

110TH CONGRESS
1ST SESSION

H. R. 4015

To provide job protection for victims of domestic violence, dating violence,
sexual assault, or stalking.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2007

Ms. ROYBAL-ALLARD (for herself and Mr. POE) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Oversight and Government Reform, the Judiciary, and House Administration, 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 job protection for victims of domestic violence,
dating violence, sexual assault, or stalking.

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 “Job Protection for Sur-
5 vivors Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1 (1) DISCRIMINATE.—The term “discriminate”,
2 used with respect to the terms, conditions, or privi-
3 leges of employment, includes failing to implement a
4 request from an individual, in response to actual or
5 threatened domestic violence, dating violence, sexual
6 assault, or stalking, for a reasonable safety proce-
7 dure or a job-related modification to enhance the se-
8 curity of that individual or safeguard the workplace
9 (such as installation of a lock, change of a telephone
10 number or seating assignment, provision of a trans-
11 fer, provision of leave, modification of a schedule, or
12 adjustment of a work requirement), unless the em-
13 ployer can demonstrate that granting the request
14 would impose an undue hardship on the operation of
15 the employer, or would significantly disrupt other
16 employee’s performance of their core job functions.

17 (2) DOMESTIC VIOLENCE.—The terms “domes-
18 tic violence”, “dating violence”, “sexual assault”,
19 and “stalking” have the meanings given such terms
20 in section 40002 of the Violence Against Women Act
21 of 1994 (42 U.S.C. 13925).

22 (3) EMPLOYEE.—

23 (A) IN GENERAL.—The term “employee”
24 means any person employed by an employer. In
25 the case of an individual employed by a public

1 agency, such term means an individual em-
2 ployed as described in section 3(e)(2) of the
3 Fair Labor Standards Act of 1938 (29 U.S.C.
4 203(e)(2)).

5 (B) BASIS.—The term includes a person
6 employed as described in subparagraph (A) on
7 a full- or part-time basis, for a fixed time pe-
8 riod, on a temporary basis, pursuant to a detail,
9 or as a participant in a work assignment as a
10 condition of receipt of Federal or State income-
11 based public assistance.

12 (4) EMPLOYER.—The term “employer”—

13 (A) means any person engaged in com-
14 merce or in any industry or activity affecting
15 commerce who employs 15 or more individuals;

16 (B) includes any person acting directly or
17 indirectly in the interest of an employer in rela-
18 tion to an employee; and

19 (C) includes a public agency that employs
20 individuals as described in section 3(e)(2) of the
21 Fair Labor Standards Act of 1938, but does
22 not include any labor organization (other than
23 when acting as an employer) or anyone acting
24 in the capacity of officer or agent of such labor
25 organization.

1 (5) EMPLOYMENT BENEFITS.—The term “em-
2 ployment benefits” means all benefits provided or
3 made available to employees by an employer, includ-
4 ing group life insurance, health insurance, disability
5 insurance, sick leave, annual leave, educational bene-
6 fits, and pensions, regardless of whether such bene-
7 fits are provided by a practice or written policy of
8 an employer or through an “employee benefit plan”,
9 as defined in section 3(3) of the Employee Retirement
10 Income Security Act of 1974 (29 U.S.C.
11 1002(3)).

12 (6) FAMILY OR HOUSEHOLD MEMBER.—The
13 term “family or household member”, used with re-
14 spect to a person, means an individual who is a
15 spouse, former spouse, parent, son or daughter, or
16 person residing or formerly residing in the same
17 dwelling unit as the person.

18 (7) PARENT; SON OR DAUGHTER.—The terms
19 “parent” and “son or daughter” have the meanings
20 given the terms in section 101 of the Family and
21 Medical Leave Act of 1993 (29 U.S.C. 2611).

22 (8) REDUCED LEAVE SCHEDULE.—The term
23 “reduced leave schedule” means a leave schedule
24 that reduces the usual number of hours per work-
25 week, or hours per workday, of an employee.

1 (9) SECRETARY.—The term “Secretary” means
2 the Secretary of Labor.

3 (10) UNDUE HARDSHIP.—

4 (A) IN GENERAL.—The term “undue hard-
5 ship” means an action requiring significant dif-
6 ficulty or expense, when considered in light of
7 the factors set forth in subparagraph (B).

8 (B) FACTORS TO BE CONSIDERED.—In de-
9 termining whether a reasonable accommodation
10 would impose an undue hardship on the oper-
11 ation of an employer or public agency, factors
12 to be considered include—

13 (i) the nature and cost of the request
14 of an employee for an accommodation;

15 (ii) the overall financial resources of
16 the facility involved, the number of persons
17 employed at such facility, the effect on ex-
18 penses and resources, or the impact other-
19 wise of such accommodation on the oper-
20 ation of the facility;

21 (iii) the overall financial resources of
22 the employer or public agency, the overall
23 size of the business of an employer or pub-
24 lic agency with respect to the number of
25 employees of the employer or public agen-

1 cy, and the number, type, and location of
2 the facilities of an employer or public agen-
3 cy; and

4 (iv) the type of operation of the em-
5 ployer or public agency, including the com-
6 position, structure, and functions of the
7 workforce of the employer or public agen-
8 cy, the geographic separateness of the fa-
9 cility from the employer or public agency,
10 and the administrative or fiscal relation-
11 ship of the facility to the employer or pub-
12 lic agency.

13 (11) VICTIM OF DOMESTIC VIOLENCE, DATING
14 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—The
15 term “victim of domestic violence, dating violence,
16 sexual assault, or stalking” includes a person who
17 has been a victim of domestic violence, dating vio-
18 lence, sexual assault, or stalking and a person whose
19 family or household member has been a victim of do-
20 mestic violence, dating violence, sexual assault, or
21 stalking.

22 (12) VICTIM SERVICES ORGANIZATION.—The
23 term “victim services organization” means a non-
24 profit, nongovernmental organization that provides
25 assistance to victims of domestic violence, dating vio-

1 lence, sexual assault, or stalking, or to advocates for
2 such victims, including a rape crisis center, an orga-
3 nization carrying out a domestic violence program,
4 an organization operating a shelter or providing
5 counseling services, or a legal services organization
6 or other organization providing assistance through
7 the legal process.

8 **SEC. 3. EMPLOYMENT PROTECTION FOR VICTIMS OF DO-**
9 **MESTIC VIOLENCE, DATING VIOLENCE, SEX-**
10 **UAL ASSAULT, OR STALKING.**

11 An employer shall not fail to hire, refuse to hire, dis-
12 charge, or harass any individual, or otherwise discriminate
13 against any individual with respect to the compensation,
14 terms, conditions, or privileges of employment of the indi-
15 vidual (including retaliation in any form or manner) be-
16 cause—

17 (1) the individual involved is or the employer or
18 public agency involved perceives that individual to be
19 a victim of domestic violence, dating violence, sexual
20 assault, or stalking;

21 (2) that individual attended, participated in,
22 prepared for, or requested leave to attend, partici-
23 pate in, or prepare for, a criminal or civil court pro-
24 ceeding relating to an incident of domestic violence,
25 dating violence, sexual assault, or stalking of which

1 the individual, or the family or household member of
2 the individual, was a victim;

3 (3) that individual, in response to actual or
4 threatened domestic violence, dating violence, sexual
5 assault, or stalking, requested that the employer or
6 public agency implement a reasonable safety proce-
7 dure or a job-related modification to enhance the se-
8 curity of that individual or safeguard the workplace
9 involved; or

10 (4) the workplace is disrupted or threatened by
11 the action of a person whom that individual states
12 has committed or threatened to commit domestic vi-
13 olence, dating violence, sexual assault, or stalking
14 against that individual, or that individual's family or
15 household member.

16 **SEC. 4. ENTITLEMENT TO LEAVE FOR ADDRESSING DOMES-**
17 **TIC VIOLENCE, DATING VIOLENCE, SEXUAL**
18 **ASSAULT, OR STALKING.**

19 (a) ENTITLEMENT TO LEAVE.—

20 (1) IN GENERAL.—An employee who is a victim
21 of domestic violence, dating violence, sexual assault,
22 or stalking shall be entitled to a total of 15 days of
23 unpaid leave during any 12-month period for any of
24 the following:

1 (A) To obtain services from a victim serv-
2 ices organization related to an incident of do-
3 mestic violence.

4 (B) To obtain psychological or other coun-
5 seling for the employee or the employee's family
6 or household member related to experiences of
7 domestic violence, dating violence, sexual as-
8 sault, or stalking.

9 (C) To participate in safety planning or
10 take other actions to increase the safety of the
11 employee or the employee's family or household
12 member from future domestic violence, dating
13 violence, sexual assault, or stalking or ensure
14 economic security, including temporarily or per-
15 manently relocating.

16 (D) To seek medical attention for injuries
17 caused by domestic violence or sexual assault.

18 (2) LEAVE FOR COURT PROCEEDINGS.—An em-
19 ployee who is a victim of domestic violence, dating
20 violence, sexual assault, or stalking shall be entitled
21 to such leave as is necessary to enable the employee
22 to attend or participate in any civil or criminal legal
23 proceeding resulting from an incident of domestic vi-
24 olence, dating violence, sexual assault, or stalking
25 against that employee, including, seeking to obtain a

1 temporary restraining order, restraining order, or
2 other injunctive relief, or to help ensure the health,
3 safety, or welfare of the victim or his or her child.

4 (b) SCHEDULE.—Leave described in subsection (a)
5 may be taken intermittently or on a reduced leave sched-
6 ule. The taking of leave intermittently or on a reduced
7 leave schedule shall not result in a reduction of the total
8 amount of leave to which the employee is entitled under
9 subsection (a).

10 (c) CALCULATION OF 12-MOTNH PERIOD.—An em-
11 ployer is permitted to choose any 1 of the following meth-
12 ods for determining the 12-month period in which the 15
13 days of leave entitlement occurs:

14 (1) The calendar year.

15 (2) Any fixed 12-month “leave year” such as a
16 fiscal year, a year required by State law, or a year
17 starting on the date that is 1 year after the date on
18 which an employee begins employment with that em-
19 ployer.

20 (3) The 12-month period measured forward
21 from the first date on which an employee’s takes
22 leave under subsection (a).

23 (d) RELATIONSHIP TO PAID LEAVE.—An employee
24 who is entitled to take paid or unpaid leave (including
25 family, medical, sick, annual, personal, or similar leave)

1 from employment, pursuant to Federal, State, or local law,
2 a collective bargaining agreement, or an employment bene-
3 fits program or plan, may elect to substitute any period
4 of such leave for an equivalent period of leave provided
5 under subsection (a).

6 (e) NOTICE TO EMPLOYER AND CERTIFICATION.—

7 (1) NOTICE TO EMPLOYER AND DUTIES OF EM-
8 PLOYEE.—In any case in which the necessity for
9 leave under subsection (a) is foreseeable based on a
10 scheduled appointment or planned activity, the em-
11 ployee shall—

12 (A) make a reasonable effort to schedule
13 the appointment or activity so as not to disrupt
14 unduly the operations of the employer; and

15 (B) provide the employer with not less
16 than 15 days notice before the date the leave is
17 to begin, of the employee's intention to take
18 leave under such subsection, except that if such
19 15 days' notice is not practicable, the employee
20 shall provide the employer with such advanced
21 notice as is practicable.

22 (2) CERTIFICATION.—

23 (A) IN GENERAL.—The employer may re-
24 quire the employee to provide certification to

1 the employer, within a reasonable period after
2 the employer requests the certification, that—

3 (i) the employee or the employee’s
4 family or household member is a victim of
5 domestic violence, dating violence, sexual
6 assault, or stalking; and

7 (ii) the leave is for 1 of the purposes
8 enumerated in subsection (a).

9 (B) CONTENTS.—An employee may satisfy
10 the certification requirement of subparagraph
11 (A) by providing to the employer—

12 (i) a sworn statement of the employee;

13 (ii) documentation from an employee,
14 agent, or volunteer of a victim services or-
15 ganization, an attorney, a member of the
16 clergy, or a medical or other professional,
17 from whom the employee or the employee’s
18 family or household member has sought as-
19 sistance in addressing domestic violence,
20 dating violence, sexual assault, or stalking
21 and the effects of domestic violence, dating
22 violence, sexual assault, or stalking; or

23 (iii) a police or court record.

24 (3) CONFIDENTIALITY.—All information pro-
25 vided to the employer pursuant to paragraphs (1) or

1 (2), including a statement of the employee or any
2 other documentation, record, or corroborating evi-
3 dence, and the fact that the employee has requested
4 or obtained leave pursuant to subsection (a), shall be
5 retained in the strictest confidence by the employer,
6 except to the extent that disclosure is—

7 (A) requested or consented to by the em-
8 ployee in writing; or

9 (B) otherwise required by applicable Fed-
10 eral or State law.

11 (f) EMPLOYMENT AND BENEFITS.—

12 (1) RESTORATION TO POSITION.—Except as
13 provided in paragraph (3), any employee who takes
14 leave under this section for the intended purpose of
15 the leave shall be entitled, on return from such
16 leave—

17 (A) to be restored by the employer to the
18 position of employment held by the employee
19 when the leave commenced; or

20 (B) to be restored to an equivalent position
21 with equivalent employment benefits, pay, and
22 other terms and conditions of employment.

23 (2) LOSS OF BENEFITS.—The taking of leave
24 under this section shall not result in the loss of any

1 employment benefits accrued prior to the date on
2 which the leave commenced.

3 (3) LIMITATIONS.—Nothing in this subsection
4 shall be construed to entitle any restored employee
5 to—

6 (A) the accrual of any seniority or employ-
7 ment benefits during any period of leave; or

8 (B) any right, benefit, or position of em-
9 ployment other than any right, benefit, or posi-
10 tion to which the employee would have been en-
11 titled had the employee not taken the leave.

12 (4) CONSTRUCTION.—Nothing in this sub-
13 section shall be construed to prohibit an employer
14 from requiring an employee on leave under this title
15 to report periodically to the employer on the status
16 and intention of the employee to return to work.

17 **SEC. 5. PROHIBITED ACTS.**

18 (a) INTERFERENCE WITH RIGHTS.—

19 (1) EXERCISE OF RIGHTS.—It shall be unlawful
20 for any employer to interfere with, restrain, or deny
21 the exercise of or the attempt to exercise, any right
22 provided under section 4.

23 (2) EMPLOYER DISCRIMINATION.—It shall be
24 unlawful for any employer to discharge or harass
25 any individual, or otherwise discriminate against any

1 individual with respect to compensation, terms, con-
2 ditions, or privileges of employment of the individual
3 (including retaliation in any form or manner) be-
4 cause the individual—

5 (A) exercised any right provided under sec-
6 tion 4 ; or

7 (B) opposed any practice made unlawful by
8 this Act.

9 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
10 IES.—It shall be unlawful for any person to discharge or
11 in any other manner discriminate (as described in sub-
12 section (a)(2)) against any individual because such indi-
13 vidual—

14 (1) has filed any charge, or has instituted or
15 caused to be instituted any proceeding, under or re-
16 lated to this Act;

17 (2) has given, or is about to give, any informa-
18 tion in connection with any inquiry or proceeding re-
19 lating to any right provided under this Act; or

20 (3) has testified, or is about to testify, in any
21 inquiry or proceeding relating to any right provided
22 under this Act.

23 **SEC. 6. ENFORCEMENT.**

24 (a) CIVIL ACTION BY AFFECTED INDIVIDUALS.—

1 (1) LIABILITY.—Any employer who violates sec-
2 tion 3 or 5 of this Act shall be liable to any indi-
3 vidual affected—

4 (A) for damages equal to—

5 (i) the amount of—

6 (I) any wages, salary, employ-
7 ment benefits, or other compensation
8 denied or lost to such individual by
9 reason of the violation; or

10 (II) in a case in which wages,
11 salary, employment benefits, or other
12 compensation has not been denied or
13 lost to the individual, any actual mon-
14 etary losses sustained by the indi-
15 vidual as a direct result of the viola-
16 tion;

17 (ii) the interest on the amount de-
18 scribed in clause (i) calculated at the pre-
19 vailing rate; and

20 (iii) an additional amount as liq-
21 uidated damages equal to the sum of the
22 amount described in clause (i) and the in-
23 terest described in clause (ii), except that,
24 in the case of an alleged violation of sec-
25 tion 5, if an employer that has violated

1 section 5 proves to the satisfaction of the
2 court that the act or omission that violated
3 section 5 was in good faith and that the
4 employer had reasonable grounds for be-
5 lieving that the act or omission was not a
6 violation of section 5, such court may, in
7 the discretion of the court, reduce the
8 amount of the liability to the amount and
9 interest determined under clauses (i) and
10 (ii), respectively; and

11 (B) for such equitable relief as may be ap-
12 propriate, including employment, reinstatement,
13 and promotion.

14 (2) RIGHT OF ACTION.—An action to recover
15 the damages or equitable relief prescribed in para-
16 graph (1) may be maintained against any employer
17 in any Federal or State court of competent jurisdic-
18 tion by any 1 or more affected individuals for and
19 on behalf of—

20 (A) the individuals; or

21 (B) the individuals and other individuals
22 similarly situated.

23 (3) FEES AND COSTS.—The court in such an
24 action shall, in addition to any judgment awarded to
25 the plaintiff, allow a reasonable attorney's fee, rea-

1 sonable expert witness fees, and other costs of the
2 action to be paid by the defendant.

3 (4) LIMITATIONS.—The right provided by para-
4 graph (2) to bring an action by or on behalf of any
5 affected individual shall terminate—

6 (A) on the filing of a complaint by the Sec-
7 retary in an action under subsection (d) in
8 which restraint is sought of any further delay
9 in the payment of the amount described in
10 paragraph (1)(A) to such individual by an em-
11 ployer responsible under paragraph (1) for the
12 payment; or

13 (B) on the filing of a complaint by the Sec-
14 retary in an action under subsection (b) in
15 which a recovery is sought of the damages de-
16 scribed in paragraph (1)(A) owing to an af-
17 fected individual by an employer liable under
18 paragraph (1),

19 unless the action described in subparagraph (A) or
20 (B) is dismissed without prejudice on motion of the
21 Secretary.

22 (b) ACTION BY THE SECRETARY OF LABOR.—

23 (1) ADMINISTRATIVE ACTION.—The Secretary
24 shall receive, investigate, and attempt to resolve
25 complaints of violations of section 3 or 5 in the same

1 manner as the Secretary receives, investigates, and
2 attempts to resolve complaints of violations of sec-
3 tions 6 and 7 of the Fair Labor Standards Act of
4 1938 (29 U.S.C. 206 and 207).

5 (2) CIVIL ACTION.—The Secretary may bring
6 an action in any court of competent jurisdiction to
7 recover the damages described in subsection
8 (a)(1)(A).

9 (3) SUMS RECOVERED.—Any sums recovered by
10 the Secretary pursuant to paragraph (2) shall be
11 held in a special deposit account and shall be paid,
12 on order of the Secretary, directly to each individual
13 affected. Any such sums not paid to such an indi-
14 vidual because of inability to do so within a period
15 of 3 years shall be deposited into the Treasury of
16 the United States as miscellaneous receipts.

17 (c) LIMITATION.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), an action may be brought under this sub-
20 section not later than 2 years after the date of the
21 last event constituting the alleged violation for which
22 the action is brought.

23 (2) WILLFUL VIOLATION.—In the case of such
24 action brought for a willful violation of section 5,
25 such action may be brought within 3 years after the

1 date of the last event constituting the alleged viola-
2 tion for which such action is brought.

3 (3) COMMENCEMENT.—In determining when an
4 action is commenced by the Secretary under this
5 subsection for the purposes of this paragraph, it
6 shall be considered to be commenced on the date
7 when the complaint is filed.

8 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
9 district courts of the United States shall have jurisdiction,
10 for cause shown, in an action brought by the Secretary—

11 (1) to restrain violations of section 3 or 5, in-
12 cluding the restraint of any withholding of payment
13 of wages, salary, employment benefits, or other com-
14 pensation, plus interest, found by the court to be
15 due to affected individuals; or

16 (2) to award such other equitable relief as may
17 be appropriate, including employment, reinstatement,
18 and promotion.

19 (e) SOLICITOR OF LABOR.—The Solicitor of Labor
20 may appear for and represent the Secretary on any litiga-
21 tion brought under this subsection.

22 (f) CERTAIN PUBLIC AGENCY EMPLOYERS.—

23 (1) AGENCIES.—Notwithstanding any other
24 provision of this section, in the case of a public
25 agency that employs individuals as described in sub-

1 paragraph (A) or (B) of section 3(e)(2) of the Fair
2 Labor Standards Act of 1938 (29 U.S.C. 203(e)(2)),
3 paragraph (2) shall apply.

4 (2) **AUTHORITY.**—In the case described in
5 paragraph (1), the powers, remedies, and procedures
6 provided in the case of a violation of chapter 63 of
7 title 5, United States Code, in that title to an em-
8 ploying agency, in chapter 12 of that title to the
9 Merit Systems Protection Board, or in that title to
10 any person alleging a violation of chapter 63 of that
11 title, shall be the powers, remedies, and procedures
12 this subsection provides in the case of a violation of
13 section 3 or 5 to that agency, that Board, or any
14 person alleging a violation of section 3 or 5, respec-
15 tively, against an employee who is such an indi-
16 vidual.

17 **SEC. 7. SECRETARY OF LABOR REGULATIONS.**

18 Not later than 120 days after the date of the enact-
19 ment of this Act, the Secretary of Labor shall prescribe
20 such regulations as are necessary to carry out this Act.

21 **SEC. 8. RELATIONSHIP TO STATE LAWS.**

22 This Act supersedes any provision of a statute, regu-
23 lation, or rule of a State or political subdivision of a State
24 which provides similar protections and entitlements as

1 provided by this Act, except to the extent that such stat-
2 ute, regulation, or rule provides—

3 (1) greater protection to an individual than that
4 provided by section 3; or

5 (2) an entitlement to leave that exceeds that
6 provided under section 5.

○