

104TH CONGRESS
2D SESSION

H. R. 3837

To provide unemployment insurance and leave from employment to battered women.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 1996

Ms. ROYBAL-ALLARD (for herself, Ms. WOOLSEY, and Ms. NORTON) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Economic and Educational Opportunities, Government Reform and Oversight, and House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To provide unemployment insurance and leave from employment to battered women.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Battered Women’s
5 Employment Protection Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) violence against women is the leading cause
2 of physical injury to women, and the Department of
3 Justice estimates that intimate partners commit
4 more than one million violent crimes against women
5 every year;

6 (2) the Bureau of Labor Statistics predicts that
7 women will account for two-thirds of all new en-
8 trants into the workforce between now and the year
9 2000;

10 (3) violence against women dramatically affects
11 women's workforce participation, insofar as one-
12 quarter of battered women surveyed had lost a job
13 due at least in part to the effects of domestic vio-
14 lence, and over half had been harassed by their
15 abuser at work;

16 (4) the availability of economic support is a
17 critical factor in women's ability to leave abusive sit-
18 uations that threaten them and their children, and
19 over half of battered women surveyed stayed with
20 their batterers because they lacked resources to sup-
21 port themselves and their children;

22 (5) a report by the New York City Victims
23 Services Agency found that abusive spouses and
24 lovers harass 74 percent of battered women at work
25 and 54 percent of battering victims miss at least 3

1 days of work per month and 56 percent are late for
2 work at least 5 times per month, and a University
3 of Minnesota study found that 24 percent of women
4 in support groups for battered women had lost a job
5 partly because of being abused;

6 (6) a survey of State unemployment insurance
7 agency directors by the Federal Advisory Council on
8 Unemployment Compensation found that in 31
9 States battered women who leave work as a result
10 of domestic violence do not qualify for unemploy-
11 ment benefits, in 9 States the determination often
12 varies depending on the facts and circumstances,
13 and in only 13 States are they usually considered
14 qualified for unemployment benefits;

15 (7) a study by the New York State Department
16 of Labor found that, when filing for unemployment
17 insurance benefits, domestic violence victims fre-
18 quently hide their victimization and do not disclose
19 the domestic violence as a reason for their problems
20 with the job or need to separate from employment;

21 (8) the same New York State study found that
22 75 percent of employed victims of domestic violence
23 must communicate with doctors, lawyers, shelters,
24 counselors, family and friends from their workplaces
25 because they cannot do so at home;

1 (9) 49 percent of senior executives recently sur-
2 veyed said domestic violence has a harmful effect on
3 their company's productivity, 47 percent said domes-
4 tic violence negatively affects attendance, and 44
5 percent said domestic violence increases health care
6 costs, and the Bureau of National Affairs estimates
7 that domestic violence costs employers between 3
8 and 5 billion dollars per year; and

9 (10) existing Federal and State legislation does
10 not expressly authorize battered women to take leave
11 from work to seek legal assistance and redress,
12 counseling, or assistance with safety planning and
13 activities.

14 (b) PURPOSES.—Pursuant to the affirmative power
15 of Congress to enact this Act under section 5 of the Four-
16 teenth Amendment to the Constitution, as well as under
17 section 8 of Article I of the Constitution, the purposes of
18 this Act are—

19 (1) to promote the national interest in reducing
20 domestic violence by enabling victims of domestic vi-
21 olence to maintain the financial independence nec-
22 essary to leave abusive situations, to achieve safety
23 and minimize the physical and emotional injuries
24 from domestic violence, and to reduce the devastat-

1 ing economic consequences of domestic violence,
2 by—

3 (A) providing unemployment insurance for
4 victims of domestic violence who are forced to
5 leave their employment as a result of domestic
6 violence; and

7 (B) entitling employed victims of domestic
8 violence to take reasonable leave to seek medi-
9 cal help, legal assistance, counseling, and safety
10 planning and assistance without penalty from
11 their employer;

12 (2) to promote the purposes of the Fourteenth
13 Amendment by protecting the civil and economic
14 rights of victims of domestic violence and by further-
15 ing the equal opportunity of women and men to em-
16 ployment and economic self-sufficiency;

17 (3) to minimize the negative impact on inter-
18 state commerce from dislocations of employees and
19 harmful effects on productivity, health care costs,
20 and employer costs from domestic violence; and

21 (4) to accomplish the purposes described in
22 paragraphs (1) , (2) and (3) in a manner that ac-
23 commodates the legitimate interests of employers.

1 **SEC. 3. UNEMPLOYMENT COMPENSATION.**

2 (a) UNEMPLOYMENT COMPENSATION.—Section
3 3304(a) of the Internal Revenue Code of 1986 is amend-
4 ed—

5 (1) by striking “and” at the end of paragraph
6 (18),

7 (2) by striking the period at the end of para-
8 graph (19) and inserting “; and”,

9 (3) by adding after paragraph (19) the follow-
10 ing:

11 “(20) compensation is to be provided where an
12 individual is separated from employment due to cir-
13 cumstances directly resulting from the individual’s
14 experience of domestic violence.”,

15 (4) by redesignating subsections (b) through (f)
16 as subsections (c) through (g), respectively, and

17 (5) by adding after subsection (a) the following:
18 “(b) CONSTRUCTION.—

19 “(1) For the purpose of determining, under
20 subsection (a)(20), whether an employee’s separation
21 from employment is ‘directly resulting’ from the in-
22 dividual’s experience of domestic violence, it shall be
23 sufficient if the separation from employment re-
24 sulted from—

1 “(A) the employee’s reasonable fear of fu-
2 ture domestic violence at or en route to or from
3 her place of employment;

4 “(B) the employee’s wish to relocate to an-
5 other geographic area in order to avoid future
6 domestic violence against the employee or the
7 employee’s family;

8 “(C) the employee’s need to recover from
9 traumatic stress resulting from the employee’s
10 experience of domestic violence;

11 “(D) the employer’s denial of the employ-
12 ee’s request for temporary leave from employ-
13 ment to deal with domestic violence and its
14 aftermath, as provided in section 4 of the Bat-
15 tered Women’s Employment Protection Act; or

16 “(E) any other respect in which domestic
17 violence causes the employee to reasonably be-
18 lieve that termination of employment is nec-
19 essary for the future safety of the employee or
20 the employee’s family.

21 “(2) For purposes of subsection (a)(20), where
22 State law requires the employee to have made rea-
23 sonable efforts to retain employment as a condition
24 for receiving unemployment compensation, it shall be
25 sufficient that the employee—

1 “(A) sought protection from or assistance
2 in responding to domestic violence, including
3 calling the police or seeking legal, social work,
4 medical, clergy, or other assistance;

5 “(B) sought safety, including refuge in a
6 shelter or temporary or permanent relocation,
7 whether or not the employee actually obtained
8 such refuge or accomplished such relocation; or

9 “(C) reasonably believed that options such
10 as a leave, transfer, or alternative work sched-
11 ule would not be sufficient to guarantee the em-
12 ployee or the employee’s family’s safety.

13 “(3) For purposes of subsection (a)(20), where
14 State law requires the employee to actively search
15 for employment after separation from employment
16 as a condition for receiving unemployment com-
17 pensation, such requirement shall be deemed to be
18 met where the employee is temporarily unable to ac-
19 tively search for employment because the employee is
20 engaged in seeking safety or relief for the employee
21 or the employee’s family from domestic violence, in-
22 cluding—

23 “(A) going into hiding or relocating or at-
24 tempting to do so, including activities associ-
25 ated with such relocation or hiding, such as

1 seeking to obtain sufficient shelter, food, school-
2 ing for children, or other necessities of life for
3 the employee or the employee's family;

4 “(B) actively pursuing legal protection or
5 remedies, including meeting with the police,
6 going to court to make inquiries or file papers,
7 meeting with attorneys, or attending court pro-
8 ceedings; or

9 “(C) participating in psychological, social,
10 or religious counseling or support activities to
11 assist the employee in ending domestic violence.

12 “(4) In determining if an employee meets the
13 requirements of paragraphs (1), (2), and (3), the
14 employer or reviewer of any claim of an employee
15 may require the employee to provide a statement
16 along with—

17 “(A) documentation, such as police or
18 court records, or documentation from a shelter
19 worker, attorney, clergy, medical or other pro-
20 fessional from whom the employee has sought
21 assistance in dealing with domestic violence; or

22 “(B) other corroborating evidence, such as
23 a statement from any other individual with
24 knowledge of the circumstances which provide
25 the basis for the claim, or physical evidence of

1 domestic violence, such as photographs, torn or
2 bloody clothes, etc.”

3 (b) SOCIAL SECURITY PERSONNEL TRAINING.—Sec-
4 tion 303(a) of the Social Security Act (42 U.S.C.
5 503(a)(4)) is amended by redesignating paragraphs (4)
6 through (10) as paragraphs (5) through (11), respectively,
7 and by adding after paragraph (3) the following:

8 “(4) Such methods of administration as will en-
9 sure that claims reviewers and hearing personnel are
10 adequately trained in the nature and dynamics of
11 domestic violence and in methods of ascertaining in-
12 formation about possible experiences of domestic vio-
13 lence, so that employment separations stemming
14 from domestic violence are reliably screened, identi-
15 fied, and adjudicated.”.

16 (c) DEFINITIONS.—Section 3306 of the Internal Rev-
17 enue Code of 1986 is amended by adding at the end the
18 following:

19 “(u) DOMESTIC VIOLENCE.—The term ‘domestic vio-
20 lence’ includes abuse committed against an employee or
21 a family member of the employee by—

22 “(1) a current or former spouse of the em-
23 ployee;

24 “(2) a person with whom the employee shares
25 a child in common;

1 “(3) a person who is cohabitating with or has
2 cohabitated with the employee as a romantic or inti-
3 mate partner; or

4 “(4) a person from whom the employee would
5 be eligible for protection under the domestic vio-
6 lence, protection order, or family laws of the juris-
7 diction in which the employee resides or the em-
8 ployer is located.

9 “(v) ABUSE.—The term ‘abuse’ includes—

10 “(1) physical acts resulting in, or threatening to
11 result in, physical injury;

12 “(2) sexual abuse, sexual activity involving a
13 dependent child, or threats of or attempts at sexual
14 abuse;

15 “(3) mental abuse, including threats, intimidat-
16 ion, acts designed to induce terror, or restraints on
17 liberty; and

18 “(4) deprivation of medical care, housing, food
19 or other necessities of life.”.

20 **SEC. 4. LEAVE FROM EMPLOYMENT.**

21 (a) IN GENERAL.—Employers subject to the Federal
22 Family and Medical Leave Act (29 U.S.C. 2601 et seq.),
23 any State law addressing family, medical, sick, or other
24 kind of leave from employment, or an employment benefits
25 program or policy or collective bargaining agreement ad-

1 dressing family, medical, sick, or other kind of leave from
2 employment, shall provide leave to employees seeking tem-
3 porary absences from employment to deal with domestic
4 violence and its aftermath in accordance with this section.

5 (b) EXISTING LEAVE USEABLE FOR DOMESTIC VIO-
6 LENCE.—Where family, medical, sick, or any other kind
7 of leave from employment is available to employees pursu-
8 ant to the Federal Family and Medical Leave Act of 1993
9 (29 U.S.C. 2601 et seq.), any State law, an existing em-
10 ployment benefits program or plan, or collective bargain-
11 ing agreement, employees shall be entitled to use such
12 leave for the purpose of dealing with domestic violence and
13 its aftermath.

14 (c) MINIMUM LEAVE FOR DOMESTIC VIOLENCE.—

15 (1) IN GENERAL.—Any employee who is not en-
16 titled to leave from employment for the purpose of
17 dealing with domestic violence and its aftermath
18 pursuant to subsection (b) or who has used up the
19 employee’s available leave pursuant to subsection (b)
20 and who is not an employee who has taken 12 weeks
21 of leave for the purpose of dealing with domestic vio-
22 lence and its aftermath, shall be entitled to take up
23 to 10 days per year of unpaid leave without penalty,
24 for that purpose.

1 (2) SUBSTITUTION.—An employee may elect, or
2 an employer may require the employee, to substitute
3 accrued paid leave for any part of the 10 days of un-
4 paid leave provided under paragraph (1).

5 (d) DEALING WITH DOMESTIC VIOLENCE AND ITS
6 AFTERMATH.—The following activities constitute means of
7 “dealing with domestic violence and its aftermath,” which
8 shall render an employee eligible for leave under this sec-
9 tion:

10 (1) Experiencing domestic violence.

11 (2) Seeking medical attention for injuries
12 caused by domestic violence, except for “serious
13 health conditions” where covered by the Family and
14 Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

15 (3) Seeking legal assistance or remedies, includ-
16 ing communicating with the police or an attorney, or
17 participating in any legal proceeding related to do-
18 mestic violence.

19 (4) Attending support groups for victims of do-
20 mestic violence.

21 (5) Obtaining psychological counseling related
22 to experiences of domestic violence.

23 (6) Participating in safety planning and other
24 actions to increase safety from future domestic vio-
25 lence, including temporary or permanent relocation.

1 (7) Any other activity necessitated by domestic
2 violence which must be undertaken during hours of
3 employment.

4 (e) CONSTRUCTION.—In determining if an employee
5 meets the requirements of subsections (b), (c), and (d),
6 the employer or reviewer of any claim of an employee may
7 require the employee to provide a statement along with—

8 (1) documentation, such as police or court
9 records, or documentation from a shelter worker, at-
10 torney, clergy, medical or other professional from
11 whom the employee has sought assistance in dealing
12 with domestic violence; or

13 (2) other corroborating evidence, such as a
14 statement from any other individual with knowledge
15 of the circumstances which provide the basis for the
16 claim, or physical evidence of domestic violence, such
17 as photographs, torn or bloody clothes, etc.

18 (f) ENFORCEMENT.—

19 (1) PUBLIC ENFORCEMENT.—The Secretary of
20 Labor shall have the powers set forth in subsections
21 (b), (c), (d) and (e) of section 107 of the Family and
22 Medical Leave Act of 1993 (29 U.S.C. 2617) for the
23 purpose of public enforcement of any alleged viola-
24 tions of this section against any employer.

25 (2) PRIVATE ENFORCEMENT.—

1 (A) PRIVATE AND FEDERAL EMPLOY-
2 ERS.—The remedies and procedures set forth in
3 subsection (a) of section 107 of the Family and
4 Medical Leave Act of 1993 (29 U.S.C. 2617)
5 shall be the remedies and procedures pursuant
6 to which an employee may initiate a legal action
7 against a Federal or private employer for al-
8 leged violations of this section..

9 (B) STATE EMPLOYERS.—

10 (i) QUI TAM ACTIONS.—

11 (I) An employee of a State em-
12 ployer may bring a civil action for a
13 violation of this section for the em-
14 ployee and for the United States Gov-
15 ernment (referred to as a ‘Qui Tam’
16 action). The action shall be brought in
17 the name of the United States Gov-
18 ernment. The action may be dismissed
19 only if the court and the Secretary of
20 Labor give written consent to the dis-
21 missal stating their reasons for con-
22 senting. The Qui Tam plaintiff may
23 recover damages or injunctive relief to
24 the same extent provided in subpara-
25 graph (A).

1 (II) The right provided by sub-
2 clause (I) to bring a Qui Tam action
3 shall terminate on the filing of a com-
4 plaint by the Secretary of Labor in an
5 action seeking damages or monetary
6 relief on behalf of the affected em-
7 ployee under paragraph (1) unless
8 that action is dismissed without preju-
9 dice on motion of the Secretary of
10 Labor.

11 (3) EMPLOYER LIABILITY UNDER OTHER
12 LAWS.—Nothing in this section shall be construed to
13 limit the liability of an employer to an employee for
14 harm suffered relating to the employee’s experience
15 of domestic violence pursuant to any other State or
16 Federal law or legal remedy.

17 (f) DEFINITIONS.—For purposes of this section:

18 (1) EMPLOYER.—The term ‘employer’ includes
19 any person subject to the Federal Family and Medi-
20 cal Leave Act of 1993 (29 U.S.C. 2601 et seq.) or
21 any State law addressing family, medical, sick, or
22 any other kind of leave from employment, or any
23 employer granting family, medical, sick, or other
24 kind of leave from employment under an employ-
25 ment benefits program or policy or collective bar-

1 gaining agreement in effect as of the date of enact-
2 ment of this Act.

3 (2) EMPLOYEE.—The term ‘employee’ refers to
4 any person eligible to receive leave pursuant to the
5 Federal Family and Medical Leave Act of 1993 (29
6 U.S.C. 2601 et seq.), any State law addressing med-
7 ical, family, sick, or other kind of leave from employ-
8 ment, or an employment benefits program or policy
9 or collective bargaining agreement in effect as of the
10 date of enactment of this Act.

11 (3) DOMESTIC VIOLENCE.—The term ‘domestic
12 violence’ has the meaning assigned to such term by
13 section 3306(u) of the Internal Revenue Code of
14 1986.

15 **SEC. 5. EFFECT ON OTHER LAWS AND EMPLOYMENT BENE-**
16 **FITS.**

17 (1) MORE PROTECTIVE.—Nothing in this Act
18 or the amendments made by this Act shall be con-
19 strued to supersede any provision of any Federal,
20 State or local law, collective bargaining agreement,
21 or other employment benefit program which provides
22 greater unemployment compensation or leave bene-
23 fits for employed victims of domestic violence than
24 the rights established under this Act or such amend-
25 ments.

1 (2) LESS PROTECTIVE.—The rights established
2 for employees under this Act or the amendments
3 made by this Act shall not be diminished by any col-
4 lective bargaining agreement, any employment bene-
5 fit program or plan, or any State or local law.