸ Welfare programs do provide money to low-income victims, but they are not paid enough to become self-sufficient and are essentially paid to stay home.²⁴⁹ Programs that do require recipients to work often are not able to comply with the work requirements because they cannot go to work safely or do not have the skills to be a successful employee.²⁵⁰ Therefore, most often, recipients will lose their welfare benefits.²⁵¹

Given the shortfalls of state and federal law as well as the welfare system, steps need to be taken to help victims of domestic violence enter the workforce and become economically literate in order to really combat economic abuse. Federal, state, and local laws need to be enacted to help victims of domestic violence become economically literate and independent as well as help them transition into the workplace. Such laws would equip advocacy groups and shelters with the resources necessary to assess economic abuse and ways to address this abuse. Laws would also help establish economic empowerment programs and asset building programs that would help victims develop skills to be employable and to become economically literate. These programs could also implement direct pipelines to prospective employers.

One asset building federal initiative in place is the Building Assets for Survivors of Domestic Violence initiative. Under this initiative, the U.S. Department of Health and Human Services through its Office of Community Services has established Assets for Independence programs

247. *See supra* Part II.A.

248. *See supra* Part II.A.

249. *See supra* Part II.B.1.

250. *See supra* Part II.B.1.

251. *See supra* Part II.B.1.

(“AFI”) which partner with states, communities, and agencies to target causes of poverty and increase economic self-sufficiency.²⁵² Domestic violence has become a new area of focus for the AFI program and looks to integrate asset building programs into this community of victims in order to change “financial behaviors by setting financial goals, creating a budget, and paying down their debt” in addition to “added financial education, credit repair, debt management, access to Earned Income Tax Credit, and individual development accounts.”²⁵³

Another program through a private organization is the Moving Ahead Financial Empowerment Program started by Allstate.²⁵⁴ In 2005, the Allstate Foundation partnered with the National Network to End Domestic Violence “to bring financial education, matched savings programs, job readiness and job training and microenterprise opportunities to survivors of domestic violence.”²⁵⁵ The grant program awards money to state domestic violence coalitions that work with community organizations to help victims of domestic violence overcome economic abuse by achieving economic independence.²⁵⁶ Part of the grant program is to provide for financial education through its own *Financial Management Curriculum* which guides these organizations to best serve their clients so that they can achieve economic interdependence and leave their abusers.²⁵⁷

The Allstate Foundation helps fund a nationally recognized program called ROW’s Economic Action Program (“REAP”), which was created by the Redevelopment Opportunities for Women organization in St. Louis, Missouri.²⁵⁸ REAP provides a twelve hour economic education curriculum at seventeen different locations around

252. *About AFI*, IDARESOURCE.ORG, <http://www.idaresources.org/page?pageid=a04700000ArRQO> (last visited Feb. 12, 2013). The AFI program provides grants to community organizations, advocacy groups, and agencies under the Assets for Independence Act in title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act of 1998. *Assets for Independence Program Summary*, OFFICE ADMINISTRATION CHILDREN & FAMILIES (July 5, 2012), <http://www.acf.hhs.gov/programs/ocs/resource/assets-for-independence-program-summary>.

253. *Assets for Independence Resource Center*, IDARESOURCE.ORG, <http://www.idaresources.org/page?pageid=a04700000Bo2RbAAJ> (last visited Feb. 12, 2013).

254. *Domestic Violence: Grant Programs*, ALLSTATEFOUNDATION.ORG, <http://www.allstatefoundation.org/domestic-violence-grants> (last visited Sept. 15, 2012).

255. *The Allstate Foundation: Domestic Violence*, ALLSTATEFOUNDATION.ORG., <http://www.allstatefoundation.org/domestic-violence-program> (last visited Sept. 15, 2012).

256. *Id.*

257. *Domestic Violence: Financial Empowerment Curriculum*, ALLSTATEFOUNDATION.ORG., <http://www.allstatefoundation.org/financial-empowerment-curriculum> (last visited Sept. 15, 2012).

258. *ROW’s Economic Action Program*, ROW, <http://www.row-stl.org/row-s-economic-action-program> (last visited Sept. 10, 2012).

St. Louis.²⁵⁹ Women who enroll receive “core financial information on budgeting, credit, banking and investing, assistance is provided in dealing with creditors and emphasis on safety issues/concerns is provided throughout the curriculum. All women are also given the opportunity to participate in credit counseling and develop an individualized economic action plan.”²⁶⁰ This program also provides free childcare, which allows victims with children to attend without having to leave them behind.²⁶¹ In its annual report, REAP gives descriptions of success stories in which women who were physically, emotionally, and economically abused have successfully become economically independent and literate through the program.²⁶² They went back to school, paid back their debt, and started their own businesses.²⁶³ Programs like REAP need to be created throughout the country so that victims of domestic violence can leave their abusers without feeling insecure about their finances and can get equipped with the skills necessary to be an attractive future employee.

Amendments also need to be made to the FACTA and the ECOA in regards to helping victims of domestic violence repair their credit scores damaged by economic abuse. Under the FACTA, to obtain an identity theft report, a victim may be required to involve the police.²⁶⁴ Considering that many instances of domestic violence go unreported to law enforcement and some police departments will not entertain identity theft claims involving domestic relations, law enforcement is not an ideal judge of what is identity theft.²⁶⁵ Instead of law enforcement, family courts, that are better equipped to assess domestic violence situations, should decide issues of identity theft.²⁶⁶ Additionally, identity theft is a crime of fraud, not duress under the statute.²⁶⁷ Often, abusers use duress to force a victim to seek a loan or to use her credit card in a particular transaction.²⁶⁸ Because she is involved, she cannot claim identity theft.²⁶⁹ Thus, the statute should be amended to include

259. *Id.*

260. *Id.*

261. *Id.*

262. *Annual Report: 2011-2012*, ROW, http://www.row-stl.org/images/ROW_Annual_Report_2012.pdf (last visited Sept. 10, 2012).

263. *See id.*

264. *Escaping Battered Credit*, *supra* note 190, at 392.

265. *See id.* at 392-93.

266. *See id.* at 394.

267. *See* 15 U.S.C. § 1681c-2(a)(4) (2012).

268. *See Escaping Battered Credit*, *supra* note 190, at 393.

269. *Id.*

2014]

WOMEN'S WORK

507

identity theft based on duress in order to protect victims who are forced to include themselves in coerced transactions.²⁷⁰

Under the ECOA, even though it does allow creditors to examine credit history that does not accurately reflect an applicant's creditworthiness, the regulations should expressly cover coerced debt so that victims can utilize the regulations to better achieve financial security.²⁷¹

Federal initiatives as well as private foundations in place to fund financial education programs should be commonplace. Achieving financial security and independence needs to be a top priority. In order to productively and fastidiously put an end to violence in intimate partner relationships, the law needs to provide outlets for women who are not currently in the labor force. Federal and state laws have made strides to protect victims of domestic violence currently employed. But there is more to be done to combat this vicious pattern of behavior that affects one in every four women.

*Jamie Haar**

270. *See id.*

271. *Id.* at 372.

* I want to thank Professor Joanna L. Grossman for her advice and guidance throughout the writing process and for pushing me to delve deep into such an important topic. I want to thank the staff of the Hofstra Labor & Employment Law Journal for their hard work and dedication in making this article a success. To my Dad, who has been my rock and the force behind my aspirations and accomplishments. To my brother, Justin, who is my best friend and challenges me to be the best I can be every single day. And lastly, to my Mom, who I know is smiling and I know is proud of me always.