

Family Violence Appellate Project

Hello everyone, and welcome to Family Violence Appellate Project's webinar.

Before we get started, a few logistical notes:

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Housing and Employment: Legal Rights of Survivors of Domestic Violence

Training Overview

Part 1 : FVAP Introduction

- ❑ Who are we?
- ❑ What do we do?
- ❑ Housing and Employment Justice Project

Part 2: Domestic Violence and Housing Law

- ❑ Domestic Violence and its effects on Housing
- ❑ Federal and State Legal Protections in Housing for Domestic Violence Survivors
- ❑ Using the Laws to Protect your Clients

Part 3: Domestic Violence and Employment Law

- ❑ Domestic Violence and its effects on Employment
- ❑ Federal and State Legal Protections in Employment for Domestic Violence Survivors
- ❑ Using the Laws to Protect your Clients

Part 1 -FVAP Introduction

Who Are We?

FVAP is the only nonprofit in California dedicated to helping domestic violence survivors and their children by appealing dangerous trial court decisions on their behalf, for free.

Our Mission

- ❑ To assist and protect individual survivors of DV and their children by representing them in appeals of unsafe trial court decisions; **and**
- ❑ To build a body of published appellate decisions that guide judges and attorneys throughout California on how courts should use California's statutes designed to protect survivors of DV and their children.

Part 1 -FVAP Introduction

What Do We Do?

Appellate Work

- ❑ Free representation to low- and moderate-income survivors of domestic violence (DV) throughout California in family law and civil matters who lost at trial and want to appeal or defend appeals brought by abusers
- ❑ Support other appeals with technical assistance, amicus briefs and publication requests.
- ❑ 80% success rate in prosecuting appeals (statewide average: 20%)
- ❑ 90% success rate in defending appeals

Technical Assistance, Training, and Free Resources

- ❑ Located in Oakland but Statewide service provider
- ❑ State Bar funded support center for legal services agencies working with DV survivors
- ❑ Support center for domestic violence agencies supporting survivors with legal questions or issues that are not criminal
- ❑ Housing and Employment Justice Project

Part 1 -FVAP Introduction

Housing & Employment Justice Project

Goal: Secure economic stability and prevent homelessness among the DV survivor community.

Part 1 -FVAP Introduction

Housing & Employment Justice Project

Support DV advocates in addressing discrimination in employment & housing based on survivor status:

1. Educating survivors and their advocates and attorneys on the state and federal laws available to protect them, through **written materials, toolkits, and recorded trainings;**
2. Connecting survivors and their advocates with **housing and employment focused legal resources;**
3. Providing **technical legal assistance** to advocates and legal representatives;
4. Providing, as appropriate, **appellate representation** of DV survivors in cases involving employment and housing law issues; and
5. Working with survivors, advocates, and legal representatives to make **positive changes in housing and employment laws, policies, and regulations.**

Part 2 -Domestic Violence and Housing Law

- ❑ Domestic Violence and its effects on Housing
- ❑ Federal & State Legal Protections in Housing for Domestic Violence Survivors
- ❑ Using the Laws to Protect your Clients

Part 2 -Domestic Violence and Housing Law

Domestic Violence and its effects on Housing

DOMESTIC VIOLENCE IS A PRIMARY CAUSE OF HOMELESSNESS

- ❑ According to multiple studies examining the causes of homelessness, among mothers with children experiencing homelessness, more than 80% had previously experienced domestic violence.
- ❑ Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness.
- ❑ 39% of U.S. cities surveyed reported that domestic violence was “a primary cause of homelessness” in their cities.

Part 2 -Domestic Violence and Housing Law

Domestic Violence and its effects on Housing

DOMESTIC VIOLENCE PUTS SURVIVORS AT RISK OF HOMELESSNESS

- ❑ Violence in the home causes survivors to flee home for safety.
- ❑ Landlords evict or refuse to rent to survivors because of the violence of batterer.
- ❑ Nuisance Ordinances cause survivors to be evicted because of calls for police or emergency assistance.

Part 2 -Domestic Violence and Housing Law

Federal and State Legal Protections in Housing for DV Survivors

State Laws

- ❑ Family Code §§ 6321, 6324 & 6340 i.e. Domestic Violence Prevention Act
Provides survivors avenues to remove abusers from their home, and to require their abusers to continue to pay the abuser's portion of rent or mortgage.
- ❑ California Civil Code §§ 1161.3, 1941.5, 1941.6, 1946.7 & 1946.8
Allows survivors to change their locks and terminate their leases early, and provides survivors eviction protections.
- ❑ California Government Code §§ 6205-6211, 53165
Allows survivors to make their address confidential and prohibits ordinances from penalizing DV survivors or their landlords because law enforcement was called for assistance.

Part 2 -Domestic Violence and Housing Law

Federal and State Legal Protections in Housing for DV Survivors

State Laws Continued

- ❑ California Health & Safety Code § 34328.1

Requires Housing Authorities to report tenancy terminations and termination notices given to DV survivors to California's Department of Housing and Community Development.

- ❑ California Welfare & Institutions Code § 11450(f)(2)(E)(iii)-(v)

Provides additional homeless assistance under CalWorks if the assistance is needed because of DV.

Part 2 -Domestic Violence and Housing Law

Federal and State Legal Protections in Housing for DV Survivors

Federal Laws

- Violence Against Women Act (VAWA) 34 U.S.C. § 1249

Protects Survivors living in certain subsidized housing by making it illegal to deny housing to survivors, terminate housing of survivors and otherwise penalize to survivors because they are survivors.

- Fair Housing Act (FHA) 42 U.S.C. §3601 et seq.

Provides protections against housing discrimination based on race, color, religion, national origin, sex, disability, and familial status.

Part 2 -Domestic Violence and Housing Law

Using the Law to Protect Clients

Applying Laws to the Facts: Starting with Two Couples, Living Together

Rory and Jules: Live in private non-subsidized housing

Morgan and Jordan: Live together with a Section 8 Housing Choice Voucher (Section 8 Voucher)

Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

Rory and Jules Move in together

- ❑ Rory's name is not on lease
- ❑ They live together for 6 months
- ❑ Rory pays half the rent with a personal check that Jules uses to pay the Landlord
(either Co-Tenant or Sub-Tenant)



Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Jules Becomes Abusive

For Rory's safety Rory needs Jules to leave the apartment, but Rory cannot afford the apartment's rent alone.

What Can Rory Do?



Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

Rory Can File: Ex Parte DV Temporary Restraining Order (TRO) with requests for a Move Out Order & Order to Pay Rent



- A request a for a Move Out Order asks the Judge to order Jules to temporary move out of the apartment.
- A request a for an Order to Pay Rent asks the Judge to order Jules to continue to pay Jules' portion of the rent for up to as long as the restraining order is in effect.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

How to Get a DV TRO with a Move Out Order

Rory must establish with reasonable proof that:

1. Jules assaulted or threatened to assault Rory (or Rory's child/dependent);
2. Physical or emotional harm would result to Rory (or Rory's child/dependent) if Jules were not excluded from the apartment; and
3. Rory has a right under "color of law" to possession of the premises.
 - Rory has resided in the apartment for more than 30 days, has paid rent, and would be entitled to a 30 day notice in an eviction proceeding.

How to Get a Domestic Violence Temporary Restraining Order with an Order to Pay Rent

Rory can request that Jules pay all or a portion of the rent.



- In the TRO application, Question 15 asks the applicant about “Payment of Debt,” which can include rent and mortgage payments.
- It is the Court’s decision on whether to issue an order requiring Jules to pay rent during the period the restraining order is in effect.

Part 2 -Domestic Violence and Housing Law
Using the Law- **Rory and Jules** Private housing

**Rory gets a DV Temporary Restraining
Order with a Move Out Order!**

Now, how does Rory change the Locks?

Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

To Change the Locks Rory Must:

Cal. Fam. Code § 6321/6340 & Cal. Civ. Code § 1941.6



Write to the landlord and request they change the locks.



Provide the landlord a copy of the restraining order with a move out order.

- The restraining order must have been issued in the last 180 days.

After receiving the restraining and move out order, the landlord must change the locks within 24 hours.

- If the landlord doesn't change the locks within 24 hours Rory can have locks changed.



Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

Rory seeks a Restraining Order After Hearing with a Move Out Order. Rory gives Jules Notice of the Hearing.

For a Restraining Order After Hearing Rory Must Show:

by a preponderance of the evidence, that an act of abuse occurred.

For a Move Out Order Rory Must Show:

that *physical or emotional harm would otherwise result* to Rory (or Rory's child/dependent in Rory's care) if Jules were not excluded from the apartment.



Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Rory is Ready to Move!



Rory decided to leave the apartment shared with Jules to find a new place, where Jules cannot find Rory. Rory starts applying to apartments.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

TRUE OR FALSE

Because Rory is seeking an apartment in **Private Market Rate Housing** (i.e. not subsidized housing) ...

A private Landlord may deny Rory's housing application based upon Rory's status as a Domestic Violence Survivor or Rory's eviction/conviction record that was a direct result of domestic violence.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

FALSE

Rory is protected by the
Federal Fair Housing Act -42 U.S.C. § 3601

- Applies to Private and Public Housing
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class
- Protected Classes
 - race, color, religion, national origin, sex, disability, and familial status

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

How Does the Fair Housing Act Protect Survivors?

Disparate Treatment and Disparate Impact

The Fair Housing Act does not specifically state it is illegal to discriminate against domestic violence survivors. But, because most survivors are women—and discriminating against survivors would have a larger impact on women than men—it can be illegal. Discrimination against survivors of domestic violence may be illegal sex discrimination when:

1. it is disparate (unequal) treatment based on gender or gender stereotypes about survivors, or
2. it has a disparate (unequal) impact on a protected class, for example, it affects women more than men.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Rory finds a new home, but Jules finds it too!

Jules:

- Makes a copy of Rory's key;
- Causes disturbance;
- Damages property; and
- Causes Rory and Rory's neighbors to call 911.



What Can Rory Do?

Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

Rory Can Change the Locks:

If Rory has a **restraining order** or a **police report** involving Jules and abuse, stalking, or sexual assault that is no more than 180 Days old, Rory can:



Require the Landlord change the locks within 24 hours by requesting in **writing** and with **a copy of the court order or police report** that the landlord change the locks.

- If the locks are not changed within 24 hours, Rory can have them changed.

Survivor may be able to receive financial assistance for up to \$1,000 to enhance security at their homes from The California Victims Compensation Board, the Board suggests you try your county office, as they process applications faster! <https://victims.ca.gov/victims/localhelp.aspx>

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

30-Day Notice of Tenancy Termination

The landlord gives Rory a 30-Day Notice, claiming there were too many 911 calls about Rory's apartment.



Can the Landlord Evict Rory for Needing Emergency Assistance or Help From the Police?

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

No!

Rory has an Affirmative Defense to an Eviction

A Landlord cannot penalize a tenant for calls for law enforcement or emergency assistance, if the person calling believes the assistance is needed.

Also, there cannot be laws or regulations in California that require or allow landlords to evict or otherwise punish tenants for calls for law enforcement or emergency assistance, like ambulances.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Rory Receives a 3-Day Notice

Rory's landlord is tired of dealing with Jules, so seeks to evict Rory, serving Rory a 3-Day Notice to Cure or Quit sighting Jules' abusive behavior or damage caused by Jules.

Does Rory have any defenses to the eviction?

Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

YES!

Rory has an Affirmative Defense to Eviction

(Unlawful Detainer) Cal. Code Civ. Proc. § 1161.3

To Prove Abuse Rory Needs One of the Following:

- a **Police Report** documenting Jules' abuse within the last 180 days;
- a **Restraining Order** against Jules within the last 180 days;
or
- a **letter from a qualified third party**, (examples include a doctor, a DV counselor, or a therapist) confirming that Rory sought assistance for physical or mental injuries, or abuse from Jules.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Limits to Rory's Affirmative Defense to Eviction

The Landlord may still terminate Rory's tenancy if,

1. Rory allows Jules back on the premises after Rory received the 3-Day Notice;

OR

2. After the 3-Day Notice expires, the landlord reasonably believes Jules poses a physical threat to other tenants or their right to quiet possession of their unit.



Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

After stopping the eviction, Rory finds a dream home!
Rory is in the middle of the lease, can Rory move?



Part 2 -Domestic Violence and Housing Law

Using the Law- **Rory and Jules** Private housing

Yes! Rory can end the lease early!

Rory must tell the landlord in writing that Rory is ending the lease early with a copy of a:

- restraining order no more than 180 days old; or
- police report no more than 180 days old; or
- statement from a qualified third-party

Rory must pay 14 days rent after giving the landlord the written notice.

- If the unit is re-rented in less than 14 days, the rent for the days the unit was re-rented should be returned to Rory.

Rory's security deposit should be returned as usual.

- The security deposit should be returned no later than 21 Days after move out with an itemized list of any deductions.

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

Who is a Qualified 3rd Party?

- A. Licensed Doctor, Nurse or Psychologist
- B. Clinical Social Worker or Licensed Marriage & Family Therapist
- C. Domestic Violence Counselor
- D. Sexual Assault Counselor
- E. All of the Above

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

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- B. Clinical Social Worker or Licensed Marriage & Family Therapist
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- D. Sexual Assault Counselor
- E. All of the Above**

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

If Jules and Rory were roommates, not partners, could Rory file a DV Restraining Order and have Jules locked out?

- A. Yes
- B. No
- C. It Depends



The Domestic Violence Prevention Act, includes Cohabitants in its list of qualifying relationships, however cohabitant has been defined by the California Court of Appeals to require the cohabitants reside in a family or social unit. (*O’Kane v. Irvine* (1996) 47 CA 4th 207)

Part 2 -Domestic Violence and Housing Law

Using the Law- Rory and Jules Private housing

If Jules and Rory were roommates, not partners, could Rory file a DV Restraining Order and have Jules locked out?

A. Yes

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Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Morgan & Jordan Live Together

- ❑ Morgan and Jordan have a private landlord and use Jordan's Section 8 Housing Choice Voucher.
- ❑ Morgan is on Jordan's voucher as Jordan's partner.
- ❑ Morgan and Jordan have lived together for over 30 days.



Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Jordan's Voucher Gives **ALL** Household Members VAWA Protections

VAWA Protections:

- ❑ Prohibits landlords or Housing Authorities from discriminating against or evicting a Survivor because they are a Survivor;
- ❑ Requires tenants receive notice of VAWA protections;
- ❑ Requires Housing Authorities and landlords to keep a tenant's status as a DV survivor confidential;
- ❑ Allows survivors access to emergency transfer plans, when they need to move because of abuse; and
- ❑ Allows survivors to bifurcate (or split) their lease because of abuse.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Morgan & Jordan are Covered by the Same Laws **as Rory & Jules**

In addition to the protections from VAWA, Tenants in subsidized housing also have the legal protections given to tenants in private housing.

In other words, Morgan can also use the laws that protected Rory to request a restraining order with a move out order, change their apartment's locks, and have a defense to an eviction action caused by Domestic Violence.

Part 2 -Domestic Violence and Housing Law

Using the Law- Morgan and Jordan Subsidized Housing

Jordan Physically and/or Emotionally Abuses Morgan

Morgan May Choose to:

- Stay in the unit; or
- Leave to find new place



Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Morgan Wants to Stay and Asks the Landlord to Bifurcate the Lease



- ▶ Under VAWA, the landlord may choose to end Jordan's tenancy but not Morgan's tenancy (i.e. evict Jordan and not Morgan).
- ▶ Evicting only Jordan bifurcates the lease and lets Morgan stay in the Unit.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

How Can Morgan Afford the Rent without Jordan's Voucher? By becoming a Section 8 Housing Voucher Holder

Because Jordan is the Voucher holder, the Housing Authority must provide Morgan the opportunity to obtain a Section 8 Housing Choice Voucher.

- If Morgan does not qualify for a Section 8 Voucher, the Housing Authority must give Morgan a reasonable time to either
 1. Get assistance from another housing program covered by VAWA; or
 2. Find different housing.

Part 2 -Domestic Violence and Housing Law

Using the Law- Morgan and Jordan Subsidized Housing

If Morgan Decides to Go:

Morgan can use the Housing Authority's Emergency Transfer Plan to:



- ❑ Bifurcate their lease to move without Jordan.
- ❑ Request that Morgan get Morgan's own voucher to move to a new unit.
- ❑ Request to port Morgan's new voucher to a different Housing Authority.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Every Housing Provider Covered by VAWA **MUST** have an Emergency Transfer Plan that:

Allows survivors to transfer to a different, safe and available unit that has assistance under the covered housing program if the survivor asks for a transfer and:

- “reasonably believes there is a **threat of imminent harm from further violence**” if they stay in the unit; or
- is a survivor of sexual assault and the **sexual assault happened on the premises no more than 90 days ago.**

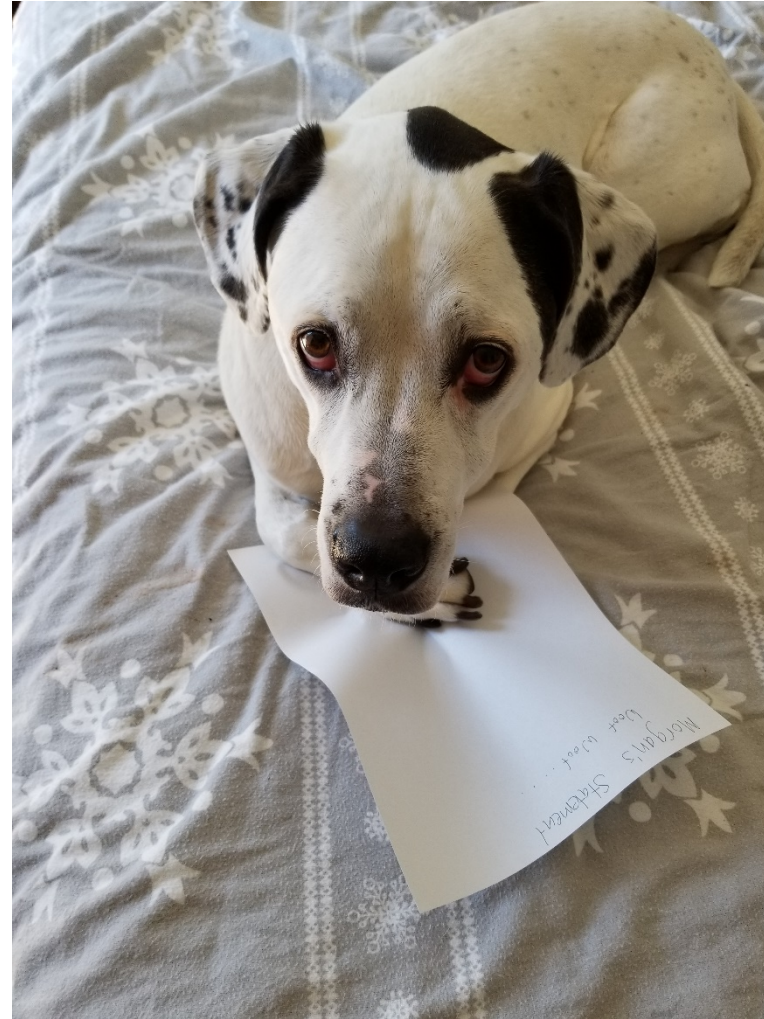
* the covered housing provider may require the survivor give them documentation showing that they are a survivor.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

Morgan's Documentation of Abuse

Morgan gives the Housing Authority a written statement where Morgan certifies that Morgan is a survivor.



Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

True or False

The Housing Authority may require Morgan produce either a **qualified third-party statement**, a **police report**, or a **restraining order** to prove Morgan qualifies for VAWA protections.

Part 2 -Domestic Violence and Housing Law

Using the Law- **Morgan and Jordan** Subsidized Housing

FALSE

While a Housing Authority *may require documentation* of a survivor's status, **Self-Certification** is acceptable. Generally, survivor gets to choose which of the 4 types of documentation to give the housing provider.

- ❖ However, a housing provider can require proof in addition to the self certification, if there is conflicting evidence.

Part 3 -Domestic Violence & Employment Law

- ❑ Domestic Violence and its effects on Employment
- ❑ Federal & State Legal Protections in Employment for Domestic Violence Survivors
- ❑ Using the Laws to Protect your Clients

Part 2 -Domestic Violence and Employment Law

Domestic Violence and its effects on Employment

DOMESTIC VIOLENCE PUTS SURVIVORS AT RISK OF LOSS OF EMPLOYMENT & ECONOMIC SECURITY

- ❑ Violence at the home or workplace may cause an employer to take negative employment actions against a survivor.
- ❑ Taking time off work to seek help from the court or domestic violence service providers can lead to employment loss.
- ❑ Survivors who lose employment due to DV may not be aware they are entitled to Unemployment Benefits.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

State

- California Labor Code § § 230 (c), (e), (f) & 230.1
- California Unemployment Insurance Code §§ 1030, 1032
- California Fair Employment and Housing Act (FEHA)
(Cal. Gov. Code §§ 12900 et al)

Federal

- Title VII (24 U.S.C. §§ 2000e et al.)
- Americans with Disabilities Act (42 U.S. Code §§ 12101 et al.)

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

California Labor Code § 230

Prohibits: employers that know their employee is a survivor of domestic violence, sexual assault or stalking from firing or discriminating against the employee:

- because they are a survivor; or
- because they took time off to get legal relief from the abuse.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

California Labor Code § 230

Requires: employers provide reasonable accommodations to a survivors of domestic violence, sexual assault, or stalking who request an accommodation for their safety at work.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

California Labor Code § 230.1

Prohibits **employers with at least 25 employees from firing or penalizing employees that are** survivors of domestic violence, sexual assault or stalking from taking leave to:

- ❑ Receive medical help with injuries caused the abuse.
- ❑ Receive services from a domestic violence shelter, program, or rape crisis center.
- ❑ Receive psychological counseling related to the abuse.
- ❑ Safety plan or take other actions to increase the survivor's safety from future abuse, including temporary or permanent relocation.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

California Unemployment Insurance Code §§ 1030, 1032

- In California, a domestic violence survivor who quits their job to protect themselves or their family from domestic violence has “good cause” for leaving that job.
- Survivors who quit or are fired because of domestic violence are entitled to Unemployment Insurance.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

Federal Law - Title VII



Prohibits disparate treatment based on sex, which may include treatment based on sex-based stereotypes.

Prohibits practices that cause a disparate impact on the basis of sex, unless the practice is job related and necessary and there is no alternative practice available.

Part 3 -Domestic Violence and Employment Law

Federal & State Legal Protections in Employment for DV Survivors

Federal Law: The Americans with Disabilities Act (ADA)

State Law: Fair Employment and Housing Act (FEHA)



The ADA and FEHA prohibit different treatment or harassment at work based on an actual or perceived impairment, which could include impairments resulting from domestic or dating violence, sexual assault or stalking.

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Morgan moved, so Jordan starts showing up at Morgan's workplace, 4Paws Accounting, causing disturbances.

4Paws says Morgan will be fired because:

- 4Paws doesn't want "drama" at work.
- 4Paws Employees are frightened by Jordan.
- Morgan is missing work because of Jordan's abuse.

What Can Morgan Do?

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Morgan Can:



1. Inform 4Paws that Morgan is a survivor of domestic violence, so an 4Paws cannot take adverse actions against Morgan because Morgan's survivor status.
2. Provide 4Paws documentation of abuse and explain that Morgan took time off to obtain relief from the abuse.
3. Ask for a reasonable accommodation, such as a transfer to another office, change in hours, new phone number, and/or new safety protocols.

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

What documentation of DV Survivor status may an employee submit?

- A. Police Report
- B. Restraining Order
- C. Self-Certified Statement
- D. Qualified Third Party Statement
- E. A, B, D

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

What documentation of DV Survivor status may an employee submit?

- A. Police Report
- B. Restraining Order
- ~~C. Self-Certified Statement~~
- D. Qualified Third Party Statement
- E. A, B, D

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Despite the 4Paws accommodations, Morgan does not feel safe from Jordan at 4Paws, so Morgan leaves 4Paws.

Can Morgan get Unemployment Insurance benefits payments even though Morgan quit the job?

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients



Yes!

Morgan gets Unemployment Insurance benefits payments because Morgan quit 4Paws to stay safe.

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Morgan Starts Looking for a New Job

During an interview Morgan admits to leaving 4Paws because of Jordan's abuse. Morgan volunteers that the abuse caused Morgan to struggle with depression, but because of therapy Morgan is doing well and very excited to return to work.

Although Morgan is by far the most qualified applicant, the employer hires someone else because of concerns that Morgan will require future time off to deal with depression symptoms. Are the employer's actions legal?

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

No!

The employer is violating the ADA and FEHA by choosing not to hire Morgan because of a disability, depression.

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Morgan Finds a Job

Morgan's new job is at Expert Woof Accounting. Morgan is an excellent accountant and performing well. However, Morgan is often late to work, which starts at 9am, because Morgan's depression causes Morgan to struggle to get out of bed in the morning.



Is there anything Morgan can do?

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Requesting a Reasonable Accommodation

A Reasonable Accommodation is:

a change to a job or workplace that allows an employee or applicant with a disability equal employment opportunities. A Reasonable Accommodation cannot:

- ▶ change the employee's **essential job functions**; or
- ▶ be an **undue hardship** on the employer (i.e. cost too much or be too disruptive)

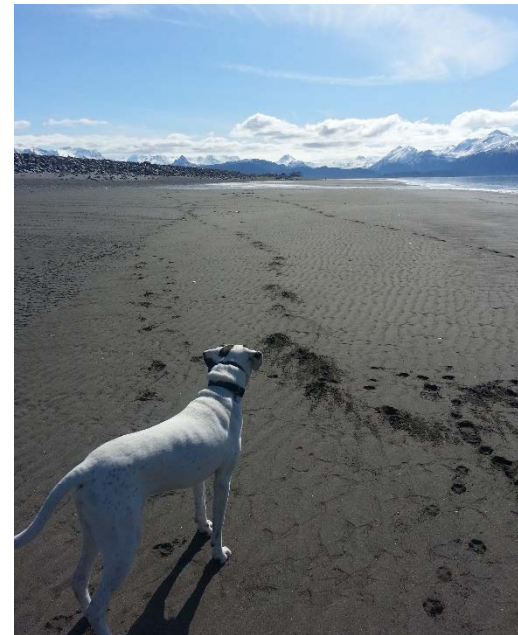
Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Morgan Receives A Modified Work Schedule

- Morgan requests the accommodation with **a letter from a treating doctor verifying Morgan's disability and that the symptoms of Morgan's disability require Morgan's work to start at 10am at the earliest.**
- Expert Woof grants Morgan's request because it is not an undue burden and allows Morgan to continue performing the job's essential functions.

Morgan's Employment Future is Bright!



Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Gender Stereotyping & Title VII



This is Bob. Bob is a survivor of domestic violence.

Bob's manager was going to promote him to head builder. Then Bob gets a restraining order against his partner and Bob loses the promotion because his manager decides Bob is untrustworthy, believing that because only women can be true victims of domestic violence, Bob is lying.

Has Bob's manager violated the law?

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Gender Stereotyping & Title VII



Yes! By denying Bob the Builder a promotion because of the gender stereotype that only women can be survivors, the employer violated Federal Law - Title VII, which prohibits disparate treatment based on sex. This includes treatment based on sex-based stereotypes.

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Title VII & Employment Discrimination

An employer's leave policy allows employees to use paid leave for restraining order court appearances when the employee is the restrained, i.e. the person being restrained by the order, and unpaid leave when the employee is the restrainer, i.e. the person asking for the restraining order.

This is an example of:

- A) Disparate Impact Discrimination based on Sex
- B) Disparate Treatment based on Sex

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Title VII & Employment Discrimination

An employer's leave policy allows employees to use paid leave for restraining order court appearances when the employee is the restrained, i.e. the person being restrained by the order, and unpaid leave when the employee is the restrainer, i.e. the person asking for the restraining order.

This is an example of:

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- B) Disparate Treatment based on Sex

Part 3 -Domestic Violence and Employment Law

Using the Law to Protect Clients

Title VII & Employment Discrimination

What if, it is the employer decides on a case by case basis when someone can use paid vs. unpaid leave. The employer allows a male employee paid leave to respond to a restraining order, but a woman unpaid leave to request a restraining order because the employer believes women make up domestic violence to punish their husbands.

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FVAP Website

<https://fvaplaw.org/legal-resource-library/>

Password: FVAPtrainings6

Free Access To Resources For DV Survivors And DV Advocates:

- Court Preparation Checklist
- Litigation Abuse Tipsheet
- Family Code § 3044 Toolkits
- Trainings On How To Lay A Record For Appeal

Family Violence Appellate Project

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- ▶ Thank you again for watching. This webinar is now concluded.